JUDICIAL COUNCIL OF CALIFORNIA

EXECUTIVE AND PLANNING COMMITTEE

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EXECUTIVE AND PLANNING COMMITTEE

OPEN MEETING WITH CLOSED SESSION AGENDA

Open to the Public Unless Indicated as Closed (Cal. Rules of Court, rule 10.75(c)(1))

THIS MEETING IS BEING CONDUCTED BY ELECTRONIC MEANS

OPEN PORTION OF THIS MEETING IS BEING RECORDED

Date:	Thursday, October 8, 2015
Time:	12:10 to 1:10 p.m.
Public Call-In Number:	877-820-7831; passcode 846-8947 (listen only)

Meeting materials for open portions of the meeting will be posted on the advisory body web page on the California Courts website at least three business days before the meeting.

Agenda items are numbered for identification purposes only and will not necessarily be considered in the indicated order.

I. OPEN MEETING (CAL. RULES OF COURT, RULE 10.75(C)(1))

Call to Order and Roll Call

Approval of Minutes

Approve minutes of the August 13, 2015, Executive and Planning Committee meeting.

II. PUBLIC COMMENT (CAL. RULES OF COURT, RULE 10.75(K)(2))

Written Comment

In accordance with California Rules of Court, rule 10.75(k)(1), written comments pertaining to any agenda item of a regularly noticed open meeting can be submitted up to one complete business day before the meeting. For this specific meeting, comments should be e-mailed to executiveandplanning@jud.ca.gov or mailed or delivered to Judicial Council of California, 455 Golden Gate Avenue, San Francisco, California, 94102-3688, Attention: Cliff Alumno. Only written comments received by 12:10 p.m. on Wednesday, October 7, 2015, will be provided to the committee members prior to the meeting.

III. Discussion and Possible Action Items

Item 1

Amendment to the 2015 Annual Agenda of the Workload Assessment Advisory Committee (WAAC) (Action Required)

Review proposed amendments to the 2015 WAAC annual agenda that reflect the need to revise the timeline for the update of the Resource Assessment Study (RAS).

Presenters: Judge Lorna Alksne (Chair) and Ms. Deana Farole (Staff)

Item 2

Conversion of Two Subordinate Judicial Officer (SJO) Positions in the Superior Court of San Diego County (Action Required)

Review request from the court to confirm the conversion of two vacant SJO positions in the Superior Court of San Diego County.

Presenters: Mr. Mike Roddy (Court Executive Officer), Ms. Leah Rose-Goodwin (Staff), and Mr. David Smith (Staff)

Item 3

Invitation to Comment: Revision of the Conflict of Interest Code for the Judicial Council (Action Required)

Review a proposal to be circulated for comment that would adopt amendments to the Judicial Council Conflict of Interest Code aligning it with the Judicial Council's new classification and compensation structure. In accordance with Government Code sections 87303 and 87306, the code must be updated "when change is necessitated by changed circumstances, including the creation of new positions" (Gov. Code, § 87306) and the council must review and approve proposed amendments to the code or direct that it be further revised and resubmitted for approval.

Presenter: Ms. Linda Cox (Staff)

Item 4

Trial Courts Security Grants Program (No Action Required)

At the April 17, 2015, meeting, the Judicial Council approved eliminating, reducing, and deferring expenditures for specified projects funded from the State Trial Court Improvement and Modernization Fund (IMF) and directed staff to explore other funding sources to support programs funded from the IMF. During its June 15, 2015, meeting, E&P reviewed this report identifying other funding sources and directed the Legal Services office to review and comment on the report. Legal Services has reviewed the report and concurs with the analysis and conclusion.

Presenter: Mr. Zlakto Theodorovic

Item 5

Agenda Setting for October 26–27 Judicial Council Meeting (Action Required)
Review draft reports and set the agenda for the Judicial Council meeting in October.

Presenters: Various

IV. ADJOURNMENT

Adjourn to Closed Session

V. CLOSED SESSION (CAL. RULES OF COURT, RULE 10.75(D))

Call to Order and Roll Call

Item 6

Pursuant to California Rules of Court, rule 10.75(d)(1)
Advisory Body Appointment
Review materials and develop recommendations to be sent to the Chief Justice regarding a request for an appointment to an advisory body.

Adjourn Closed Session

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EXECUTIVE AND PLANNING COMMITTEE

MINUTES OF OPEN MEETING WITH CLOSED SESSION

Thursday, August 13, 2015
12:10 to 2:00 p.m.
Teleconference

Advisory Body Members Present:	Justice Douglas P. Miller (Chair); Judge David M. Rubin (Vice Chair); Justice Judith Ashmann-Gerst; Judges Marla O. Anderson, James R. Brandlin, Marsha G. Slough, Dean T. Stout, and Charles D. Wachob; and Ms. Donna D. Melby and Ms. Mary Beth Todd
Advisory Body Members Absent:	Judge Morris D. Jacobson
Committee Staff Present:	Ms. Jody Patel and Ms. Nancy Carlisle
Staff Present:	Mr. Cliff Alumno, Ms. Nadine Blaschak-Brown, Ms. Roma Cheadle, Ms. Linda Cox, Mr. Mark Dusman, Mr. Bob Fleshman, Ms. Lucy Fogarty, Ms. Cristina Foti, Mr. Bob Fleshman, Mr. Patrick McGrath, Ms. Diane Nunn, Mr. Patrick O'Donnell, Ms. Nancy Taylor, and Mr. Zlatko Theodorovic

OPEN MEETING

Call to Order and Roll Call

The vice chair, as acting chair for this meeting, called the meeting to order at 12:10 p.m. and committee staff took roll call.

Approval of Minutes

The committee reviewed and approved the minutes of the August 10, 2015, Executive and Planning Committee meeting.

DISCUSSION AND ACTION ITEMS

Continue Agenda Setting for the August 20–21, 2015, Judicial Council Meeting

The committee reviewed remaining draft reports and continued to set agenda for the Judicial Council meeting in August.

Action: ***The committee approved the following items for placement on the August Judicial Council business meeting agenda:***

- ***Judicial Branch: Workers' Compensation Program Allocation Methodology (Action Required)***

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- ***Collaborative Justice: Recommended Allocations of Fiscal Year 2015–2016 Substance Abuse Focus Grants (Action Required)***
- ***Judicial Administration: Statewide Traffic Tickets/Infraction Amnesty Program (Action Required)***
- ***Budget: Fiscal Year 2016–2017 Budget Proposals for Supreme Court, Courts of Appeal, Judicial Council, Judicial Branch Facilities Program, Trial Courts, and Habeas Corpus Resource Center (Action Required)***
- ***Government Code Section 68106: Public Notice by Courts of Closures or Reduced Clerks' Office Hours (Gov. Code, § 68106—Report No. 33) (Information Only)***

ADJOURNMENT

There being no further open meeting business, the meeting was adjourned at 12:30 p.m.

CLOSED SESSION

Pursuant to California Rules of Court, rule 10.75(d)(1)

Advisory Body Appointments

The committee reviewed materials regarding advisory body vacancies.

Action: The committee developed recommendations to be sent to the Chief Justice regarding advisory body vacancies.

Adjourned closed session at 2:00 p.m.

Approved by the advisory body on [insert date].

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JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date
September 11, 2015

To
Judicial Council Executive and Planning Committee

From
Workload Assessment Advisory Committee
Hon. Lorna Alksne, Chair

Subject
Modifications to Annual Agenda

Action Requested
Approve Modifications to Annual Agenda

Deadline
N/A

Contact
Deana Farole, Supervising Research Analyst,
Office of Court Research
415-865-8997 phone
deana.farole@jud.ca.gov

Summary

The Workload Assessment Advisory Committee (WAAC) requests that the Executive and Planning Committee approve modifications to its annual agenda that reflect the need to revise the timeline for the update of the Resource Assessment Study (RAS). Although the staff time study would be conducted a few months later than initially planned, the final results of the RAS update would still be available in time for fiscal year 2017-2018 funding allocations.

Background

The Executive and Planning Committee initially approved WAAC's annual agenda on April 16, 2015. At that time, the status of the staff study update (project 1) was noted as "ongoing," with interim goals for 2015 of fielding the staff time study and conducting a preliminary analysis of the time study data. That timeline was predicated on filling two new analyst positions, one in January 2015 and one in July 2015. The new positions were needed because the study will be done entirely in-house by Judicial Council staff, whereas the National Center for State Courts

was responsible for a large portion of the work for the last RAS update. It took longer than anticipated to secure approval to recruit for the two positions; interviews are currently underway and the positions are expected to be filled in September or October. With the staff time study slated for the field in October, there would not be sufficient time to onboard and train the new staff. The study could not be supported with existing staff due in part to other commitments and in part to the much larger volume of courts and court staff that will be participating in the study relative to the last update.

Other factors that impact the feasibility of conducting the study in October include unanticipated assignments to WAAC (i.e., the complex civil caseweight and the AB 1058 funding methodology joint subcommittee); implementation of the amnesty program, which could initially cause a spike or atypical pattern in workload; and the timing of the AB 1058 conference, which has typically been held earlier in September rather than October and could take many study participants away from their courts for several days.

Staff to WAAC developed a proposed alternate timeline for the RAS update that puts the staff study in the field in February or March 2016. It was important to avoid times too close to the holidays when many staff take vacation and the workload is not typical. The courts that volunteered to participate in the study were polled about the revised timeline and all but one would still be able to participate; in fact, several courts preferred the revised timeline due to the timing of implementation of their new case management systems and other commitments.

Although it is not necessary to include in the annual agenda at this time, it is worth noting that staff were able to find some time to trim from the back end of the project so that the updated RAS model would still be available in time for fiscal year 2017-2018 allocations. WAAC unanimously approved the full revised RAS timeline at its August 27, 2015 meeting.

Revisions to Annual Agenda

Due to the postponement of the staff time study, it was necessary to revise WAAC's annual agenda—both the key objectives for 2015 on page 1 and the status of the staff workload study update on page 2. The project status is still noted as "ongoing," but with modified interim goals of recruiting courts to participate in the study (already completed) and finalizing the revisions to the data collection instruments. WAAC is requesting the Executive and Planning Committee's approval of these modifications (see attached annual agenda draft with changes highlighted in yellow).

Workload Assessment Advisory Committee
Annual Agenda—2015
Approved by E&P/RUPRO: _____

I. ADVISORY BODY INFORMATION

Chair:	Hon. Lorna Alksne
Staff:	Leah Rose-Goodwin and Deana Farole, Court Operations Services, Office of Court Research (OCR)

Advisory Body's Charge: The committee makes recommendations to the council on judicial administration standards and measures that provide for the equitable allocation of resources across courts to promote the fair and efficient administration of justice. The committee must recommend:

(1)Improvements to performance measures and implementation plans and any modifications to the Judicial Workload Assessment and the Resource Assessment Study Model;

(2)Processes, study design, and methodologies that should be used to measure and report on court administration; and

(3)Studies and analyses to update and amend case weights through time studies, focus groups, or other methods.

Advisory Body's Membership: 16 members: 8 judicial officers, 8 court executives

Subgroups/Working Groups: Special Circumstances Subcommittee; Child Support Commissioner and Family Law Facilitator Program Allocation Methodology Joint Subcommittee

Advisory Body's Key Objectives for 2015:

- Finalize the project plan and methodology for conducting an update to the staff workload study.
- Recruit courts to participate in the staff workload study update and finalize data collection instruments in preparation for fielding the time study in early 2016.
- Improve data quality of filings data in the RAS categories.

II. ADVISORY BODY PROJECTS

#	Project[1]	Priority[2]	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
1.	Staff workload study update. The update will consist of a time study of a sample of trial courts and is intended to update the caseweights and other model parameters that are used to estimate workload need. The committee's work in 2015 will consist of discussing the study parameters and methodology, advising council staff on and assisting with recruitment of courts to participate in the study, and directing council staff to finalize updates of the data collection instruments in preparation for launch of the time study in early of 2016.	1	**Judicial Council Direction:** In February 2013, the Judicial Council approved the updated RAS model parameters for use in estimating court staff workload need, with the understanding that ongoing technical adjustments will continue to be made by council staff as the data become available. The need for regular updates to the workload model has become more urgent now that RAS is used as the foundation piece of the model used to allocate trial court funding (WAFM). **Origin of Project:** The SB 56 Working Group was formed in 2009 at the direction of the Administrative Director to provide trial court input and oversight to the Office of Court Research in its ongoing work to revise and improve the workload estimates for judges and court staff. In October	Ongoing. The data collection instruments will be finalized by the end of 2015, in preparation for training participants and launching the time study in early 2016.	Updated caseweights to measure trial court staff workload. These caseweights are used to estimate trial court staff need, which is then used for the WAFM model.

[1] All proposed projects for the year must be included on the Annual Agenda. If a project implements policy or is a program, identify it as *implementation* or *a program* in the project description and attach the Judicial Council authorization/assignment or prior approved Annual Agenda to this Annual Agenda.

[2] For non-rules and forms projects, select priority level 1 (must be done) or 2 (should be done). For rules and forms proposals, select one of the following priority levels: 1(a) Urgently needed to conform to the law; 1(b) Urgently needed to respond to a recent change in the law; 1(c) Adoption or amendment of rules or forms by a specified date required by statute or council decision; 1(d) Provides significant cost savings and efficiencies, generates significant revenue, or avoids a significant loss of revenue; 1(e) Urgently needed to remedy a problem that is causing significant cost or inconvenience to the courts or the public; 1(f) Otherwise urgent and necessary, such as a proposal that would mitigate exposure to immediate or severe financial or legal risk; 2(a) Useful, but not necessary, to implement statutory changes; 2(b) Helpful in otherwise advancing Judicial Council goals and objectives.

#	Project[1]	Priority[2]	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
			2013, the advisory committee voted to update the studies every 5 years, as resources permit. In December 2013, the Judicial Council approved a recommendation to establish the Judicial Branch Resource Needs Assessment Advisory Committee to succeed the SB 56 Working Group and to continue its work. In April 2014, the committee was renamed to the Workload Assessment Advisory Committee (WAAC). **Resources:** 0.25 FTE Manager, 1.0 FTE Supervising Research Analyst, 2.5 FTE Senior Research Analyst, 0.5 FTE Staff Analyst II (2 FTE Senior Research Analysts are pending recruitment; all others are existing staff); ITSO support to create web-based data collection interface; subject matter expert consultants from the Center for Families, Children & the Courts and Criminal Justice Services. **Key Objective Supported:** #1 and #2		
2.	Convene Special Circumstances Subcommittee to study the impact of special circumstances cases on the felony caseweight and make recommendations to	1	**Judicial Council Direction:** In February 2013, the Judicial Council approved the updated RAS model parameters for use in estimating court staff workload need, with the	Subcommittee completed work in August 2015, resulting in a recommendation to further study the	The subcommittee will formulate recommendations for consideration by the full committee on how

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#	Project[1]	Priority[2]	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
	the full committee on how to handle such cases.		understanding that ongoing technical adjustments will continue to be made by council staff as the data become available. **Origin of Project:** At its January 16, 2014 meeting, the Trial Court Budget Advisory Committee passed a motion to recommend to the Judicial Council that WAAC consider establishing a casetype for special circumstances cases. The motion was intended to highlight the extraordinary resource needs for those cases and also the criticality of the workload models to direct resources to courts based on workload. At the February 20, 2014 Judicial Council meeting, the Council refined the TCBAC's recommendation to recommend that WAAC specifically study homicide-death penalty cases. **Resources:** 0.1 FTE Supervising Research Analyst, 0.25 FTE Senior Research Analyst, nominal time from Manager (existing OCR staff). Subcommittee consists of representatives from the trial courts who are current WAAC members. Meeting expenses will be absorbed into existing IMF allocation for	workload associated with these cases in the early 2016 update of the staff time study.	to approach special circumstances cases in terms of data collection and the analysis of court resource needs in this area.

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#	Project[1]	Priority[2]	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
			WAAC. **Key Objective Supported:** #1		
3.	Improve data quality of filings data in the RAS categories, including: • Working with courts to ensure that data are reported in all of the RAS casetype categories • Evaluate court reporting practices for filings data to ensure they meet current JBSIS standards; update and clarify JBSIS standards as needed • Develop different possibilities for validating the filings data used in the RAS model, including establishing a data auditing process for filings data. This project is a partnership with the Court Executive Advisory Committee.	1	**Judicial Council Direction:** The Judicial Council approved the judicial workload study (December 2011) and the Resource Assessment Study (February 2013) as the methodologies used to estimate judge and staff workload need. Both studies use filings as the driver to estimate resource need. The accuracy of the estimates rely on the accurate and complete reporting of filings data by the trial courts. The Council's motions to approve the two studies also anticipated the need for ongoing technical adjustments to the models as better data became available. **Origin of Project**: The need for better data reporting and data auditing were discussed at the last SB 56 Working Group meeting (October 2013). The issue has also been raised at various forums, including CEAC; Trial Court Budget Advisory Committee meetings; and Funding Methodology Subcommittee meetings. **Resources:** COS-OCR staff (existing	Ongoing	The result of this work will be an improvement in the data presently collected from the courts for the RAS model.

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#	Project[1]	Priority[2]	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
			resources); ITSO staff (existing resources); a more extensive data validation project (3rd bullet) could require additional staff resources. **Key Objective Supported:** #3		
4.	To enrich recommendations to the council and avoid duplication of effort, members of the Family and Juvenile Law Advisory Committee will collaborate with members of the Trial Court Budget Advisory Committee, the Workload Assessment Advisory Committee, and representatives from the California Department of Child Support Services to reconsider the allocation methodology developed in 1997 and report back at the February 2016 Judicial Council meeting.	1	**Judicial Council Direction:** At its April 17, 2015 meeting, the Judicial Council received and approved a recommendation from the Family and Juvenile Advisory Committee to form a joint subcommittee to study the AB 1058 funding methodology. **Origin of Project:** The AB 1058 funding methodology was first established in 1997 and has not since been updated. In reviewing the proposed midyear funding reallocations, the Family and Juvenile Law Advisory Committee acknowledge the need to reexamine the funding methodology to account for "the myriad of factors that must be considered when allocating funding to both optimize program success and provide for mechanisms for all funds to be spent by the end of each fiscal year." **Resources:** COS-OCR staff, existing	Work to be completed by December 31, 2015; report with recommendations due to the Judicial Council in February 2016.	The subcommittee will provide recommendations to the Judicial Council for updating the AB 1058 funding methodology.

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#	Project[1]	Priority[2]	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
			resources, but contingent on filling the two senior research analyst positions referenced above in #1; CFCC staff (existing resources); Finance staff (existing resources) **Key Objective Supported:** N/A (WAAC is acting in a consulting role and the key objective rests with the Family and Juvenile Law Advisory Committee.)		
5.	Develop an interim caseweight for complex civil cases, applying it to paid complex civil case fee filings, for the purposes of FY 2015-16 budget allocations. For future budget cycles, review the validity of the weighting and propose a long-term solution.	1	**Judicial Council Direction:** At its April 17, 2015 meeting, the Judicial Council received and approved a recommendation from the Trial Court Budget Advisory Committee to request that the Workload Assessment Advisory Committee include the paid complex case fee filings in the Resource Assessment Study computation of workload need and assign to them an interim caseweight, until such time as the advisory committee reviews the validity of the weighting. **Origin of Project:** In March 2015, the Trial Court Budget Advisory Committee's Revenue and Expenditure Subcommittee met to review allocations from the State Trial Court Improvement and	Interim caseweight will be developed by June 2015 for use in FY 2015-16 budget allocations. Long-term solution will be incorporated into the 2016 staff workload study update.	The committee will develop an interim caseweight for complex civil for FY 2015-16 budget allocations, as well as a longer-term solution to capturing the workload associated with complex civil cases.

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#	Project[1]	Priority[2]	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
			Modernization Fund (IMF). In order to address shortfalls in the fund, the subcommittee recommended, and the full committee approved, the elimination of funding for the complex civil litigation pilot programs. Assigning a separate caseweight that recognizes the additional workload involved in processing complex civil cases was seen as a way to continue to support enhanced case processing in complex civil in the absence of the IMF funding. **Resources:** COS-OCR staff (existing resources); Finance staff (existing resources) **Key Objective Supported:** #1		

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III. STATUS OF 2014 PROJECTS:

[List each of the projects that were included in the 2014 Annual Agenda and provide the status for the project.]

#	Project	Completion Date/Status
1.	Staff and judge workload studies update: the workload studies update will consist of a time study of a sample of trial courts and is intended to update the caseweights and other model parameters that are used to estimate workload need. The committee's work in 2014 will consist of discussing the study parameters, methodology, and securing the resources to conduct the time study data collection.	**Ongoing.** The staff workload study parameters and methodology are under continued discussion and will be finalized in Summer 2015, with the study to be conducted in the Fall. The judge workload study will trail the staff workload study in order to minimize the burden on participating courts. JC staff have submitted one PAR to recruit a research position in OCR to support the project; a second PAR will be submitted for another position to start in July 2015. These positions are key to the ability of OCR staff to support the project, because of loss of several key staff who previously were assigned to the project and in light of the recommendation by OCR and agreement by the Executive Office that the entire study should be done in-house, rather than contracted out to the National Center for State Courts as was the case with the previous study.
2.	Update the Judicial Needs Assessment: this project involves using updated filings data to project the need for judicial officers. Biennial updates in even-numbered years are required by Government Code Section 61614(c)(1).	**Complete.** The Judicial Council approved the report for transmission to Legislature and Governor on December 12, 2014.
3.	Review the method for prioritizing judicial need and determine if changes should be made to the current method.	**Complete.** The committee's recommendation to lower the eligibility threshold to get on the list for a new judgeship from 1.0 to 0.8 FTE was approved by the council on December 12, 2014.
4.	Improve data quality of filings data in the RAS categories, including: • Working with courts to ensure that data are reported in all of the RAS casetype categories • Evaluate court reporting practices for filings data to ensure they meet current JBSIS standards; update and clarify JBSIS standards as needed • Develop different possibilities for validating the filings	**Ongoing.** Key milestones achieved in 2014 include modifying the JBSIS web portal to accept filings in the disaggregated family law-other category (DV, parentage, child support, and family law-other petitions). Portal modifications for probate and civil limited will be completed in early 2015. Additionally, a working group of CEAC has been convened to compile and prioritize a list of JBSIS reporting issues.

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	data used in the RAS model, including establishing a data auditing process for filings data.	
5.	Subordinate Judicial Officer Conversion Program: Provide to E&P updated information that would show how the remaining 54 subordinate judicial officer conversions authorized under Government Code section 61695 would be allocated if more current workload data were used.	**Ongoing.** This project was delayed because of the need to update the number of authorized subordinate judicial officer FTE in the courts. A census was conducted in September 2014, and E&P reviewed changes made in several courts at its October 9, 2014 meeting. An updated analysis will be reviewed by WAAC in January 2015 and, if approved, will be presented to E&P in early 2015.

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IV. Subgroups/Working Groups - Detail

Subgroups/Working Groups: *[For each group listed in Section I, including any proposed "new" subgroups/working groups, provide the below information. For working groups that include members who are not on this advisory body, provide information about the additional members (e.g., from which other advisory bodies), and include the number of representatives from this advisory body as well as additional members on the working group.]*

Subgroup or working group name: Special Circumstances Subcommittee

Purpose of subgroup or working group: To study the impact of special circumstances cases on the felony caseweight and make recommendations to the full committee on how to handle such cases.

Number of advisory body members on the subgroup or working group: 5

Number and description of additional members (not on this advisory body): N/A

*Date formed:*11/20/2014

Number of meetings or how often the subgroup or working group meets: Approximately 4 meetings are anticipated.

Ongoing or date work is expected to be completed: Work is expected to be completed by July 2015.

Subgroup or working group name: Child Support Commissioner and Family Law Facilitator Program Allocation Methodology Joint Subcommittee

Purpose of subgroup or working group: To reconsider the AB 1058 allocation methodology developed in 1997, with an eye to the myriad of factors that must be considered when allocating funding to both optimize program success and provide for mechanisms for all funds to be spent by the end of each fiscal year.

Number of advisory body members on the subgroup or working group: 4

Number and description of additional members (not on this advisory body): 6 members of the Family and Juvenile Law Advisory Committee, 6 members of the Trial Court Budget Advisory Committee, 1 representative of the Department of Child Support Services

*Date formed:*4/17/2015

Number of meetings or how often the subgroup or working group meets: Monthly meetings by conference call are anticipated.

Ongoing or date work is expected to be completed: Work is expected to be completed by December 31, 2015, with a report with recommendations due to the Judicial Council in February 2016.

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JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date
September 15, 2015

To
Members of the Executive and Planning Committee

From
Leah Rose-Goodwin, Manager
David Smith, Senior Research Analyst
Office of Court Research
Judicial Council Court Operations Services

Subject
Conversion of Two Vacant Subordinate Judicial Officer Positions in the Superior Court of San Diego County

Action Requested
Approve Staff Recommendation to Confirm the Conversion of Two Vacant Subordinate Judicial Officer Positions

Deadline
October 31, 2015

Contact
David Smith
415-865-7696 phone
david.smith@jud.ca.gov

Executive Summary

Court Operation Services staff recommend that the Judicial Council's Executive and Planning Committee (E&P) confirm the conversion of two vacant subordinate judicial officer (SJO) positions in the Superior Court of San Diego County. The court has notified council staff of these vacancies and requested that the positions be converted to judgeships. Confirming this request for conversion is consistent with established council policies of improving access to justice by providing constitutionally empowered judges who are accountable to the electorate in matters that are appropriately handled by judges.

Recommendation

Court Operations Services staff recommend that E&P confirm the conversion of two vacant SJO positions in the Superior Court of San Diego County. The Superior Court of San Diego County has notified the Judicial Council that the commissioners have vacated their positions, with the

last vacancy occurring on July 31, 2015. On that basis the conversion of these SJO positions to judgeships will take effect on the date on which E&P approves the court's request.

Council staff also recommend that E&P acknowledge that the Superior Court of San Diego County may treat these converted positions as positions that the court may temporarily fill until judges are named and sworn to fill them.

Previous Council Action

The 2002 report of the Subordinate Judicial Officer Working Group led the Judicial Council to sponsor legislation to restore an appropriate balance between judges and SJOs in the trial courts. The 2002 report found that many courts had created SJO positions out of necessity in response to the dearth in the creation of new judgeships during the 1980s and 1990s. As a result, many SJOs were working as temporary judges. This imbalance between judges and SJOs was especially critical in the area of family and juvenile law.[1]

In 2007, the Judicial Council approved a methodology for evaluating the amount of workload appropriate to SJOs relative to the number of SJOs working in the courts. In the same year, the Legislature passed Assembly Bill 159, which adopted the Judicial Council's methodology. This resulted in a list of 25 courts in which a total of 162 SJO positions would be converted. Government Code section 69615(c)(1)(A) allows for the annual conversion of up to 16 SJO vacancies upon authorization by the Legislature in courts identified by the Judicial Council as having SJOs in excess of the workload appropriate to SJOs.[2]

Subsequent council action established and refined guidelines for expediting the conversion of SJO vacancies. These guidelines included:

- The adoption of four trial court allocation groups and a schedule that distributes the 16 annual SJO conversions across these groups in numbers that are proportional to the total number of conversions for which the groups are eligible;
- The delegation of authority to E&P for confirming SJO conversions;
- The establishment of guidelines for courts to notify the council of SJO vacancies and timelines for the redistribution of SJO conversions across the allocation groups; and

[1] See Judicial Council of Cal., Subordinate Judicial Officer Working Group Rep., *Subordinate Judicial Officers: Duties and Titles* (July 2002), *www.courts.ca.gov/7476.htm*.

[2] See Judicial Council of Cal., *Update of the Judicial Workload Assessment and New Methodology for Selecting Courts with Subordinate Judicial Officers for Conversion to Judgeships* (Feb. 23, 2007), available at *www.courts.ca.gov/documents/022307item9.pdf*, and the update of this report and SJO allocation list at *www.courts.ca.gov/documents/jc-20150821-itemL.pdf* (Aug. 24, 2015).

- The establishment of criteria for E&P to use in evaluating and granting requests by courts to exempt SJO vacancies from conversion.[3]

Rationale for Recommendation

The Superior Court of San Diego County is eligible for a total of 7 of the 162 conversions authorized by the Legislature and has previously converted 4 positions, with the last conversion occurring in fiscal year (FY) 2013–2014. San Diego belongs to allocation group 3, which is allotted four conversions each year. To date, the San Diego court would be the first court in this allocation group to have converted SJO positions in FY 2015–2016. The approval of the court's request to convert two vacant SJO positions would result in this allocation group having two remaining positions available for conversion in the current fiscal year.

Comments, Alternatives Considered, and Policy Implications

This proposal, which complies with council policy on SJO conversions, was not circulated for comment. Confirming these conversions would be consistent with well-established council policy on SJO conversions.

Implementation Requirements, Costs, and Operational Impacts

To date, there have been minimal implementation costs for the trial courts. Upon appointment of a new judge to sit in a converted position, funding equal to the estimated judge's compensation—which includes salary and benefits but does not include retirement—is removed from the trial court's allocation where it previously funded the SJO position. This funding is then transferred to the statewide fund for judicial salaries and benefits, Program 45.25.

Attachment

1. Attachment A: September 1, 2015, Letter From Presiding Judge David J. Danielsen, Superior Court of San Diego County, to Chief of Staff Jody Patel, Judicial Council of California; Subject: Request for Conversion of Vacant SJO Positions.

[3] See Judicial Council of Cal., *Subordinate Judicial Officers: Allocation of Conversions* (Dec. 4, 2007); and Judicial Council of Cal., *Proposal to Modify Subordinate Judicial Officer Conversion Policy* (Apr. 24, 2009).

The Superior Court
OF THE
State of California
SAN DIEGO

Chambers of
DAVID J. DANIELSEN
Presiding Judge

Mailing Address
Post Office Box 122724
San Diego, California 92112-2724

RECEIVED
SEP 08 2015
JUDICIAL

September 1, 2015

Jody Patel
Chief of Staff
Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102

Re: Conversion of Two Vacant Court Commissioner Positions to Superior Court Judgeships

Dear Ms. Patel:

We are writing on behalf of the San Diego Superior Court to request that two (2) court commissioner positions that became vacant in February 2015 and July 2015 be converted to Superior Court judgeships pursuant to the provisions of AB 159 (Chapter 722, Statutes of 2007).

On February 23, 2007, the Judicial Council approved the criteria to be used in identifying 162 subordinate judicial officer (SJO) positions in 25 counties that would be converted to judgeships pursuant to AB 159 (2007). The allocation of the remaining conversions of subordinate judicial officers was reviewed and approved by the Judicial Council on August 21, 2015. In San Diego County, 7 authorized SJO positions have been identified for conversion. To date, we have converted 4 court commissioner positions to judgeships. We are now requesting that the two latest vacancies to occur in the court commissioner classification, which occurred in February 2015 and July 2015, be converted to Superior Court judgeships. It is our hope that these conversions can be completed as expeditiously as possible.

If these requests are approved, we understand that the San Diego Superior Court will be expected to convert one (1) remaining court commissioner position called for in AB 159 by FY 17-18. With expected turnover in court commissioner positions between now and then, we will be able to meet this commitment.

If we can answer any questions or provide additional information to assist in your review of this request, please do not hesitate to let us know.

Sincerely,

DAVID V. DANIELSEN
Presiding Judge

MICHAEL M. RODDY
Executive Officer

c: Hon. Jeffrey B. Barton, Presiding Judge –Elect

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OF THE
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DAVID V. DANIELSEN
Presiding Judge

MICHAEL M. RODDY
Executive Officer

c: Hon. Jeffrey B. Barton, Presiding Judge –Elect

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: 12/10/2015

Title
Judicial Administration: Amendment to the Conflict of Interest Code for the Judicial Council

Rules, Forms, Standards, or Statutes Affected
N/A

Recommended by
Judicial Council of California Staff

Agenda Item Type
Action Required

Effective Date
December 10, 2015

Date of Report
September 30, 2015

Contact
Michael Guevara, 415-865-7586
michael.guevara@jud.ca.gov

Executive Summary

This proposal would adopt amendments (Amendments) to the Judicial Council Conflict of Interest Code (Code) and revise the Code to include updated job classifications under the Judicial Council's new classification and compensation structure. In accordance with Government Code Sections 87303 and 87306, the Code must be updated "when change is necessitated by changed circumstances, including the creation of new positions" (id., § 87306). The council must review proposed amendments to the Code and approve the Code as amended or direct that it be further revised and resubmitted for approval.

Recommendation

Adoption of updated Conflict of Interest Code

Judicial Council of California staff recommends that the Judicial Council approve the proposed Code (attached), effective December 10, 2015, that reflects updated job classifications within the new classification and compensation structure.

The proposed amendments to the Code would:

(1). Update the designated job classifications to reflect the Judicial Council's new classification structure; and

(2). Accurately capture the number of Judicial Council staff designations required to submit disclosure statements.

Previous Council Action

On December 12, 2014, the Judicial Council adopted previous amendments to the Code to reflect the organization's changes since it combined with the Judicial Council staff (the former Administrative Office of the Courts) as follows:

1. Combined the separate codes for Judicial Council members and Judicial Council staff into one consolidated Code;

2. Referenced the laws requiring a public agency to adopt a conflict of interest code;

3. Accurately designated Judicial Council members by separating them into voting and nonvoting categories; and subcategorizing the voting members into justices, judges, legislators, and attorneys;

4. Accurately addressed the number of Judicial Council staff designations required to submit disclosure statements, thereby improving the efficiency of the collection process;

5. Revised Appendix A, which explained how voting and nonvoting Judicial Council members must disclose their financial interests;

6. Revised Appendix B, which was a list of designated job classifications and their disclosure categories;

7. Consolidated and clarified the disclosure categories, streamlining the submission process for designated employees by having a clarifying statement in the opening paragraph of Appendix C; and

8. Added Appendix D, which instructed designated incumbents on the parameters of submitting their statements of financial interests.

DRAFT

Rationale for Recommendation

A conflict of interest code is a document that states the rules and procedures by which designated officers and employees of a public agency must disclose certain personal financial interests. The financial interests required to be disclosed are those that foreseeably could be materially affected by decisions that these officers or employees are authorized to make or influence. In brief, Government Code section 87302 specifies that a conflict of interest code must:

- Designate the classifications of officers or employees who make or influence financial decisions ("designated employees");
- Identify the categories of interest that foreseeably may be affected by such decisions ("disclosure categories");
- Require officers and employees to file periodic reports of their financial interests ("disclosure statements"); and
- Require officers and employees to disqualify themselves from decisions affecting matters in which they have financial interest.

A conflict of interest code must designate the officers and employees who make or participate in the making of government decisions that foreseeably can have a material effect on their personal financial interests. (Gov. Code, § 87302(a).) The disclosure categories for each job classification must correspond to those interests that employees foreseeably can affect. (Gov. Code, § 87302 (c).) Thus, disclosure categories reflect the authority and responsibilities assigned to employees within each job classification.

Classification and Compensation Study

Government Code Section 87306 further states that an agency's conflict of interest code must be amended when new positions and duties are created or eliminated.

The Judicial Council has undergone a significant transformation with organizational restructuring, staffing reductions from layoffs, Voluntary Separation Incentive Programs, and natural attrition. Due to these extensive changes and directives established by the Judicial Council, the agency has developed a new job classification structure that captures the core functions of the Judicial Council. The new structure ensures that employees are working within the scope of their assigned classifications and that minimum qualifications are relevant for the current classifications.

The Judicial Council eliminated classifications no longer deemed essential in meeting the business needs of the organization with the goal of streamlining the classification system. Prior to the study, the Judicial Council had approximately 183 job classifications across various functional areas. Following the study, the organization will have approximately 83 classifications. The Code should be revised to reflect the reduction and creation of job classifications within the new classification structure.

DRAFT

Comments, Alternatives Considered, and Policy Implications

Judicial Council staff posted the proposed amendments to the Code on the Judicial Council's Intranet, on *Court News Update* (distributed via e-mail and available on the judicial branch's password-protected Serranus extranet), and on the "Invitations to Comment" page of the California Courts website (http://www.courts.ca.gov/) for a period of 30 days for the purpose of receiving comments from the public and Judicial Council staff. A summary of the comments received and responses thereto are attached to this report. The proposed amendments to the Code are required under the Political Reform Act of 1974, which does not provide for any alternative actions other than those presented in this report.

External comments

[TBD]

Internal comments

[TBD]

Implementation Requirements, Costs, and Operational Impacts

To implement the amended Code, the reporting officer will need to ensure that Judicial Council members and staff timely submit the Statement of Economic Interests required under the Code and the Political Reform Act.

Attachments and Links

1. Proposed amended Judicial Council Conflict of Interest Code (revised effective TBD)
2. Current Judicial Council Conflict of Interest Code
3. Summary of comments received from the public and Judicial Council staff, with responses

DRAFT

Judicial Council of California

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

[ItC prefix as assigned] SP15-08

Title
Judicial Administration: Revision of the Conflict of Interest Code for the Judicial Council

Proposed Rules, Forms, Standards, or Statutes
N/A

Proposed by
Judicial Council of California Staff

Action Requested
Review and submit comments by November 9, 2015

Proposed Effective Date
December 10, 2015

Contact
Michael Guevara, 415-865-7586
michael.guevara@jud.ca.gov

Executive Summary and Origin

This proposal would adopt amendments (Amendments) to the Judicial Council Conflict of Interest Code (Code) and align the Code with the Judicial Council's new classification and compensation structure. In accordance with Government Code Sections 87303 and 87306, the Code must be updated "when change is necessitated by changed circumstances, including the creation of new positions" (id., § 87306). The council must review proposed Amendments to the Code and approve the Code as amended or direct that it be further revised and resubmitted for approval.

Background

Political Reform Act

The Political Reform Act of 1974 (Gov. Code, § 81000 et seq.) requires public agencies to adopt conflict of interest codes. (Gov. Code, § 87300.) In 1984, the Legislature amended the Political Reform Act to require agencies and employees of the judicial branch to comply with the act. (Stats. 1984, ch. 717, amending Gov. Code §§ 82011, 82041, 82048, 82049, and 87200 and adding § 87311.5.) Every conflict of interest code, including amended codes, must be submitted to and approved by a "code reviewing body." (Gov. Code, §§ 87303, 87306.)

The Judicial Council is the code reviewing body for "any state agency within the judicial branch of government" where no other code reviewing body has been specified (Gov. Code § 82011 (h)), which includes the Judicial Council and its staff. In 1985, the Judicial Council first approved a conflict of interest code for Judicial Council employees. An agency's conflict of interest code must be amended when new positions and duties are created or eliminated. (Gov.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

Code, § 87306.) Since 1985, the Judicial Council Conflict of Interest Code has been periodically amended.

A conflict of interest code is a document that states the rules and procedures by which designated officers and employees of a public agency must disclose certain personal financial interests. The financial interests required to be disclosed are those that foreseeably could be materially affected by decisions that these officers or employees are authorized to make or influence. In brief, Government Code section 87302 specifies that a conflict of interest code must:

- Designate the classifications of officers or employees who make or influence financial decisions ("designated employees");
- Identify the categories of interest that foreseeably may be affected by such decisions ("disclosure categories");
- Require officers and employees to file periodic reports of their financial interests and the financial interests of their spouses ("disclosure statements"); and
- Require officers and employees to disqualify themselves from decisions affecting matters in which they have financial interest.

A conflict of interest code must designate the officers and employees who make or participate in the making of government decisions that foreseeably can have a material effect on their personal financial interests. (Gov. Code, § 87302(a).) The disclosure categories for each job classification must correspond to those interests that employees foreseeably can affect. (Gov. Code, § 87302 (c).) Thus, disclosure categories reflect the powers and responsibilities assigned to employees within each job classification.

Classification and Compensation Study

The Judicial Council has undergone a significant transformation with organizational restructuring, staffing reductions from layoffs, Voluntary Separation Incentive Programs, and natural attrition. Due to these extensive changes and directives established by the Judicial Council, the agency has developed a new job classification structure that captures the core functions of the Judicial Council. The new structure ensures that employees are working within the scope of their assigned classifications and that minimum qualifications are relevant for the current classifications.

The Judicial Council eliminated classifications no longer deemed essential in meeting the business needs of the organization with the goal of streamlining the classification system. Prior to the study, the Judicial Council had approximately 183 job classifications across various functional areas. Following the study, the organization will have approximately 83 classifications.

The Proposal

Adoption of updated Conflict of Interest Code

The proposal (attached) brings the current Code in alignment with the new structure. The proposed Code would:

(1). Update the designated job classifications to reflect the new classification structure; and

(2). Accurately address the number of Judicial Council staff designations required to submit disclosure statements.

Alternatives Considered

The proposed Amendments are required under the Political Reform Act of 1974, which does not provide for any alternative actions other than those presented in this report.

Implementation Requirements, Costs, and Operational Impacts

To implement the approved amended Code, the Judicial Council will need to ensure that its members, employees assigned to the new classifications, and contingent workers timely submit the Statement of Economic Interests required under the Code and the Political Reform Act.

Request for Specific Comments

In addition to comments on the proposal as a whole, the Administrative Director is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

Attachments and Links

1. Proposed Amended Conflict of Interest Code for the Judicial Council of California.
2. Current Judicial Council Conflict of Interest Code

Attachment 1

~~—~~CONFLICT OF INTEREST CODE
FOR THE
JUDICIAL COUNCIL OF CALIFORNIA
(Revised effective TBD~~December 11, 2014~~)

The Political Reform Act (Gov. Code, § 81000 et seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation (Cal.~~, California~~ Code Regs., tit.~~of Regulations, title~~ 2, §~~section~~ 18730) that~~ which~~ contains the terms of a standard conflict of interest code~~,~~ and can be incorporated by reference into an agency's code. After public notice and hearing, the code may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of California ~~(Cal.~~ Code of Regulations, title~~Regs., tit.~~ 2, section~~§~~ 18730~~,),~~ and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This regulation and the attached appendices shall constitute the Conflict of Interest Code for the Judicial Council of California.

Designated employees and contractors shall file statements of economic interests with the Administrative Director as prescribed by the Fair Political Practices Commission.

Appendix A.— Judicial Council Members

Under Article VI, section 6, of the California Constitution, Judicial Council voting membership is limited to justices, judges, legislators, and attorneys. Two nonvoting court administrators and such other nonvoting members are determined by the voting membership of the council. Council members, voting or nonvoting, who are justices, judges, state legislators, court executive officers, and court administrator and clerks are required to file disclosure statements at their primary position because they are subject to comprehensive disclosure requirements arising out of their primary offices, pursuant to Government Code sections 87200 and 87300. When filing their annual statement of economic interests, council members, voting or nonvotingnon-voting, should indicate on the cover sheet of the Conflict of Interest-Form 700 that their statements are being filed for both their primary and their Judicial Council positions.

Designation of Positions

1. Voting Council Members

a. Justices, Judges, Legislators

i. **Disclosure of Financial Interests:** Council members must disclose all investments, sources of income, interests in real property, and positions in business entities, including those of their spouses.

ii. **Manner of Reporting:** When filing their annual statement of economic interests, council members should indicate on the cover sheet of Conflict of Interest-Form 700 that their statements are being filed for both their primary and their Judicial Council positions.

b. Attorneys

i. **Disclosure of Financial Interests:** The disclosure requirements under this code for the designated attorney members are limited to those in Business and Professions Code section 6036, subdivision (d).- Under this provision, a member required to disqualify himself or herself because of a conflict of interest shall (1) immediately disclose the interest, (2) withdraw from any participation in the matter, (3) refrain from attempting to influence another member, and (4) refrain from voting.- Consistent with section 6036, subdivision (d), it is sufficient that the member indicate only that he or she has a disqualifying financial or personal interest, without disclosing the specific interest.

ii. **Manner of Reporting:** Attorney members of the Judicial Council of California shall file the Statement of Economic Interests (form FPPC-2). -This form requires members to (1) disclose whether or

not they were required to disqualify themselves from making, participating in making, or attempting to influence a decision of the Judicial Council during the reporting period because of a conflict of interest under Business and Professions Code section 6036, and (2) identify each decision requiring disqualification.

2. Nonvoting Council Members

a. Justices, Judges, Court Executive Officers, Court Administrators~~Administrator,~~ and Clerks, and such other nonvoting members as determined by the voting membership of the council.

i. **Disclosure of Financial Interests:** Council members must disclose all investments, sources of income, interests in real property, and positions in business entities, including those of their spouses.

ii. **Manner of Reporting:** When filing their annual statement of economic interests, council members should indicate on the cover sheet of Conflict of Interest-Form 700 that their statements are being filed for both their primary and their Judicial Council positions.

Appendix B. Judicial Council Member and Staff Designations

List of Designated Classifications	Assigned Disclosure Categories
~~List of Designated Classifications~~	~~Assigned Disclosure Categories~~

1. JUDICIAL COUNCIL MEMBERS

a. Voting

i.	Justice	1a
ii.	Judge	1a
iii.	Legislator	1a
iv.	Attorney	2a

~~i. Justice 1a~~

~~ii. Judge 1a~~

~~iii. Legislator 1a~~

~~iv. Attorney 2a~~

b. Nonvoting

i.	Justice	1a
ii.	Judge	1a
iii.	Court Administrator and Clerk	1a
iv.	Court Executive Officer	2a
v.	Other Nonvoting Members	1a

~~i. Justice 1a~~

~~ii. Judge 1a~~

~~iii. Court Administrator and Clerk 1a~~

~~iv. Court Executive Officer 1a~~

~~v. Other nonvoting members 1a~~

2. EXECUTIVE OFFICE

i.	Administrative Director	1
ii.	Chief Officer–Zone 2	1
iii.	Chief Officer–Zone 1	1
iv.	Principal Advisor	3, 4

~~i. Administrative Director 1~~

~~ii. Chief Administrative Officer 1~~

~~iii. Chief of Staff 1~~

~~iv. Chief Operating Officer 1~~

~~v. Executive Office Liaison III 3, 4~~

3. **GOVERNMENTAL AFFAIRS**

i.	Director	1
ii.	Principal Manager–Zone 1	1
iii.	Attorney I	4
iv.	Legislative Advocate	4

~~i. Assistant Director 1~~

~~ii. Associate Attorney I 4~~

~~iii. Attorney 4~~

~~iv. Director 1~~

~~v. Senior Attorney 4~~

~~vi. Senior Governmental Affairs Analyst 4~~

~~vii. Supervising Administrative Coordinator 3,4~~

4. **LEADERSHIP SERVICES DIVISION**

a. Audit Services

i.	Principal Manager–Zone 1	1
ii.	Audit Supervisor	3, 4

~~i. Senior Manager 1~~

~~ii. Supervising Internal Auditor 3,4~~

b. Judicial Council Support

i. Supervising Analyst 4

~~i. Supervising Court Services Analyst 4~~

c. Legal Services

i.	Director, Chief Counsel	1
ii.	Principal Manager–Zone 2	1
iii.	Principal Manager–Zone 1	1
iv.	Supervising Attorney	2b
v.	Attorney II	2b

~~i. Attorney 2b~~

~~ii. General Counsel/Division Director 1~~

~~iii. Managing Attorney 1~~

~~iv. Senior Attorney 2b~~

~~v. Supervising Attorney 2b~~

d. Special Projects

i. Principal Manager–Zone 1

~~i. Manager 1~~

e. Trial Court Liaison

i.	Manager	4
ii.	Supervising Analyst	4

~~i. Manager 4~~

~~ii. Supervising Court Services Analyst 4~~

5. **OPERATIONS & PROGRAMS DIVISION**

a. Appellate Court Services

i.	Director	1
ii.	Manager	1

b. Capital Program

i.	Director	1
ii.	Principal Manager–Zone 1	1
iii.	Manager	1
iv.	Senior Project Manager	7
v.	Project Manager	7

~~a.~~c. **Center for Families, Children & the Courts**

i.	Director	1
ii.	Principal Manager–Zone 2	1
iii.	Principal Manager–Zone 1	4
iv.	Supervising Attorney	2b
v.	Supervising Analyst	4
vi.	Attorney II	2b

~~i. Assistant Director 1~~

~~ii. Attorney 2b~~

~~iii. Director 1~~

~~iv. Manager 4~~

~~v. Managing Attorney 1~~

~~vi. Senior Attorney 2b~~

~~vii. Supervising Attorney 2b~~

~~viii. Supervising Court Services Analyst 4~~

~~ix. Supervising Research Analyst 4~~

~~b.~~d. **Center for Judicial~~Judiciary~~ Education and Research**

i.	Attorney I	6
ii.	Director	1
iii.	Supervising Attorney	6
iv.	Principal Manager–Zone 1	6
v.	Media Production Supervisor	6

~~i. Attorney 6~~

~~ii. Director 1~~

~~iii. Manager 6~~

~~iv. Managing Attorney 6~~

~~v. Senior Attorney 6~~

~~vi. Senior Manager 6~~

~~vii. Supervising Media Production Specialist 6~~

~~c.~~e. **Court Operations Services**

i.	Director	1
ii.	Principal Manager–Zone 1	1
iii.	Manager	4
iv.	Supervising Analyst	4

~~i. Assistant Director 1~~

~~ii. Director 1~~

~~iii. Manager 4~~

~~iv. Senior Emergency Response and Planning Manager 3,4~~

~~v. Supervising Court Services Analyst 4~~

~~vi. Supervising Research Analyst 4~~

~~d.~~f. **Criminal Justice Services**

i.	Director	1
ii.	Attorney II	2b
iii.	Supervising Attorney	2b
iv.	Supervising Analyst	4

~~i. Attorney 2b~~

~~ii. Senior Manager 1~~

~~iii. Supervising Attorney 2b~~

~~iv. Supervising Research Analyst 4~~

~~e. **Appellate Court Services**~~

~~i. Director 1~~

~~ii. Manager 1~~

~~**f. Capital Programs**~~

~~i. Assistant Director 1~~

~~ii. Design & Construction Project Manager III 7~~

~~iii. Director 1~~

~~iv. Manager 7~~

~~v. Principal Architect 7~~

~~vi. Supervising AV/Video Technician 3~~

~~vii. Supervising Facilities Planner 7~~

6. **ADMINISTRATIVE DIVISION**

a. Administrative Support

i.	Manager	3
ii.	Administrative Support Supervisor II	3
iii.	Media Telecom Support Supervisor	3, 4

~~i. Manager 3~~

~~ii. Production and Mail Services Supervisor 3~~

~~iii. Supervising Administrative Coordinator 4~~

~~iv. Supervising AV/Video Technician 3,4~~

b. Finance

i.	Director	1
ii.	Principal Manager–Zone 1	1
iii.	Manager	3
iv.	Fiscal Supervisor	3
v.	Fiscal Services Support Supervisor	3

~~i. Assistant Director 1~~

~~ii. Director 1~~

~~iii. Manager 3~~

~~iv. Senior Manager 3~~

~~v. Supervising Accountant 3,4~~

~~vi. Supervising Budget Analyst 3,4~~

~~vii. Supervising Contract Specialist 3,4~~

~~viii. Supervising Procurement Specialist 3,4~~

c. Human Resources

i.	Director	1
ii.	Principal Manager–Zone 1	4
iii.	Manager	4
iv.	Human Resources Supervisor	4
v.	Business Systems Supervisor	5

~~i. Director 1~~

~~ii. Manager 4~~

~~iii. Senior Manager 4~~

~~iv. Supervising Business Applications Analyst 5~~

~~v. Supervising Human Resources Analyst 4~~

~~vi. Supervising Pay and Benefits Specialist 4~~

d. Information Technology

i.	Director	1
ii.	Principal Manager–Zone 1	5
iii.	Manager	5
iv.	Information Systems Supervisor I, II	5

~~i. Director 1~~

~~ii. Information Systems Manager 5~~

~~iii. Senior Manager 5~~

~~iv. Supervising Business Applications Analyst 5~~

~~v. Supervising Information Systems Analyst A, B 5~~

e. Real Estate and Facilities~~Facility~~ Management

i.	Director	1
ii.	Principal Manager–Zone 2	1
iii.	Principal Manager–Zone 1	1
iv.	Manager	7
v.	Engineering Specialist	7
vi.	Facilities Management Administrator	7
vii.	Project Manager	7
viii.	Senior Facilities Analyst	7
ix.	Engineering Supervisor	7
x.	Facilities Operations Supervisor	7
xi.	Facilities Supervisor	7

~~i. Assistant Director 1~~

~~ii. Facilities Management Administrator 7~~

~~iii. Facilities Management Specialist 7~~

~~iv. Manager 7~~

~~v. Mechanical, Electrical, Plumbing Engineer 7~~

~~vi. Regional Manager of Facilities Operations 7~~

~~vii. Senior Manager 7~~

~~viii. Supervision Facilities Management Administration 7~~

~~ix. Utility Engineer/Analyst 7~~

f. Trial Court Administrative Services

i.	Director	1
ii.	Principal Manager–Zone 1	1
iii.	Manager	1
iv.	Business Systems Supervisor	5
v.	Fiscal Supervisor	3
vi.	Human Resources Supervisor	4
vii.	Supervising Analyst	4

~~i. Manager 4~~

~~ii. Supervising Contract Specialist 4~~

~~iii. Senior Manager 1~~

~~iv. Supervising Accountant 4~~

~~v. Supervising Court Services Analyst 4~~

7. **All Divisions**[*]

i. Special Consultant 1
ii. Contractor 1

~~i. * Special Consultant 1~~

~~ii. Contractor 1~~

[*]Consultants (contractors) shall be included in the list of designated positions~~employees~~ and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitation:

The Administrative Director may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. ~~-~~Such written determination shall include a description of the consultant's ~~–~~duties and, based upon that description, a statement of the extent of disclosure requirements. ~~-~~The consultant must comply with all other provisions of this code.~~-~~ The Administrative Director's determination is a matter of public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code.

Appendix C. –Judicial Council Staff Disclosure Categories

An employee need only disclose a financial interest, or a spouse's financial interest, in a business entity included in an assigned category if the employee's duties involve making recommendations and/or decisions concerning that type of business entity. In this appendix, "positions" includes employee, partner, officer, director, trustee, and any other management position. "Providers" includes business entities and individuals that are manufacturers, distributors, vendors, sellers, lessors, suppliers, contractors, subcontractors, and other providers of the supplies, equipment, real property, and services indicated in the category.

1. Executive authority

All investments, sources of income, interests in real property, and positions in business entities

a. Council members who are justices, judges, legislators, court executive officers, court administrators,administrator and clerks are required to file disclosure statements at their primary position because they are subject to comprehensive disclosure requirements arising out of their primary offices, pursuant to Government Code sectionssection 87200 and 87300. When filing their annual statement of economic interests, council members, voting or nonvotingnon-voting, should indicate on the cover sheet of Conflict of Interest-Form 700- that their statements are being filed for both their primary and their Judicial Council positions.

2. **Attorneys**

Attorneys are required to (1) disclose whether or not they were required to disqualify themselves from making, participating in making, or attempting to influence a decision of the Judicial Council during the reporting period because of a conflict of interest under Business and Professions Code section 6036, and (2) identify each decision requiring disqualification.

a. Attorneys who are Judicial Council members shall file the Statement of Economic Interests for the Judicial Council on form FPPC-2.

b. Attorneys who are Judicial Council staff shall file the Statement of Economic InterestsInterest for the Judicial Council on formForm FPPC-1.

Decisionmaking

3. **Decision-making authority affecting the purchasing of office equipment, materials, and supplies**

Investments, sources of income, and business positions in entities that are providers of office equipment, materials, and supplies including, but not limited to, commercial and noncommercialnon-commercial furniture, fixtures, publication materials, printing,

graphics, publishing services, audiovisual equipment, and/or any other non-IT electronic devices of the type used by the Judicial Council.

4. DecisionmakingDecision-making authority affecting external consultants and contracts

Investments, sources of income, and business positions in business entities that are providers of services used by any office in the Judicial Council for the purposes of, including, but not limited to, personnel and employment services, editing, publications, data gathering, data management, researching and surveying, policy analysis, real estate management, fleet management, conference and travel services, financial services, external legal counsel, and court security.

5. Decisionmaking authority affecting information technology

Investments, sources of income, and business positions in business entities that are providers of information technology, data management systems, computer software, computer equipment, and hardware of the type used by the Judicial Council.

Decisionmaking

~~5. **Decision-making authority affecting information technology**~~

~~Investments, sources of income, and business positions in business entities that are providers of information technology, data management systems, computer software, computer equipment and hardware of the type used by the Judicial Council.~~

6. ~~**Decision-making**~~ **authority affecting judicial education**

Investments, sources of income, and business positions in business entities that are providers of training and educational development services of the type used by the Judicial Council.

7. DecisionmakingDecision-making authority affecting real property and management

Investments, sources of income, and business positions in business entities that are providers of real estate purchasing, maintenance, construction, and development.

Appendix D. Reporting Instructions

1. Time of filing statements and reporting period

a. Annual Statement: The statement shall disclose the information required in section 3 for the previous 12-month period.

i. Each Judicial Council member and each designated Judicial Council employee and contingent worker shall file a statement of economic interest in accordance with the Fair Political Practices Commission's regulations. (Cal. Code Regs., tit. 2, § 18723.)

- Judicial Council members who are not attorneys shall file an annual statement by March 1~~October 15~~.

All others, including but not limited to

- ~~Designated~~ Judicial Council members who are attorneys,~~staff incumbents~~ shall file by April 1. ~~15.~~

b. Statements when assuming office: As pursuant to Government Code sections~~codes~~ 87200 and 87300, every Judicial Council member or designated staff incumbent shall file a statement within 30 days after assuming office.

c. Statements after leaving offices: As pursuant to Government Code sections~~codes~~ 87200 and 87300, each former council member or designated staff incumbent shall file a statement within 30 days after leaving office. The statement shall disclose the information required by section 3 for the period between the closing date of the last statement required to be filed and the date of leaving office.

2. Place of filing statements

a. Judicial Council members and designated staff incumbents shall file the required statements with the Secretary of the Judicial Council (Administrative Director) on the Statement of Economic Interests for Judicial Council Members Conflict of Interest-Form 700, FPPC-1, or FPPC-2.

3. Assistance to members

a. A member may request assistance concerning duties under this code from the Fair Political Practices Commission under section 83114 of the Government Code.

CONFLICT OF INTEREST CODE
FOR THE
JUDICIAL COUNCIL OF CALIFORNIA
(Revised effective December 11, 2014)

The Political Reform Act (Gov. Code, § 81000 et seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation, California Code of Regulations, title 2, section 18730 which contains the terms of a standard conflict of interest code, and can be incorporated by reference into an agency's code. After public notice and hearing, the code may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of (Cal. Code Regs., tit. 2, § 18730), and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This regulation and the attached appendices shall constitute the Conflict of Interest Code for the Judicial Council of California.

Designated employees and contractors shall file statements of economic interests with the Administrative Director as prescribed by the Fair Political Practices Commission.

Appendix A. Judicial Council Members

Under Article VI, section 6, of the California Constitution, Judicial Council voting membership is limited to justices, judges, legislators, and attorneys. Two nonvoting court administrators and such other nonvoting members are determined by the voting membership of the council. Council members, voting or nonvoting, who are justices, judges, state legislators, court executive officers, and court administrator and clerks are required to file disclosure statements at their primary position because they are subject to comprehensive disclosure requirements arising out of their primary offices, pursuant to Government Code sections 87200 and 87300. When filing their annual statement of economic interests, council members, voting or non-voting, should indicate on the cover sheet of the Conflict of Interest-Form 700 that their statements are being filed for both their primary and their Judicial Council positions.

Designation of Positions

1. **Voting Council Members**
    a. **Justices, Judges, Legislators**
        i. **Disclosure of Financial Interests:** Council members must disclose all investments, sources of income, interests in real property, and positions in business entities.

        ii. **Manner of Reporting:** When filing their annual statement of economic interests, council members should indicate on the cover sheet of Conflict of Interest-Form 700 that their statements are being filed for both their primary and their Judicial Council positions.

    b. **Attorneys**
        i. **Disclosure of Financial Interests:** The disclosure requirements under this code for the designated attorney members are limited to those in Business and Professions Code section 6036, subdivision (d). Under this provision, a member required to disqualify himself or herself because of a conflict of interest shall (1) immediately disclose the interest, (2) withdraw from any participation in the matter, (3) refrain from attempting to influence another member, and (4) refrain from voting. Consistent with section 6036, subdivision (d), it is sufficient that the member indicate only that he or she has a disqualifying financial or personal interest, without disclosing the specific interest.

        ii. **Manner of Reporting:** Attorney members of the Judicial Council of California shall file the Statement of Economic Interests (form FPPC-2). This form requires members to (1) disclose whether or not they were required to disqualify themselves from making, participating in making, or attempting to influence a decision of the Judicial Council during the reporting period because of a conflict of

interest under Business and Professions Code section 6036, and (2) identify each decision requiring disqualification.

2. Nonvoting Council Members

a. Justices, Judges, Court Executive Officers, Court Administrator, and Clerks and such other nonvoting members as determined by the voting membership of the council.

i. **Disclosure of Financial Interests:** Council members must disclose all investments, sources of income, interests in real property, and positions in business entities.

ii. **Manner of Reporting:** When filing their annual statement of economic interests, council members should indicate on the cover sheet of Conflict of Interest-Form 700 that their statements are being filed for both their primary and their Judicial Council positions.

Appendix B. Judicial Council Member and Staff Designations

List of Designated Classifications	Assigned Disclosure Categories
1. JUDICIAL COUNCIL MEMBERS	
a. Voting	
i. Justice	1a
ii. Judge	1a
iii. Legislator	1a
iv. Attorney	2a
b. **Nonvoting**	
i. Justice	1a
ii. Judge	1a
iii. Court Administrator and Clerk	1a
iv. Court Executive Officer	1a
v. Other nonvoting members	1a
2. **EXECUTIVE OFFICE**	
i. Administrative Director	1
ii. Chief Administrative Officer	1
iii. Chief of Staff	1
iv. Chief Operating Officer	1
v. Executive Office Liaison III	3, 4
3. **GOVERNMENTAL AFFAIRS**	
i. Assistant Director	1
ii. Associate Attorney I	4
iii. Attorney	4

iv. Director 1

v. Senior Attorney 4

vi. Senior Governmental Affairs Analyst 4

vii. Supervising Administrative Coordinator 3,4

4. **LEADERSHIP SERVICES DIVISION**

a. **Audit Services**

i. Senior Manager 1

ii. Supervising Internal Auditor 3,4

b. **Judicial Council Support**

i. Supervising Court Services Analyst 4

c. **Legal Services**

i. Attorney 2b

ii. General Counsel/Division Director 1

iii. Managing Attorney 1

iv. Senior Attorney 2b

v. Supervising Attorney 2b

d. **Special Projects**

i. Manager 1

e. Trial Court Liaison

i. Manager 4

ii. Supervising Court Services Analyst 4

5. **OPERATIONS & PROGRAMS DIVISION**

a. **Center for Families, Children & the Courts**

i. Assistant Director 1

ii. Attorney 2b

iii.	Director	1
iv.	Manager	4
v.	Managing Attorney	1
vi.	Senior Attorney	2b
vii.	Supervising Attorney	2b
viii.	Supervising Court Services Analyst	4
ix.	Supervising Research Analyst	4

b. **Center for Judiciary Education and Research**

i.	Attorney	6
ii.	Director	1
iii.	Manager	6
iv.	Managing Attorney	6
v.	Senior Attorney	6
vi.	Senior Manager	6
vii.	Supervising Media Production Specialist	6

c. Court Operations Services

i.	Assistant Director	1
ii.	Director	1
iii.	Manager	4
iv.	Senior Emergency Response and Planning Manager	3,4
v.	Supervising Court Services Analyst	4
vi.	Supervising Research Analyst	4

d. Criminal Justice Services

i.	Attorney	2b
ii.	Senior Manager	1

iii.	Supervising Attorney	2b
iv.	Supervising Research Analyst	4

e. **Appellate Court Services**

i.	Director	1
ii.	Manager	1

f. Capital Programs

i.	Assistant Director	1
ii.	Design & Construction Project Manager III	7
iii.	Director	1
iv.	Manager	7
v.	Principal Architect	7
vi.	Supervising AV/Video Technician	3
vii.	Supervising Facilities Planner	7

6. **ADMINISTRATIVE DIVISION**

a. **Administrative Support**

i.	Manager	3
ii.	Production and Mail Services Supervisor	3
iii.	Supervising Administrative Coordinator	4
iv.	Supervising AV/Video Technician	3,4

b. **Finance**

i.	Assistant Director	1
ii.	Director	1
iii.	Manager	3
iv.	Senior Manager	3

v.	Supervising Accountant	3,4
vi.	Supervising Budget Analyst	3,4
vii.	Supervising Contract Specialist	3,4
viii.	Supervising Procurement Specialist	3,4

c. **Human Resources**

i.	Director	1
ii.	Manager	4
iii.	Senior Manager	4
iv.	Supervising Business Applications Analyst	5
v.	Supervising Human Resources Analyst	4
vi.	Supervising Pay and Benefits Specialist	4

d. **Information Technology**

i.	Director	1
ii.	Information Systems Manager	5
iii.	Senior Manager	5
iv.	Supervising Business Applications Analyst	5
v.	Supervising Information Systems Analyst A, B	5

e. **Real Estate and Facility Management**

i.	Assistant Director	1
ii.	Facilities Management Administrator	7
iii.	Facilities Management Specialist	7
iv.	Manager	7
v.	Mechanical, Electrical, Plumbing Engineer	7
vi.	Regional Manager of Facilities Operations	7
vii.	Senior Manager	7

viii. Supervision Facilities Management Administration 7

ix. Utility Engineer/Analyst 7

f. Trial Court Administrative Services

i. Manager 4

ii. Supervising Contract Specialist 4

iii. Senior Manager 1

iv. Supervising Accountant 4

v. Supervising Court Services Analyst 4

7. **All Divisions***

i. Special Consultant 1

ii. Contractor 1

*Consultants (contractors) shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitation:

The Administrative Director may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The consultant must comply with all other provisions of this code. The Administrative Director's determination is a matter of public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code.

Appendix C. Judicial Council Staff Disclosure Categories

An employee need only disclose a financial interest in a business entity included in an assigned category if the employee's duties involve making recommendations and/or decisions concerning that type of business entity. In this appendix, "positions" includes employee, partner, officer, director, trustee, and any other management position. "Providers" includes business entities and individuals that are manufacturers, distributors, vendors, sellers, lessors, suppliers, contractors, subcontractors, and other providers of the supplies, equipment, real property, and services indicated in the category.

1. **Executive authority**

   All investments, sources of income, interests in real property, and positions in business entities

   a. Council members who are justices, judges, legislators, court executive officers, court administrator and clerks are required to file disclosure statements at their primary position because they are subject to comprehensive disclosure requirements arising out of their primary offices, pursuant to Government Code section 87200 and 87300. When filing their annual statement of economic interests, council members, voting or non-voting, should indicate on the cover sheet of Conflict of Interest-Form 700 that their statements are being filed for both their primary and their Judicial Council positions.

2. **Attorneys**

   Attorneys are required to (1) disclose whether or not they were required to disqualify themselves from making, participating in making, or attempting to influence a decision of the Judicial Council during the reporting period because of a conflict of interest under Business and Professions Code section 6036, and (2) identify each decision requiring disqualification.

   a. Attorneys who are Judicial Council members shall file the Statement of Economic Interests for the Judicial Council on form FPPC-2.

   b. Attorneys who are Judicial Council staff shall file the Statement of Economic Interest for the Judicial Council on Form FPPC-1.

3. **Decision-making authority affecting the purchasing of office equipment, materials and supplies**

   Investments, sources of income and business positions in entities that are providers of office equipment, materials, and supplies including, but not limited to, commercial and non-commercial furniture, fixtures, publication materials, printing, graphics, publishing services, audiovisual equipment and/or any other non-IT electronic devices of the type used by the Judicial Council.

4. Decision-making authority affecting external consultants and contracts

Investments, sources of income, and business positions in business entities that are providers of services used by any office in the Judicial Council for the purposes of, including, but not limited to, personnel and employment services, editing, publications, data gathering, data management, researching and surveying, policy analysis, real estate management, fleet management, conference and travel services, financial services, external legal counsel, and court security.

5. **Decision-making authority affecting information technology**

Investments, sources of income, and business positions in business entities that are providers of information technology, data management systems, computer software, computer equipment and hardware of the type used by the Judicial Council.

6. Decision-making authority affecting judicial education

Investments, sources of income, and business positions in business entities that are providers of training and educational development services of the type used by the Judicial Council.

7. Decision-making authority affecting real property and management

Investments, sources of income, and business positions in business entities that are providers of real estate purchasing, maintenance, construction, and development.

Appendix D. Reporting Instructions

1. **Time of filing statements and reporting period**
    a. **Annual Statement:** The statement shall disclose the information required in section 3 for the previous 12-month period.
        i. Each Judicial Council member shall file an annual statement by October 15.

        ii. Designated Judicial Council staff incumbents shall file by April 15.

    b. **Statements when assuming office:** As pursuant to codes 87200 and 87300, every Judicial Council member or designated staff incumbent shall file a statement within 30 days after assuming office.

    c. **Statements after leaving offices:** As pursuant to codes 87200 and 87300, each former council member or designated staff incumbent shall file a statement within 30 days after leaving office. The statement shall disclose the information required by section 3 for the period between the closing date of the last statement required to be filed and the date of leaving office.

2. **Place of filing statements**
    a. Judicial Council members and designated staff incumbents shall file the required statements with the Secretary of the Judicial Council (Administrative Director) on the Statement of Economic Interests for Judicial Council Members Conflict of Interest-Form 700, FPPC-1, or FPPC-2.

3. **Assistance to members**
    a. A member may request assistance concerning duties under this code from the Fair Political Practices Commission under section 83114 of the Government Code.

JUDICIAL COUNCIL OF CALIFORNIA

2860 Gateway Oaks Drive, Suite 400 • Sacramento, California 95833-4336
Telephone 916-263-7885 • Fax 916-263-1966 • TDD 415-865-4272

MEMORANDUM

Date
September 18, 2015

To
Members of the Executive and Planning Committee

From
Zlatko Theodorovic, Director and Chief Financial Officer, Judicial Council

Subject
Trial Courts: Trial Court Security Grants Program

Action Requested
Information Only

Deadline
N/A

Contact
Zlatko Theodorovic
916-263-1397 phone
zlatko.theodorovic@jud.ca.gov

Executive Summary

Upon recommendation of the Trial Court Budget Advisory Committee, at the April 17, 2015, Judicial Council meeting, the council approved eliminating, reducing, and deferring expenditures for specified projects funded from the State Trial Court Improvement and Modernization Fund. This action eliminated $1.2 million for the Trial Court Security Grants Program effective July 1, 2015. The Council directed staff to explore utilizing alternative sources to fund Trial Court Security Grants. The purpose of this memorandum is to identify any financial or statutory constraints for using one or more of the construction funds to support the Trial Court Security Grants Program. To the extent a Budget Change Proposal is required to provide the appropriate spending authority specifically for this workload, this memorandum describes the types of information that should be included in the request.

Previous Action (Judicial Council and Executive and Planning Committee)

At the April 17, 2015, meeting, the Judicial Council approved eliminating, reducing, and deferring expenditures for specified projects funded from the State Trial Court Improvement and Modernization Fund (IMF) and directed staff to explore other funding sources to support programs funded from the IMF. The Executive and Planning Committee reviewed this report at its June 15, 2015, meeting and directed the Legal Services Office (LSO) to review and comment on the report. LSO has reviewed the report and concurs with the analysis and conclusion.

Methodology and Process

Trial Court Security Grants Program

The Judicial Council's Office of Security administers the Trial Court Security Grants Program for the installation and enhancement of security systems in trial court facilities. The program began in fiscal year 2006-07 and has historically been funded from the IMF. The initial program budget was $3 million annually, but has since been reduced to $1.2 million annually. To date, the program has installed a total of 80 cameras and 27 access and 116 duress alarm systems. Additionally, grant funding is used to support other security projects, such as a web-based continuity of operations planning tool, reconfiguration of clerk's counters, and installation of ballistic glass.

Systems installed using Trial Court Security Grant Program funds since 2006 have been maintained using those grants funds, through the purchase of maintenance service agreements; however the service agreements became cost prohibitive. Beginning in 2009-10, they were no longer purchased, and as such, maintenance expenses for cameras and access systems are handled as needed on a time and materials basis.

Alternative funding sources for the Trial Court Security Grants Program

Judicial Council Finance (Finance) has reviewed the statutes that established the Court Facilities Trust Fund (CFTF), State Court Facilities Construction Fund (SCFCF), and State Court Facilities Construction Fund Immediate and Critical Needs Account (ICNA) to determine if there is any statutory impediment to utilizing these funds to support the Trial Court Security Grants Program. Attachment 1 summarizes the establishing legislation and permissible types of expenditures for each fund source.

As indicated in the attachment nothing in statute specifically prohibits the use of the ICNA funds to purchase and maintain security equipment and, to the extent security equipment is determined to be a fixture, funds from the SCFCF may be utilized for this purpose. While the SCFCF and

ICNA provide funding for a variety of purposes, including facility modifications and, (in the case of ICNA), general trial court operations, declining revenues have affected the long-term stability of both of the funds and impacted the level of services provided. Conservative estimates indicate that both funds are projecting negative fund balances in future years.

The CFTF was established to support ongoing operations, repair, and maintenance of court facilities. However, there are insufficient funds to meet the current and ongoing facility repair and maintenance needs. Moreover, previous Budget Change Proposal (BCP) requests for additional General Fund resources to support facility repair and maintenance have been denied by the Department of Finance.

Utilizing Funding from the Facility Modifications Program

The Trial Court Facility Modifications Policy (see Attachment 2) adopted by the Judicial Council on July 12, 2012, and revised on December 12, 2014, defines a Facility Modification and assigns each approved project one of the six priority categories. Approximately $65 million is provided annually for Facility Modification projects from the SCFCF ($40 million) and ICNA ($25 million). While the Trial Court Facility Modifications Policy does not explicitly exclude the use of these funds to replace or provide new security equipment, the guidelines (Guideline 5, see Attachment 3) for prioritizing and ranking facilities modifications adopted by the Trial Court Facility Modification Advisory Committee are less clear. Exterior security lighting, making accessible entry areas that can house security equipment, perimeter alarms, normal exterior locks and hardware, and holding cells are clearly part of the facility and determined to be a Judicial Council responsibility. However, responsibility for cameras, interior locks, and other security related, but attached equipment is not clearly defined. Guideline 5 does note that Facility Modification projects are limited to the replacement of failed equipment, but these projects can be considered and are automatically categorized as a Priority #3[1].

The Court Security Advisory Committee, established in October 2013, makes recommendations to the Judicial Council for improving court security, including personal security, emergency response planning, and oversight of the Trial Court Security Grants Program. Finance staff suggest that any determination or consideration by the Trial Court Facility Modification Advisory Committee to allocate resources to support the Trial Court Security Grants Program consider any recommendations and/or policies adopted by the Court Security Advisory Committee.

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[1] Priority #3-Needed, A Priority 3 ranking is applied when the modification reduces long-term maintenance or repair costs or improves the functionality, usability, and accessibility of a court facility. The condition does not hinder basic court functions, but the correction will improve court operations.

Budget Change Proposals

The Judicial Council approved the submission of a BCP to the Department of Finance in September 2015, which requested $3.905 million General Fund in 2016-17 and ongoing. The BCP indicates the funds would be used to replace aging camera, and duress alarm and intrusion alarm systems, as well as provide maintenance of current systems. Additionally, a similar BCP was submitted to the Department of Finance in September 2014, which requested $1.464 million General Fund for Trial Court Security System Maintenance and Replacement in 2015-16 and ongoing. This was in addition to the $1.2 million proposed for expenditure in 2015-16 from the IMF. The Department of Finance denied this request, stating that the Judicial Council should utilize existing Facility Modification funding to support this workload. This was in addition to the $1.2 million proposed for expenditure in 2015-16 from the IMF. We believe that a BCP requesting General Fund will likely be denied again. However, if the request proposes to utilize another fund source, it may be given further consideration.

Policy and Cost Implications

If the Judicial Council determines the Trial Court Security Grants Program is a critical service, Finance has determined that utilization of one or more of the construction funds are authorized funding options for this purpose—although these funds are already projecting negative balances which may present difficult policy choices as to the use of the funds. In the next section, several options are presented for the Judicial Council to consider, three of which require submission and approval of a Budget Change Proposal to the Department of Finance. Any BCP request should, at a minimum, include the following elements:

- Clear, concise description of the problem/issue and why funding is needed;
- Address history, risks and uncertainties;
- Why these program costs cannot be absorbed within existing resources;
- A workload table identifying the amount of resources needed and their intended use;
- Identification of a viable fund source;
- Identify benefits to be achieved; and
- Present and evaluate viable alternatives.

Possible Recommendations

1. **Utilize the State Court Facilities Construction Fund**. To the extent security equipment is determined to be a fixture; resources from the SCFCF could be used to support the purchase and maintenance of security equipment. At this time, the expected expenditures from this

fund are essentially static and no new construction projects are proposed to be funded from the SCFCF, producing a stable funding source. A BCP will be required to provide the appropriate spending authority to specifically support Trial Court Security Grants Program workload.

2. **Utilize the Immediate and Critical Needs Account**. Resources from the ICNA could be used to support the purchase and maintenance of security equipment. While this option is viable, proposed expenditures in the ICNA are continuously shifting, based on the available resources to support approved court construction projects. A BCP will be required to provide the appropriate spending authority to specifically support Trial Court Security Grants Program workload.

3. **Utilize existing Facility Modification Program resources.** While the current policies and guidelines of the Trial Court Facility Modification Advisory Committee do not explicitly address the security grants program, the Judicial Council can work with the Trial Court Facility Modification Advisory Committee to further refine the security guidelines to identify eligible security projects that can be funded from the Facility Modification Program. The Facility Modifications Program currently has authority to expend up to $65 million annually. Should the requests for new or replacement security equipment be incorporated into the Facility Modification Program, per the Trial Court Facility Modifications Policy, these projects would be automatically ranked as a Priority #3 and subject to consideration and approval against other statewide facility needs within the same ranking and below Priorities #1 and #2. This option does not require a BCP.

4. **Permanently redirect $1.2 million from the Facilities Modification Program to the Trial Court Security Grants Program.** This alternative provides a permanent funding source for the Trial Court Security Grants Program. The purchase of new security equipment or its replacement would not be prioritized against other higher priority facility modification projects. However, this alternative would permanently reduce the Facility Modifications budget by $1.2 million. This option requires various technical budgeting changes to implement the redirection of resources.

5. **Utilize all three construction funds: ICNA, SCFCF, and the Court Facilities Trust Fund.** This alternative provides that the maintenance of security equipment be supported from the CFTF and the purchase or replacement of security equipment be supported from either the SCFCF or ICNA. However, as indicated above, current County Facility Payments deposited into the CFTF are insufficient to meet the current and ongoing facility repair and maintenance needs. Consider delegating oversight responsibility to the Court Security Advisory Committee. A BCP will be required to provide the appropriate spending authority to specifically support Trial Court Security Grants Program workload.

Attachments and Links

1. Attachment 1: Chart–Establishing legislation and types of expenditures
2. Attachment 2: Trial Court Facility Modifications Policy
3. Attachment 3: Trial Court Facility Modification Advisory Committee Guideline #5

Fund	Statutory Authority	Allowable Use of Funds	Source of Revenue	Types of Expenditures
Court Facilities Trust Fund (3066)	Government Code Sections 70351-70370	Ongoing operations, repair, and maintenance of court facilities.	Requires each county to pay to the state an amount that county historically expended for operation and maintenance of court facilities.	Program operations costs, and court facilities operations and maintenance
State Court Facilities Construction Fund (3037)	Government Code Section 70371	Planning, design, construction, rehabilitation, renovation, replacement, leasing, or acquisition of court facilities.	State court construction penalty assessments (primarily vehicle code infractions). Surcharges on parking offenses and filing fees in civil actions.	Program operations costs, Facilities Modifications, Capital Outlay project costs, Lease-Revenue Debt Service Payments for court construction.
Immediate and Critical Needs Account (3138)	Government Code Sections 70371-70374	Planning, design, construction, rehabilitation, renovation, replacement, or acquisition of court facilities. Lease-revenue and Public-Private Partnership payments. Trial court operations.	State court construction penalty assessments (primarily vehicle code infractions). Assessment on criminal convictions. Surcharges on parking offenses and civil filing fees.	Program operations costs, Trial Court operations costs, Facilities Modifications, Los Angeles Long Beach Courthouse Service Fee, Capital Outlay project costs, Lease Revenue Debt Service Payments for court construction.

Trial Court Facility Modifications Policy

ADOPTED AND EFFECTIVE
JULY 27, 2012
REVISED DECEMBER 12, 2014

JUDICIAL COUNCIL
OF CALIFORNIA

TRIAL COURT FACILITY MODIFICATION
ADVISORY COMMITTEE

I. Purpose

Government Code section 70391(h) requires the Judicial Council to allocate appropriated funds for the maintenance and construction of court facilities. Government Code section 70374(c)(1) authorizes the use of funds in the State Court Facilities Construction Fund for projects involving, among other things, rehabilitation, renovation, or replacement of court facilities. This document presents the methodology and process for identifying and prioritizing facility modifications (Facility Modifications) to be made to trial court facilities, the responsibility or title for which rests with the state.

The *Trial Court Facility Modifications Policy*, initially approved and effective July 27, 2012, replaced and superseded the Judicial Council's *Prioritization Methodology for Modifications to Court Facilities;* last revised April 24, 2009. This revised *Trial Court Facility Modifications Policy*, if approved by the council, will become effective January 1, 2015.

II. Definitions

A. Facility Modification

A Facility Modification is a physical modification to a facility or its components that restores or improves the designed level of function of a facility or facility components. A Facility Modification may consist of:

- A modification that alters or increases the designed level of services of a building;
- A "special improvement" meaning a one-time modification to a facility that is not expected to be repeated during the lifetime of the facility;
- An alteration, addition to, or betterment of a facility that changes its function, layout, capacity, or quality;
- A rehabilitation, which restores a facility to its former state or capacity;
- A renovation, which restores a facility to a former or better state, including by repairing or reconstructing facility components;
- A replacement, which puts a new facility component of the same or better quality or function, in the place of an existing facility component;
- The addition of new systems, equipment, or components to a facility that would not otherwise exist;
- A modification to a facility that is required to bring the facility into compliance with law, including but not limited to the Americans with Disabilities Act, title 24 of the California Code of Regulations, and federal and state hazardous materials laws and regulations;
- Any of the foregoing where a facility or its components are damaged, seriously deteriorated, dysfunctional, subject to intermittent service outage, or otherwise in insufficient operating condition as a result of deferred

maintenance, emergency, acts of God, severe wind or weather conditions, vandalism, or criminal activity; and

- A correction of collateral damage arising from an emergency incident or unanticipated finding that is discovered during the performance of Facility Modification work.

A Facility Modification differs from routine maintenance and repair of a court facility, which is the routine, recurring, and generally anticipated work that must be performed periodically throughout the life of a facility to keep the building and its grounds, equipment, and utilities infrastructure in a condition adequate to support their designed level of service. Routine maintenance and repair includes annual or less frequent periodic repairs and replacements of building components and equipment consistent with manufacturers' recommendations or industry-recommended service cycles. While a Facility Modification may either restore or improve a facility's designed level of function, routine maintenance and repair always maintains, without materially improving, the facility and its components at their designed level of function. Routine maintenance and repair is the basic and ongoing work that is needed, as part of ordinary facility operation and management, to keep the facility and its components in a condition adequate to support existing facility operations and to prevent deterioration, break down, and service interruptions.

In some instances, it is difficult to distinguish between a Facility Modification and routine maintenance and repairs. Facility Modifications are distinguished from routine maintenance and repairs based on the scope and complexity of the work to be performed, and the anticipated impact of the work on the ongoing operation of the facility. Factors to be considered in evaluating the scope, complexity, and impact of a project include:

- The amount of time and materials needed to complete the work;
- The number of steps involved in completing the project;
- The type and number of tools required to perform the work;
- The extent to which facility structures or equipment must be altered or moved to complete the project;
- Whether the facility component involved is a substantial part of a major facility system;
- Whether one or more facility systems will be disrupted or taken out of service as a result of the project; and
- Whether the project involves critical facility systems such as life safety or security equipment, HVAC equipment, utilities infrastructure, roofs and other structural components, or accessibility features (i.e., elevators, escalators, doors, parking lots and structures).

Projects of greater scope and complexity or with a more critical impact on the ongoing safe and secure operation of the court facility are more likely to be Facility Modifications; however, for projects that are more difficult to distinguish, case-by-case evaluation is required.

A Facility Modification differs from a capital project, which significantly increases the facility's gross area; substantially renovates the majority (more than 50 percent) of the facility; involves the construction of a new facility or a facility acquisition; or changes the use of the facility, as in a conversion from another use to court use.

B. Judicial Branch Facilities' Customer Service Center (CSC)

The Judicial Branch Facilities' Customer Service Center (CSC) is a 24-hour service center established to receive, track, and control all work statewide related to court facilities. The center is managed by Real Estate and Facilities Management staff, within the Judicial Council's Administrative Division. The CSC is the primary contact point for all Facility Modification requests and all maintenance services. The e-mail address is csc@jud.ca.gov.

C. Facility Modification Budget Allocation Categories

1. **Statewide Facility Modifications Planning Allocation**
   The Statewide Facility Modifications Planning Allocation is the portion of the Facility Modifications budget set aside by the Judicial Council for planning, investigations, and other activities related to the identification, solution analysis or development of Facility Modification requirements, estimates, and plans. This includes studies of issues that may eventually require Facility Modifications as well as full facility assessments used for long-range planning of the Facility Modification program. This budget does not include detailed construction design work, which is incorporated into the cost of each specific Facility Modification.

2. **Priority 1 Facility Modifications Allocation**
   The Priority 1 Facility Modifications Allocation is the portion of the Facility Modification budget set aside by the Judicial Council for performance of emergency Facility Modifications. Due to the unpredictable nature of these Facility Modifications funding must be set aside to ensure an adequate reserve to address any emergencies that may arise over the course of the fiscal year.

3. **Planned Facility Modifications Allocation**
   The Planned Facility Modifications Allocation is the portion of the Facility Modification budget set aside by the Judicial Council for Facility Modifications that the Trial Court Facility Modification Advisory Committee (TCFMAC) has fully vetted and recommended for funding at the beginning of the fiscal year and that are approved by the Judicial Council. Typically these Facility Modifications are considered to be among the highest priority from those *not* funded in the

previous year due to budget constraints. Funds remaining in this allocation after all Planned Facility Modifications have been completed can be reallocated by the TCFMAC among the other Facilities Modification Budget Categories. The Judicial Council will be advised of any such reallocations in the annual information report submitted after the close of each fiscal year. The report also will indicate if any Planned Facility Modifications approved by the council are canceled.

4. **Priority 2-6 Facility Modifications Allocation**
The remainder of the Facility Modifications budget is set aside by the Judicial Council for Priority 2–6 Facility Modifications that were either not received prior to the beginning of the fiscal year or involved lower-priority work not yet fully vetted and estimated but eligible for funding during the current fiscal year depending on funds available and priority of the requested modification.

This budget allocation is spread over the course of the fiscal year by the TCFMAC to fund requests that are ad hoc or unplanned, but that rank among the highest priority Facility Modifications. The TCFMAC will determine at the beginning of the fiscal year the estimated amount to be used at each of its meetings as part of a plan to stage the work over the course of the year. This will allow for funding decisions at each meeting to ensure funds are spent appropriately and fully for the fiscal year. Based on this funding determination the Judicial Council staff will present a proposed list of Facility Modification at each meeting. The TCFMAC will then approve or disapprove funding for each of the proposed Facility Modifications.

III. Priority Categories

Priority Categories for Facility Modifications

Projects determined to be Facility Modifications will be assigned one of the six priority categories described below. These priority categories are based on methods commonly used by private sector facility management firms. Facility Modifications will be prioritized based on confirmation that the requested project qualifies as a Facility Modification under the criteria in section II(A) above, as well as by priority category, specific justifications, effect on court operations, public and employee safety, risk management and mitigation, funding availability, equity among the courts, implementation feasibility, cost/benefit analysis, planning and design status, contribution to ADA compliance, and status of major capital improvements.

Facility Modifications determined to be Priority 1 will be addressed immediately and regardless of whether the court occupies a shared-use facility. Planned Priority 2–6 Facility Modifications requested for shared-use facilities will be assigned an appropriate

priority category; their prioritization and implementation may be dependent, however, on financial participation by the county that shares the building.

Priority categories for Facility Modifications are as follows:

Priority 1—Immediately or Potentially Critical. A Priority 1 ranking is appropriate where a condition of the facility requires immediate action to return the facility to normal operations or where a condition exists that will become critical if not corrected expeditiously. Such conditions necessitate a Facility Modification to prevent accelerated deterioration, damage, or dysfunction; to correct a safety hazard that imminently threatens loss of life or serious injury to the public or court employees; or to remedy intermittent function, service interruptions, or potential safety hazards. These conditions may include, but are not limited to, major flooding, substantial damage to roofs or other structural building components, or actual or imminent hazardous material release or exposure. Depending on scope, complexity, and impact, a severe deterioration in life safety or security components may also be considered a condition requiring a Priority 1 Facility Modification.

Owing to their critical nature, Priority 1 Facility Modification requests will be addressed immediately by Judicial Council staff using internal procedures—including a method and a process for setting aside funds to address Priority 1 requests— that ensure timely and effective responses to unplanned damage, deterioration, or dysfunction resulting from an emergency or other potentially critical conditions.

Priority 2—Necessary, But Not Yet Critical. A Priority 2 ranking is appropriate where a facility requires a modification to preclude deterioration, potential loss of function or service, or associated damage or higher costs if correction of a condition is further deferred.

Priority 3—Needed. A Priority 3 ranking is appropriate where addressing a Facility Modification will reduce long-term maintenance or repair costs or improve the functionality, usability, and accessibility of a court facility. Such a condition is not hindering to the most basic functions of the facility, but its correction will improve court operations.

Priority 4—Does Not Meet Current Codes or Standards. A Priority 4 ranking is appropriate where a facility or one or more of its components does not conform to current code requirements, despite having complied with all codes in place at the time of initial construction. Such conditions are considered *legally nonconforming,* and their modification to meet current code requirements is generally not required.

Priority 5—Beyond Rated Life, But Serviceable. A Priority 5 ranking is appropriate where a facility is currently adequate to support court operations but, owing to some

condition, cannot be expected to fully and properly function as designed for more than one year without the requested Facility Modification.

Priority 6—Hazardous Materials, Managed But Not Abated. A Priority 6 ranking is appropriate for a Facility Modification where a facility contains hazardous materials, such as asbestos or lead-based paints, that are managed in place and not yet abated.

IV. Process for Requesting and Prioritizing Facility Modifications

A. Requesting Facility Modifications

Potential Facility Modifications will be identified by court and Judicial Council personnel through requests made to the CSC. The Judicial Council staff in collaboration with the local court staff will

- Confirm that each requested project is a Facility Modification under the criteria set forth above in section II;
- Assign a priority category to each request;
- Resolve any questions and develop a preliminary cost estimate; and
- Finalize the scope of the Facility Modification.

1. Priority 1 Requests. Owing to their critical nature, Priority 1 requests will be addressed immediately by Judicial Council staff using internal procedures that ensure timely and effective responses to unplanned damage, deterioration, or dysfunction resulting from an emergency or other potentially critical conditions. Judicial Council staff will report to the TCFMAC on all Priority 1 requests as part of the next scheduled TCFMAC meeting.

2. Priority 2–6 Requests. Requests for Priority 2–6 Facility Modifications will be tracked by the Judicial Council staff and the courts using the Judicial Council's Computer Aided Facility Management (CAFM) database. Each request will outline the problem to be addressed and state the impact if the problem is not addressed. Requests will be processed by CSC staff and tracked in CAFM.

B. Prioritizing Requests for Priority 2–6 Facility Modifications

The following criteria will be used in ranking of all noncritical Facility Modifications:

- priority category
- specific justifications, effect on court operations
- public and employee safety and security, and risk management
- funding availability
- equity among the courts
- implementation feasibility
- cost/benefit analysis

- design and plan status,
- contribution to ADA compliance
- planned major capital improvements

C. Trial Court Facility Modifications Advisory Committee: Duties and Procedures

The TCFMAC will meet as needed to review the Judicial Council staff prepared reports, which will include a suggested ranked list of all proposed Facility Modifications with fully developed scopes of work and cost estimates as well as current funding availability. The total cost of all modifications on the draft ranked list may not exceed total available funding for the current fiscal year. Based on a review of the Judicial Council reports and any other available information, the TCFMAC will determine which modifications to recommend for funding in the current fiscal year and which should be deferred for future consideration based on funding availability. The TCFMAC may also determine that certain items do not qualify as Facility Modifications and remove them from the list of recommended projects.

D. Trial Court Facility Modifications Advisory Committee: Annual Recommendation to the Judicial Council

1. The Legislature appropriates funding to the annual Facility Modification budget (annual budget) out of the State Court Facilities Construction Fund and the Immediate and Critical Needs Account.

2. Based on the annual budget, the Judicial Council staff to the TCFMAC will develop a proposed allocation among the four Facility Modification Budget Allocation Categories and a list of potential Planned Facility Modifications.

3. The TCFMAC will consider the Judicial Council staff proposal and develop a recommended allocation among the four Facility Modification Budget Allocation Categories; Priority 1 Facility Modifications, Statewide Facility Modification Planning, Planned Facility Modifications, and Priority 2–6 Facility Modifications.

4. The TCFMAC will also use this Judicial Council staff proposal to determine if there are high priority Facility Modifications that should be funded with the Planned Facility Modification allocation. A list of proposed Planned Facility Modifications, if any, will be developed, and will include the location, a short description, and estimated cost of each Planned Facility Modification. Based on the Annual Budget, the TCFMAC may recommend all funding be preserved for use on the highest priority Facility Modifications throughout the year and not recommend any Planned Facility Modifications.

5. The TCFMAC's draft recommendations of the proposed funding allocation and

the list of Planned Facility Modifications will be made available to the trial courts for comment by posting them on Serranus and emailing them to the presiding judges and the court executive officers. The comments and the TCFMAC's responses will be included with the final recommendations in a report to the Judicial Council.

6. Based upon comments received, the TCFMAC will determine its final recommended funding allocation and list of Planned Facility Modifications, which will be presented to the council for review and approval.

7. This policy, the budget allocations, and list of Planned Facility Modifications approved by the Judicial Council will be the basis on which the TCFMAC and the Judicial Council staff, in collaboration with the local courts, will proceed to implement Facility Modifications.

8. During the fiscal year, justifiable reasons may arise for reallocating funds among the four Facility Modification budget allocations—Statewide Facility Modification Planning, Priority 1, Planned, and Priorities 2–6. Under this policy, the Judicial Council delegates to the TCFMAC the authority to redistribute funds among the four budget allocations as necessary to ensure that the funds are used in the fiscal year and are used for the highest priority Facility Modifications, consistent with this policy and the criteria outline in section IV(B) above. All reallocations will be reported to the council as part of the annual report on the activities of the TCFMAC.

9. The Judicial Council also delegates to the TCFMAC the authority to approved Priority 1 and 2 Facility Modifications between the beginning of the fiscal year and the Judicial Council's approval of the annual budget allocation and list of Planned Facility Modifications. This is necessary to ensure that emergency and necessary Facility Modifications that could impact court operations are not delayed. The TCFMAC will not expend more than 20% of the annual budget prior to the Judicial Council's approval.

E. Trial Court Facility Modifications Advisory Committee: Annual Informational Report

The TCFMAC will develop an informational annual report summarizing its activities during the preceding fiscal year. Like the annual budget allocation recommendation, this report will be provided to the courts for comment in the same manner as the recommendations to the Judicial Council outlined above.

This report will be developed in the second quarter of the new fiscal year after all data is available and analyzed for the preceding year. This report will include data on actual

expenditures, requests received, any backlog of work based on industry standard major facility systems, funding of modifications by priority, time required to complete each project, cancellation of any council-approved projects, redistribution of funding between categories, and other significant TCFMAC activities.

F. Trial Court Facility Modifications Advisory Committee: Quarterly Report

The TCFMAC will develop a quarterly report to provide to the council as an informational item. The report will include a list of all Facility Modifications funded during the quarter, as well as any reallocation of fund between the funding categories.

Guideline 5
Security Related Projects

The determination of what specialty security projects is part of the court's equipment and what is a part of the facility as a whole is often a very fine line. Metal detectors, scanning equipment, and other such stand alone plugged in equipment used by court employees, sheriff or contractors are clearly court equipment and the responsibility of the court. Exterior security lighting, making accessible entry areas that can house security equipment, perimeter alarms, normal exterior locks and hardware, and holding cells are all clearly part of the facility and thus an JCC responsibility. Responsibility for cameras, interior locks, and other security related but attached equipment is less clear.

To determine funding responsibility the following criteria should be considered:

The JCC funds:

- permanent changes to the facility and accessibility;
- permanent changes to fixed counters and access areas;
- exterior security to include lighting, and alarms;
- repair and maintenance of "transferred" holding cells ;
- installation and maintenance of JCC recommended camera systems;
- all locks and hardware permanently install as part of the building; or
- all attached security equipment found in a typical office building.

The Courts fund

- all security related personnel cost and portable equipment;
- all furniture and removable locks;
- the replacement of all keys/cards lost by court personnel ;
- panic, duress, or similar emergency notification systems; or
- all security related equipment not found in the typical office building unless identified as not court allowable per Rule 10.810 (See Attachment 2).

It is imperative on the courts that they consult with the JCC anytime they are planning to add, change, or remove security equipment, or change security procedures that could have a facilities impact. Adding new equipment, removal of equipment, and changing the entry locations for either court staff or the public could all have an impact on the facility. Failure to plan with the JCC facility staff could result in delays in changes necessary to support the new security requirements.

Facility modification projects are limited in the replacement of failed equipment. Prioritization of work related to failed equipment should follow the normal prioritization process and consideration. Work shall be limited to like-for-like replacement as much as is technically possible.

Projects enhancing facility security systems shall be prioritized as a Priority 3 project.

All security related project must be coordinated with Emergency Response and Security (ERS). All justification and related scoring for these projects should be confirmed by ERS as being valid requirements and not outside the scope of normal JCC standards.

JUDICIAL COUNCIL OF CALIFORNIA MEETINGS

Open to the Public Unless Indicated as Closed (Cal. Rules of Court, rule 10.6(a))
Judicial Council of California • Sacramento Offices
2860 Gateway Oaks Drive, Suite 400 • Sacramento, California 95833
Tuesday, October 27, 2015 • 8:30 a.m.–1:05 p.m.

Meeting materials will be hyperlinked to agenda titles as soon as possible after receipt by Judicial Council Support. Please check the agenda at CHECK FOR NEW WEB ADDRESS for recent postings of hyperlinked reports.

TUESDAY, OCTOBER 27, 2015 AGENDA

CLOSED SESSION (RULE 10.6(b))—PERSONNEL AND OTHER CONFIDENTIAL MATTERS

8:30–9:10 a.m. **Session**

9:10–9:30 a.m. **Transitional Break**

OPEN SESSION (RULE 10.6(a))—MEETING AGENDA

9:30–9:45 a.m. **Swearing in of New and Reappointed Judicial Council Members**
The Chief Justice will administer the oath of office to new and reappointed council members.

9:45–9:50 a.m. **Approval of Minutes**
Approve minutes of the August 20-21, 2015, Judicial Council meeting.

9:50–10:00 a.m. **Chief Justice's Report**
Chief Justice Tani G. Cantil-Sakauye will report.

10:00–10:10 a.m. **Administrative Director's Report**

NOTE: Time is estimated. Actual start and end times may vary.

Mr. Martin Hoshino, Administrative Director, will report.

10:10–10:40 a.m. **Judicial Council Committee Presentations**

Executive and Planning Committee
Hon. Douglas P. Miller, Chair

Policy Coordination and Liaison Committee
Hon. Kenneth K. So, Chair

Rules and Projects Committee
Hon. Harry E. Hull, Jr., Chair

Technology Committee
Hon. Marsha G. Slough, Chair

10:40–11:10 a.m. **Judicial Council Members' Liaison Reports**

Judicial Council members will report on their liaison work.

11:10–11:40 a.m. **Public Comment**

The Judicial Council welcomes public comment on general matters of judicial administration and on specific agenda items, as it can enhance the council's understanding of the issues coming before it.

Please see our public comment procedures.

1) Submit advance requests to speak by **4:00 p.m., Thursday, October 22, 2015**.

2) Submit written comments for this meeting by **1:00 p.m. on Friday, October 23, 2015**.

Contact information for advance requests to speak, written comments, and questions:

E-mail: judicialcouncil@jud.ca.gov

Postal mail or delivery in person:

Judicial Council of California
455 Golden Gate Avenue
San Francisco, California 94102-3688
Attention: Clifford Alumno

11:40–11:55 a.m. **Break**

CONSENT AGENDA (ITEMS A1–A32 THROUGH ITEM L)

A council member who wishes to request that any item be moved from the Consent Agenda to the Discussion Agenda is asked to please notify Nancy Carlisle at 415-865-7614 at least 48 hours before the meeting.

ITEMS A1–A32 RULES AND FORMS

Appellate

Item A1 Appellate Procedure: Access to Electronic Appellate Court Records (Action Required)

The Appellate Advisory Committee and the Information Technology Advisory Committee recommend the adoption of new rules of court to address public access to electronic appellate court records. The proposed appellate rules are based on the existing rules regarding public access to electronic trial court records. The new rules are intended to provide the public with reasonable access to appellate court records that are maintained in electronic form while protecting privacy interests.

Item A2 Appellate Procedure: Appendixes (Action Required)

The Appellate Advisory Committee proposes to amend the rule governing the use of appendixes in lieu of clerk's transcripts in unlimited civil appeals to eliminate the provision encouraging parties to prepare a joint appendix. This change is intended to reduce difficulties, and thus costs, for litigants associated with the efforts to reach a stipulation to use a joint appendix in cases in which litigants do not think this option is feasible.

Item A3 Appellate Procedure: Costs on Appeal (Action Required)

The Appellate Advisory Committee recommends amending the rule governing costs on appeal to modify when a request for costs must be filed. It also recommends revising the form for specifying these costs so that it is more consistent with the rule and better reflects appellate practice. These changes, which are based on a suggestion received from the State Bar of California's Committee on Appellate Courts, are intended to improve the administration of appellate proceedings by making the time frame for filing a memorandum of costs clearer and by making the form easier for practitioners to complete and for courts to review.

Item A4 Appellate Procedure: Prehearing Conferences (Action Required)

The Appellate Advisory Committee recommends that rule 8.248, which governs prehearing conferences in the Court of Appeal, be amended to limit the circumstances under which a justice who participates in such a conference is barred from subsequently participating in or influencing the determination of the appeal to when settlement of the case was addressed at the conference. This proposal, which is based on a suggestion from the presiding justice of a Court of Appeal, is intended to facilitate the use of prehearing conferences in appellate

proceedings for case management, which can save the parties and the appellate courts time and resources.

Item A5 Appellate Procedure: Record on Appeal in Civil Cases (Action Required)

The Appellate Advisory Committee recommends revising the forms for designating the record on appeal in unlimited and limited civil cases to (1) state that the fee waiver application is *submitted with* rather than *attached* to the record designation form; and (2) clarify that the respondent must pay for additional proceedings that he or she designates to be included in the record. The first change, which is based on suggestions from a superior court, is intended to avoid the unintentional release of confidential information and reduce court costs associated with identifying and detaching fee waiver applications from record designation forms. The second change is intended to eliminate confusion for litigants and reduce court costs associated with litigant errors caused by that confusion.

Item A6 Electronic Service: Authorization of Electronic Service on Trial and Appellate Courts (Action Required)

The Appellate Advisory Committee and the Information Technology Advisory Committee recommend amending rules 2.251 and 8.71 of the California Rules of Court to authorize electronic service on consenting courts. There is some ambiguity in the current rules regarding whether electronic service is authorized not only by, but also on, a court. This rule proposal would add language to rules 2.251 and 8.71 to clarify that electronic service on a court is permissible under the rules.

Civil and Small Claims

Item A7 Civil Cases: Continued Suspension of Case Management Rules (Action Required)

The Civil and Small Claims Advisory Committee recommends that a statewide rule of court on civil case management be amended to further extend the period during which courts have discretion to exempt certain types or categories of civil cases from the mandatory case management rules. The 2013 amendments to rule 3.720 were intended to help courts better address the state's fiscal crisis by decreasing the time spent by court staff and judicial officers in filing case management statements, setting and holding individual case management conferences, and performing other actions required by the case management rules. In light of the continuing fiscal crisis, the Civil and Small Claims Advisory Committee recommends a four-year extension of the discretion to grant such exemptions.

Item A8 Civil Practice and Procedure: Summary Judgment Proceedings (Action Required)

To reduce the amount of facts and evidence presented in motions for summary judgment and not pertinent to a decision on the motion, the Civil and Small Claims Advisory Committee and the Appellate Advisory Committee recommend amending the California Rules of Court relating to summary judgment motions. Specifically, the committees recommend amending rule 3.1350 to define "material facts" and clarify that the separate statement of undisputed

material facts in support of or opposition to a motion for summary judgment should include only material facts and not any facts that are not pertinent to the disposition of the motion. In addition, they recommend amending rule 3.1354 to eliminate one example of an objection on relevance grounds to evidence in support of summary judgment.

Item A9 Judicial Council Forms: Gun Violence Restraining Orders (Action Required) REPORT BEING REVISED; NOW AVAILABLE AFTER OCTOBER 6 (ANNE RONAN/SUSAN MCMULLAN STAFF CONTACTS)

The Civil and Small Claims Advisory Committee proposes adoption or approval of 23 new Judicial Council forms: EPO-002, GV-100, GV-100-INFO, GV-109, GV-110, GV-115, GV-116, GV-120, GV-120-INFO, GV-130, GV-200, GV-200-INFO, GV-250, GV-600, GV-610, GV- 620, GV-630, GV-700, GV-710, GV-720, GV-730, GV-800, and GV-800-INFO to implement legislative requirements of Penal Code section 18100 et seq. establishing a civil restraining order process for surrender of firearms before they are used to commit a crime. Penal Code section 18105 requires the Judicial Council to prescribe forms to implement the process.

Item A10 Judicial Council Forms: Proof of Service (Action Required)

The Civil and Small Claims Advisory Committee recommends revising Judicial Council form POS-040, *Proof of Service—Civil* to correct two legal errors in the current form. The recommended revisions to the form would conform it to statute.

Item A11 Small Claims: Extraordinary Writs under Code of Civil Procedure section 116.798 (Action Required)

The Civil and Small Claims Advisory Committee and the Appellate Advisory Committee recommend new rules and forms to comply with a statutory mandate to develop procedural rules for certain writ proceedings on small claims rulings. The recommendation also provides clarifying amendments to current rules and forms that apply to writ proceedings in the appellate division, generally to the extent that those apply to small claims proceedings relating to postjudgment enforcement actions.

Item A12 Telephone Appearances: Time for Notice and Notice Form (Action Required)

The Civil and Small Claims Advisory Committee recommends amending rule 3.670(h) of the California Rules of Court to clarify requirements for serving notice of intent to appear in court by telephone. The recommended amendments would resolve an internal inconsistency in one provision and address an ambiguity in another. The committee also recommends revising the *Notice of Intent to Appear by Telephone* (form CIV-020), to update rule references and clarify the included instructions.

Criminal Law

Item A13 **Criminal and Traffic Procedure: Appearance in Court for Infractions Without Deposit of Bail (Action Required)**

The Criminal Law and Traffic Advisory Committees recommend amendments to rule 4.105 of the California Rules of Court to apply the rule to non-traffic infractions and to require courts to consider the totality of the circumstances when setting bail amounts before trial. The committees also recommend adding advisory committee comments to clarify the scope of the rule and explain that the totality of the circumstances may include whether the bail amount would impose an undue hardship on the defendant. The amendments were developed in response to recent Judicial Council directives to expand the application of the rule and promote access to justice in all infraction cases.

Item A14 **Criminal Procedure: Petition and Order for Dismissal; Human Trafficking Victims (Action Required)**

In response to legislation that provides a new statutory basis for dismissals, the Criminal Law Advisory Committee recommends revising the *Petition for Dismissal* (form CR-180) and *Order for Dismissal* (form CR-181) to add data fields to facilitate dismissals under Penal Code section 1203.49 for victims of human trafficking. The committee also recommends revising both forms to incorporate reductions of misdemeanors to infractions under Penal Code section 17(d)(2) and to improve the format, advisements, and instructions on both forms.

Item A15 **Criminal Procedure: Petition and Order for Dismissal (Military Personnel (Action Required)**

The Criminal Law Advisory Committee recommends two new optional forms, a *Petition for Dismissal (Military Personnel)* (form CR-183/MIL-183) and an *Order for Dismissal (Military Personnel)* (form CR-184/MIL-184), to facilitate court implementation of recent legislation that authorizes courts to order dismissal relief for certain defendants who acquired a criminal record due to a mental health disorder stemming from service in the United States military.

Family and Juvenile Law

Item A16 **Domestic Violence: Preparing for Restraining Order Court Hearing (Action Required)**

Form DV-520-INFO, *Get Ready for the Court Hearing*, has been available for optional use by courts to provide information to litigants about preparing for a domestic violence restraining order hearing. While courts report finding the form helpful, they have also identified problems— for both courts and litigants—with the form. Accordingly, the Family and Juvenile Law Advisory Committee recommends revising the form so that it is clearer, is legally accurate, and as a result, accomplishes the original goal in approving this optional form: to inform litigants and assist in making these complex and important hearings run more smoothly.

Item A17 **Domestic Violence: Request to Modify or Terminate Domestic Violence Restraining Orders; Family Law: Changes to Request for Order Rules and Forms (Action Required)**

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective July 1, 2016, adopt, approve, revise, or amend domestic violence forms and family law rules and forms to (1) implement recent changes to Family Code section 245 mandated by Assembly Bill 1081 (Stats. 2015, ch___); (2) implement Family Code section 6345, which requires that the council establish procedures for requesting and recording the modification or termination of orders issued in *Restraining Order After Hearing* (form DV-130); and (3) respond to suggestions from judicial officers, court professionals, legal organizations, and family law attorneys to improve the *Request for Order* (form FL-300) and its associated rules and forms..

Item A18 **Family and Juvenile Law: Juvenile Court Final Child Custody Orders (Action Required)**

The Family and Juvenile Law Advisory Committee recommends amending four rules of court to clarify the procedures and requirements that apply when the juvenile court terminates its jurisdiction over a child and returns custody of the child to one or more parents. The committee also recommends revising two mandatory Judicial Council forms and approving one optional form to allow the juvenile court to include sufficient information about the circumstances underlying its custody order for the family court in which a request for the order's modification or termination is made to determine whether a significant change of circumstances has occurred and, if so, whether the requested modification is in the best interest of the child. The amendments and revisions also update references to current statutes and rules, incorporate gender-neutral language consistent with Assembly Bill 1403 (Stats. 2013, ch. 510) when appropriate, conform to recent case law, and maintain consistency with recent and recommended revisions to the Judicial Council forms for family court custody orders.

Item A19 **Family and Juvenile Law: Transfers to Tribal Court Under the Indian Child Welfare Act (Action Required)**

The Family and Juvenile Law Advisory Committee and the Tribal Court–State Court Forum propose amendments to the California Rules of Court and revisions to Judicial Council forms concerning the transfer of court proceedings involving an Indian child from the jurisdiction of the state court to a tribal court. These changes are in response to provisions of Senate Bill 1460 (Stats. 2014, ch. 772) (SB 1460) and the Court of Appeal decision in *In re. M.M.* (2007) 154 Cal.App.4th 897. SB 1460 requires the state juvenile court to give the tribal court specific information and documentation when a case governed by the *Indian Child Welfare Act* is transferred. The *In re M.M.* decision implicates an objecting party's right to appeal a decision granting a transfer to a tribal court.

Item A20 **Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (Action Required)**

The Family and Juvenile Law Advisory Committee and the Probate and Mental Health Advisory Committee recommend adopting one rule of court, adopting four Judicial Council forms (including a joint findings form), and revoking two separate findings forms. The rule and forms are needed to implement Senate Bill 873 (Stats. 2014, ch. 685), which clarified the superior court's authority to make the factual findings needed for an undocumented child to apply for federal classification as a Special Immigrant Juvenile (SIJ) and incorporated relevant elements of the federal Immigration and Nationality Act into California law. The rule and forms are intended to guide a party requesting SIJ findings from a superior court in a child custody, guardianship, or juvenile dependency or delinquency proceeding, and to supply the court with a sufficient factual basis to make accurate, just, and effective findings under California law.

Item A21 Family Law: New Form and Revised Forms for Stepparent and Additional-Parent Adoptions (Action Required)

Assembly Bill 2344, the Modern Family Act (Stats. 2014, ch. 636), expedites adoptions for nonbiological parents. Senate Bill 274 (Stats. 2013, ch. 564) amended the Family Code to provide that a child may have a parent-child relationship with more than two parents. The Family and Juvenile Law Advisory Committee recommends the Judicial Council approve creation of one new adoption form and revise four existing adoption forms. The revisions and the new form are required to implement these new California laws.

Item A22 Juvenile Delinquency: Documenting Wobbler Determination (Action Required)

The Family and Juvenile Law Advisory Committee recommends revising form JV-665, *Disposition—Juvenile Delinquency*, to clarify documentation of a wobbler (felony or misdemeanor public offense) determination and to make other nonsubstantive changes to improve the accuracy of the form.

Item A23 Juvenile Law: Detention (Action Required)

The Family and Juvenile Law Advisory Committee recommends amending three California Rules of Court and revising two forms to conform to legislative amendments to sections 635 and 737 of the Welfare and Institutions Code. The legislative amendments clarify that the basis for detaining a child must not be his or her status as a dependent of the court or the child welfare department's inability to provide a placement for the child, and add requirements to the 15-day reviews that occur when a child or nonminor dependent is detained pending execution of a placement order. The amendments and revisions ensure that the rules and forms are consistent with the amended law. They also make technical corrections and clarifications, including clarifying that home supervision does not qualify as a detention for the purposes of federal foster care funding.

Item A24 Juvenile Law: Extended Foster Care (Action Required)

The Family and Juvenile Law Advisory Committee proposes amending four of the California Rules of Court and revising five Judicial Council forms to (1) implement the provisions of

Assembly Bill 2454 (Quirk-Silva; Stats. 2014, ch. 769) allowing specified youth to petition the court to assume jurisdiction over them as nonminor dependents, and to (2) provide further guidance on the implementation of prior legislation authorizing extended foster care to age 21. The rules and forms that currently allow youth to petition for reentry would be modified to accommodate these new petitioners. In addition, this proposal would clarify the requirements for other extended foster care processes to address concerns raised by courts as implementation has proceeded.

Item A25 Juvenile Law: Proceedings Before a Referee (Action Required)

The Family and Juvenile Law Advisory Committee recommends amending California Rules of Court, rule 5.538(b)(3), to make the rule consistent with a statutory change to Welfare and Institutions Code section 248, subdivision (b)(1). The amendment would permit a referee's findings and orders to be personally served in court on a party who is present at the hearing rather than exclusively by mail, as currently provided in the rule.

Item A26 Juvenile Law: Sibling Visitation (Action Required)

The Family and Juvenile Law Advisory Committee recommends amending three rules and revising three forms to conform them to recent statutory changes giving dependency courts the authority to order visitation between dependent and nondependent siblings in specified circumstances.

Item A27 Juvenile Law: Substance Abuse Treatment Facilities and Placement (Action Required)

The Family and Juvenile Law Advisory Committee recommends amending three rules to conform to recently enacted provisions of Welfare and Institutions Code sections 319, 366.21, 366.22, and 366.25 that change the factors a court must consider when determining whether to release or detain a child.

Miscellaneous

Item A28 Forms: Miscellaneous Technical Changes (Action Required)

Various Judicial Council advisory committee members, court personnel, members of the public, and Judicial Council staff have identified errors in forms resulting from inadvertent omissions, typographical errors, and changes resulting from legislation. The staff to the Judicial Council recommends making the necessary corrections to avoid confusing court users, clerks, and judicial officers.

Item A29 Judicial Branch Administration: Changes to Rules, Standards, and Forms to Replace the Names "Administrative Office of the Courts" and "AOC" (Action Required)

The chairs of the Judicial Council's Executive and Planning, Policy Coordination and Liaison, Rules and Projects, and Litigation Management Committees recommend that the California Rules of Court and Standards of Judicial Administration be amended and Judicial Council forms be revised to replace the names "Administrative Office of the Courts" and

"AOC" with "Judicial Council," or "Judicial Council staff," as appropriate, to further effectuate the name change that began in July 2014 and to make other technical and minor substantive changes to the name of a Judicial Council advisory body, staff office, or staff position to accurately reflect the current name and to accurately state the number of internal committees and describe policymaking positions.

Item A30 Judicial Branch Administration: Public Access to Administrative Decisions of Trial Courts (Amend rule 10.620) (Action Required)

The Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee recommend the amendment of California Rules of Court, rule 10.620, to repeal the provisions that apply the rule's requirements for public notice and input to the decisions of trial courts to close court facilities or reduce the hours of a court location, as these provisions are inconsistent with statutory requirements. Amendments to Government Code section 68106, which took effect on January 1, 2012, created new requirements for public notice and comment when trial courts decide to close court facilities or reduce hours. These requirements are inconsistent with the requirements of rule 10.620, and trial courts have faced confusion in determining how notice is to be provided. The recommendations in this report are intended to resolve this confusion, leaving Government Code section 68106 as the sole authority governing decisions to close court facilities or reduce hours.

Item A31 Technology: Modernization of the Rules of Court to Facilitate E-Business, E-Filing, and E-Service (Action Required)

The Information Technology Advisory Committee recommends amending various rules in titles 2, 3, 4, 5, 7, and 8 of the California Rules of Court to modernize the rules. The minor, nonsubstantive amendments to the rules facilitate electronic filing, electronic service, and modern business practices. The Civil and Small Claims, Traffic, Family and Juvenile Law, Probate and Mental Health, and Appellate Advisory Committees also recommend the amendments to the rules in their respective subject-matter areas.

Probate and Mental Health

Item A32 Probate Conservatorship: Judicial Council Forms to Implement the California Conservatorship Jurisdiction Act (Action Required)

Legislation enacted in 2014 added the California Conservatorship Jurisdiction Act to the Probate Code. This legislation requires the Judicial Council to revise an existing form and adopt new forms to implement the act. To comply with this mandate, the Probate and Mental Health Advisory Committee proposes revision of the existing form and adoption of three new forms.

Item B Court Facilities: Naming Request for the Existing, Unnamed Courthouse in Roseville (Action Required)

The Court Facilities Advisory Committee and its Subcommittee on Courthouse Names recommends approving the request to name the existing, unnamed courthouse in the Bill Santucci Justice Center in the City of Roseville as the *Howard G. Gibson Courthouse*. This

approval provides a name for the existing courthouse that was constructed in 2008 and after a former member of the bench of the Superior Court of Placer County.

Item C **Court Facilities: Prospective Lease Pending Future Disposition of Corning Courthouse (Action Required)**

The Facilities Policies Working Group recommends that the Judicial Council (1) approve a short-term triple-net lease (the Lease) of the closed Corning Courthouse (Courthouse) to the County of Tehama (County) pending its sale to the County following further Judicial Council action and legislative authorization of such sale, and (2) direct staff to continue negotiating the Lease of the Courthouse to the County.

Item D **Equal Access Fund: Distribution of Funds for Partnership Grants and IOLTA-Formula Grants (Action Required)**

As stated in its report on the Equal Access Fund: Distribution of Funding for IOLTA-Formula Grants and Partnership Grants under the Budget Act of 2015, the State Bar Legal Services Trust Fund Commission notes that the Budget Act of 2015 includes $14,192,000 in the Equal Access Fund for distribution to legal services providers and support centers. Equal Access funds are distributed primarily in two parts, IOLTA-Formula Grants and Partnership Grants (with a small amount also distributed for administration). The State Bar Legal Services Trust Fund Commission requests approval of the distribution of $12,773,000 in IOLTA-Formula Grants for fiscal year 2015–2016, according to the statutory formula in the state Budget Act. It further requests that the Judicial Council approve distribution of $1,419,000 in partnership grants for 2016 and approve the commission's findings that the proposed budget for each individual grant complies with statutory and other relevant guidelines.

Item E **Judicial Branch Administration: Audit Report for Judicial Council Acceptance (Action Required)** **REPORT TBD (JOHN JUDNICK STAFF CONTACT)**

The A&E and Judicial Council staff recommend that the Judicial Council accept the audit report preformed by the Office of State Audits and Evaluations of the Department of Finance entitled *Judicial Council of California, Performance Audit for the Fiscal Year July 1, 2013, through June 30, 2014*. This acceptance is consistent with the policy approved by the Judicial Council on August 27, 2010, which specifies Judicial Council acceptance of audit reports as the last step to finalization of the reports before their placement on the California Courts public website to facilitate public access. Acceptance and publication of these reports promote transparent accountability and provide the courts with information to minimize future financial, compliance, and operational risk.

Item F **Judicial Council Report to the Legislature: Allocation of New Judgeships Funding in Fiscal Year 2014–2015 (Action Required)**

Judicial Council staff recommends approval of the attached *Report on Allocation of Funding in Fiscal Year (FY) 2014–2015 for Support of New Judgeships Authorized in FY 2007–2008*.

The Budget Act of 2007 requires that this report be submitted each year until all judgeships are appointed and new staff hired.

Item G **Judicial Council Report to the Legislature: Disposition of Criminal Cases According to the Race and Ethnicity of the Defendant (Action Required)**

Court Operations Services and its Office of Court Research recommend that the Judicial Council approve the report Disposition of Criminal Cases According to the Race and Ethnicity of the Defendant and direct staff to transmit it to the Legislature. Doing so fulfills the requirements of Penal Code section 1170.45, which requires the Judicial Council to report annually on the disposition of criminal cases statewide according to the defendants' race and ethnicity. Since 2001 the Judicial Council's Office of Court Research has produced this report by analyzing the disposition of felony cases using data provided by the California State Department of Justice.

Item H **Judicial Council Report to the Legislature: Electronic Recording Equipment (Action Required)**

Judicial Council staff recommend approval of the attached *Report on Purchase or Lease of Electronic Recording Equipment by Superior Courts (January 1–June 30, 2015).* Government Code section 69958 requires that the Judicial Council report to the Legislature semiannually on all purchases and leases of electronic recording equipment that will be used to record superior court proceedings.

Item I **Judicial Council Report to the Legislature: Judicial Administration Standards and Measures That Promote the Fair and Efficient Administration of Justice (Action Required) REPORT AVAILABLE OCTOBER 13 (LEAH ROSE-GOODWIN STAFF CONTACT)**

The Workload Assessment Advisory Committee recommends that the Judicial Council approve the transmittal of the attached report to the Legislature, Judicial Administration Standards and Measures That Promote the Fair and Efficient Administration of Justice. Government Code section 77001.5 requires the Judicial Council to adopt and annually report on judicial administration standards and measures that promote the fair and efficient administration of justice, including, but not limited to, the following subjects: (1) providing equal access to courts and respectful treatment for all court participants; (2) case processing, including the efficient use of judicial resources; and (3) general court administration.

Item J **Judicial Council Report to the Legislature: Status of the Phoenix Program, 2014 (Action Required)**

The staff of the Judicial Council recommends that the Judicial Council approve the report entitled *Status of the Phoenix Program, 2014* to be sent to the chair of the Joint Legislative Budget Committee, the chair of the Senate Committee on Budget and Fiscal Review, and the chair of the Assembly Committee on Budget, as required by Government Code section 68511.8(a).

Item K **Juvenile Dependency: Proposed Allocation for Fiscal Year 2015–2016 for Court Appointed Special Advocate Local Assistance (Action Required) REPORT AVAILABLE OCTOBER 5 (VIDA TERRY/AUDREY FANCY STAFF CONTACTS)**

The Family and Juvenile Advisory Committee recommends that the Judicial Council approve Court Appointed Special Advocate (CASA) program grant funding allocations for FY 2015–2016. The recommended allocations were calculated based on the CASA funding methodology approved by the Judicial Council at the August 2013 business meeting. Allocations will fund 45 programs serving 50 counties.

Item L **Juvenile Dependency: Proposed Allocation for Fiscal Year 2015–2016 for Juvenile Dependency Counsel Collections Program (Action Required)**

The Juvenile Dependency Counsel Collections Program (JDCCP) is a program under which courts collect reimbursements from parents and other responsible persons liable for the cost of dependency-related legal services to the extent that those persons are able to pay. The Trial Court Budget Advisory Committee recommends that the council allocate $872,692 remitted through the JDCCP in FY 2014–2015 to the trial courts, according to the methodology adopted by the council at its August 23, 2013, meeting.

DISCUSSION AGENDA (ITEMS M–O)

11:55 a.m.–12:10 p.m. **Item M**

Court Adoption and Permanency Month: Judicial Council Resolution (Action Required)

The Family and Juvenile Law Advisory Committee recommends adopting a resolution proclaiming November to be Court Adoption and Permanency Month. As it has since 1999, in observance of National Adoption Month, the Judicial Council can recognize the ongoing efforts of California's juvenile courts and their justice partners to provide children and families with access to fair, understandable judicial proceedings leading to timely, well-informed, and just permanency outcomes. The resolution will also give courts the opportunity to hold special events finalizing adoptions from foster care and raising community awareness of the importance of finding safe, stable, and permanent homes for every child or youth in foster care.

Speakers: Hon. Jerilyn L. Borack, Co-Chair, Family and Juvenile Law Advisory Committee

Ms. Athena Madison, Adopted Family Member

12:10–12:45 p.m. **Item N**

Trial Court Trust Fund Allocations: 2 Percent Reserve (Action Required) REPORT AVAILABLE OCTOBER 5 (PATRICK BALLARD STAFF CONTACT)

The Trial Court Budget Advisory's subcommittee presents recommendations on courts' applications for supplemental funding. There is $37.7 million set aside in the Trial Court Trust Fund for FY 2015–2016, of which by statute only up to 75 percent or $28.3 million may be allocated by the Judicial Council by October 31.

Speaker: Mr. Zlatko Theodorovic, Fiscal Services

12:45 p.m.–1:05 p.m. Item O

Realigning Expenditures from the State Trial Court Improvement and Modernization Fund (Action Required)

Upon recommendation of the Trial Court Budget Advisory Committee, at the April 17, 2015. Judicial Council meeting, the Council approved consideration of shifting core central office functions of various programs from the State Trial Court Improvement and Modernization Fund to the General Fund. The Council directed staff to explore the possibility of shifting these services to the Judicial Council's General Fund appropriation . The Council also approved consideration of shifting costs of translating domestic violence forms under the Domestic Violence Family Law Interpreter Program to the Trial Court Trust Fund, Program 45 .45-Court Interpreter appropriation. The purpose of this memorandum is to identify if sufficient appropriation authority exists to support the shift costs from the State Trial Court Improvement and Modernization Fund to the General Fund and to shift the costs of the Domestic Violence Family Law Interpreter Program to the Trial Court Trust Fund.

Speakers: Ms. Jody Patel, Chief of Staff
Mr. Zlatko Theodorovic, Fiscal Services

INFORMATION ONLY ITEMS (NO ACTION REQUIRED)

INFO 1 Judicial Council: Implementation of Judicial Council Directives on Judicial Council Staff Restructuring

The chair of E&P presents this informational report on the implementation of the Judicial Council Directives on Staff Restructuring, as approved by the Judicial Council on August 31, 2012. The Judicial Council Staff Restructuring Directives specifically direct the Administrative Director to report to E&P before each council meeting on every directive. This informational report provides an update on the progress of implementation efforts.

INFO 2 Government Code Section 68106: Public Notice by Courts of Closures or Reduced Clerks' Office Hours (Gov. Code, § 68106—Report No. 34)

Government Code section 68106 directs (1) trial courts to notify the public and the Judicial Council before closing courtrooms or clerks' offices or reducing clerks' regular office hours, and (2) the council to post all such notices on its website and also relay them to the Legislature. This

is the 34th report to date listing the latest court notices received by the council under this statutory requirement; since the previous report, NUMBER superior court(S)—COUNTY/COUNTIES—has/have issued (a) revised notice(s).

INFO 3 Court Security: Report on Screening Equipment Replacement for Fiscal Year 2014–2015

The Screening Equipment Replacement Program has been in operation since FY 2006–2007 and provides $2.286 million in funding from the Trial Court Trust Fund to replace outdated or malfunctioning screening equipment in the trial courts. Each year the Administrative Director approves the list of entrance screening equipment to be funded that year through this program. This report updates the council on the entrance screening equipment that was replaced in FY 2014–2015 using that funding.

(CO-15-03) Judicial Council Report to the Legislature: Cash-Flow Loans Made to Trial Courts in Fiscal Year 2014–2015

(CO-15-04) Judicial Council Report to the Legislature: Allocations and Reimbursements to the Trial Courts for Fiscal Year 2014–2015

Appointment Orders since the last business meeting.

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: October 27, 2015

Title
Appellate Procedure: Access to Electronic Appellate Court Records

Rules, Forms, Standards, or Statutes Affected
Adopt Cal. Rules of Court, rules 8.80–8.85

Recommended by
Appellate Advisory Committee
Hon. Raymond J. Ikola, Chair

Information Technology Advisory Committee
Hon. Terence L. Bruiniers, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2016

Date of Report
August 25, 2015

Contact
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Heather Anderson, 415-865-7691
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Executive Summary

The Appellate Advisory Committee and the Information Technology Advisory Committee recommend the adoption of new rules of court to address public access to electronic appellate court records. The proposed appellate rules are based on the existing rules regarding public access to electronic trial court records. The new rules are intended to provide the public with reasonable access to appellate court records that are maintained in electronic form while protecting privacy interests.

Recommendation

The Appellate Advisory Committee and Information Technology Advisory Committee recommend that the Judicial Council, effective January 1, 2016:

1. Adopt rule 8.80 of the California Rules of Court to:

- State the purpose of the rules in the article as providing the public with reasonable access to appellate court records maintained in electronic form while protecting privacy interests; and

- State the benefits of public access to appellate court records maintained in electronic form; and

- State that the rules of the article do not create new rights of access to records.

2. Adopt rule 8.81 to state the application and scope of the new rules, applying only to records of the Supreme Court and Courts of Appeal, and only to access by the public.

3. Adopt rule 8.82 to define terms used in the new rules, including a definition of "court records" to reflect the types of records maintained by the Courts of Appeal.

4. Adopt rule 8.83 to:

    - Provide that all electronic records must be made reasonably available to the public in some form; and

    - Provide that electronic access, both remote and at the courthouse, will be provided to certain records including dockets or registers of actions, calendars, opinions, certain Supreme Court records, and records in civil actions if maintained in electronic form; and

    - Provide that access to certain documents in electronic form will be at the courthouse only, including any reporter's transcript for which the reporter is entitled to a fee and records in 10 specified types of proceedings; and

    - In extraordinary cases, give appellate courts discretion to allow remote access to records that would not be otherwise be available remotely, with requirements for notice to be given to the parties and the public in advance and for certain information to be redacted from the records to be made available remotely; and

    - Limit electronic access to most electronic case records to availability only on a case-by-case basis, with bulk distribution allowed only of certain specified types of records.

5. Adopt rule 8.84 to set certain limitations and conditions on electronic access to appellate court records, including requirements for the means of providing access and requirements for notice to persons accessing records.

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6. Adopt rule 8.85 to state that a court may impose fees for the costs of providing copies of electronic records.

The text of the proposed rules is attached at pages 9–15.

Previous Council Action

The Judicial Council has not previously adopted rules relating to access to electronic appellate court records. However, the council adopted the predecessors to rules 2.500 to 2.506, the rules governing access to electronic trial court records, which served as the model for the proposed rules, effective July 1, 2002. The predecessor to rule 2.507, relating to electronic access to trial court calendars, indexes, and registers of actions, was added effective July 1, 2003. These trial court rules were amended and renumbered effective January 1, 2007. Some provisions have been added to these rules since that time, and other provisions have been amended.

Rationale for Recommendation

California Rules of Court, rules 2.500 to 2.507 address public access to electronic trial court records. These rules are intended to provide the public with reasonable access to trial court records that are maintained in electronic form, while protecting privacy interests. The rules address, among other things, what electronic trial court records can be made available remotely, what records may be made available only at the courthouse, what records can be made available in bulk, and what records can only be accessed on a case-by-case basis.

As more documents are electronically filed in the Courts of Appeal and Supreme Court and stored in electronic form, it is anticipated that questions will arise about public access to these electronic records. The committees are therefore recommending adoption of a set of rules to address public access to the electronic records of the Courts of Appeal and the Supreme Court. The proposed appellate rules are based on the trial court rules, but have some substantive differences based primarily on differences in the nature of the records maintained by trial and appellate courts and in existing public access to these records.

Criteria for remote access and bulk distribution

The proposed rules keep in place the basic scheme used in the trial court rules to determine which records must be made available remotely, where feasible, and which must be made available only at the courthouse; which records are to be made available only on a case-by-case basis; and which can be subject to bulk distribution.

As in the trial courts, electronic access to registers of actions, calendars, and indexes would be required to be provided both remotely and at the courthouse where feasible. In recognition of the current practices of the appellate courts, the proposed appellate court rule would also require remote and courthouse access to dockets, opinions, and specified Supreme Court records, as listed in proposed rule 8.83(b)(1). Bulk distribution of these records would be permitted under proposed rule 8.83(f).

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The dividing line as to whether other types of electronic records would be made available remotely is drawn, as it is in the trial court rules, according to case type. In most civil cases, the appellate courts would be required, where feasible, to provide public access to electronic court records both remotely and at the courthouse under rule 8.83(b)(2). These records would only be available on a case-by-case basis, where the person requesting the record is able to identify the case by information such as the case number or a party's name.

In criminal cases, juvenile court cases, family law cases, and other proceedings specified in proposed rule 8.83(c)(2), remote access to case records (other than those listed in rule 8.83(b)(1) such as calendars, dockets and indexes) would not be allowed. As with trial court electronic records, public access to these electronic appellate court records would be available at the courthouse only.

Under rule 8.83(d), however, a presiding justice or a justice assigned by a presiding justice would be given discretion to allow remote public access to records in a proceeding type listed under 8.83(c)(2) in a case of extraordinary public interest. In the trial court rule, the discretion to allow such access is limited to extraordinary criminal cases. The proposed appellate rule would give broader discretion to allow remote access in any of the types of proceedings listed in 8.83(c)(2).

Requirements for vendor contracts

In the trial court rules, rule 2.505 establishes requirements for any contract between a trial court and a vendor to provide public access to electronic records, including that the contract must provide that the court is the owner of the records and has the right to control their use. The proposed appellate rules do not contain a parallel provision. In developing the proposed appellate rules, the Information Technology Advisory Committee (ITAC) and the Appellate Advisory Committee (AAC) determined that it was not necessary to address issues relating to vendor contracts in the rules at this time. The current practice of the appellate courts is to provide access to electronic court records directly, through the *www.courts.ca.gov* website, rather than using vendors to create and maintain systems for access. Although it is possible that the appellate courts will begin to use vendors to provide public access when the use of electronic records becomes more common in those courts, it is likely that all of the appellate courts will use the same vendor and have the same contract. Thus it will be easier for the appellate courts to put in place appropriate controls on a vendor—as determined by the particular needs of the appellate courts—in the course of negotiating the single contract for those services.

Requirements for information to be included in and excluded from records made available remotely

The trial courts, under rule 2.507, are required to include certain information in calendars, indexes, and registers of actions that are made electronically accessible to the public. Other information is required to be excluded from those records, including social security numbers, financial information, and victim and witness information. The proposed appellate rules do not

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contain a parallel provision. In developing the proposed appellate rules, ITAC and the AAC found that the appellate courts are already including the information required under rule 2.507 when dockets, registers of actions, and calendars are made available electronically. Some of the information required to be excluded from records under rule 2.507—such as social security numbers—is excluded from the electronic records made available by the appellate courts. However, because the appellate courts make opinions available electronically, which by their nature may include certain kinds of information excluded under rule 2.507 (such as information regarding the age or gender of parties), the requirements of rule 2.507 regarding information to be excluded cannot easily be adapted to apply to appellate court records. Because of these differences, and as the existing practices of the appellate courts have been adequate both to provide information to the public and to protect privacy, ITAC and the AAC did not include in the proposed appellate court rules a rule similar to 2.507.

Comments, Alternatives Considered, and Policy Implications

External comments

This proposal was circulated from April 17, 2015 to June 17, 2015 in the regular spring 2015 comment cycle. Comments from seven organizations were received, many of them lengthy and detailed with suggestions for specific changes. One commentator agreed with the proposal, three agreed if modified, two disagreed, and one suggested modifications but did not indicate a position on the proposal. The comment chart, showing the full text of all comments received (with one lengthy comment attached separately) and the committees' responses is attached at pages 16–36.

Definition of "court record." The Second Appellate District of the Court of Appeal objected to the second sentence of the definition of "court record" in proposed rule 8.82(1), which states that "The term does not include the personal notes or preliminary memoranda of justices, judges or other judicial branch personnel." The court commented that the sentence is unnecessary and could create confusion as to whether some notes and memoranda might be considered court records. This proposed language is taken verbatim from trial court rule 2.502, and the committees have not heard of any difficulties in applying that rule in the trial courts. The committees therefore declined to revise the proposed rule as suggested, choosing to keep the appellate court rule consistent with the trial court rule.

Criteria for remote access. The State Bar of California's Committee on Appellate Courts (CAC) and the State Bar's Standing Committee on the Delivery of Legal Services (SCDLS) questioned whether the distinctions made in the proposed rules as to which records will be available remotely and which records only at the courthouse make sense in terms of either privacy protection or supporting the public's right to access public court records. The CAC noted that the distinction between civil cases, in which records will generally be available remotely, and other types of cases, including criminal, juvenile, and family law cases, is not an adequate way to distinguish when records are likely to contain sensitive information. Moreover, the line drawn

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between remote access and courthouse access may place unfair burdens on residents of rural areas or others for whom getting to a courthouse is difficult, while potentially allowing determined seekers to gain access to sensitive information. The SCDLS similarly asked for a more nuanced consideration of how to protect private information while maintaining public access to public records.

The committees declined to revise the proposed rules in response to these comments. The committees in their discussion of these comments noted that the proposed rules are based closely on the trial court rules regarding access to court records that have been in effect for many years. These initial proposed rules are intended to build on the experience of the trial courts. If changes are considered in the future as to what records should be available remotely, or what information should be restricted to availability at the courthouse only, the committees' view was that those changes should be simultaneously considered for the trial and appellate rules.

Remote access in extraordinary cases. Both the Orange County Bar Association (OCBA) and the Appellate Practice Section of the San Diego County Bar Association (SDCBA) commented on the scope of discretion given to appellate courts under proposed rule 8.83(d) to allow remote access to court records in extraordinary cases of case types where remote access would not generally be allowed. The intent of the committees in drafting the proposed rule was to give the appellate courts discretion to allow remote access in an extraordinary case of any type, where trial courts can do so only in extraordinary criminal cases. However, the word "criminal" was inadvertently left in the first sentence of proposed rule 8.83 (d) as circulated—although the invitation to comment was clear that the discretion was intended to extend to all case types.

OCBA accordingly commented that the title of proposed rule 8.83(d) should be "Remote electronic access allowed in extraordinary criminal cases" to reflect more accurately the language of the proposed rule. SDCBA commented that the rule should be revised to give discretion to allow remote access in certain other types of cases.

In response to these comments, the committees revised the rule to read as originally intended, and as summarized in the invitation to comment memorandum, deleting the word "criminal" from the first sentence of rule 8.83(d) and correcting the reference in that sentence from "Notwithstanding (c)(2)(E)" to "Notwithstanding (c)(2)."

Inclusion or exclusion of specific information from electronic records. OCBA suggested that the appellate rules should include a rule similar to trial court rule 2.507, which lists specific types of information that must be included in and excluded from those electronic records which are made available remotely and in bulk. In a similar vein, SCDLS suggested that the redactions required by rule 8.83(d)(2) when records are made available remotely under the discretion granted in rule 8.83(d) should be applied whenever electronic court records are made available remotely.

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The committees declined to make these changes to the rules, agreeing that the proposed rule as circulated is adequate given the current practices of the appellate courts in making information available remotely and that the proposed change is not needed. As discussed above, in developing the proposed appellate rules, the committees recognized, first, that the appellate courts currently include in those records made available remotely the types of information required to be included under rule 2.507. The committees further recognized that because of the types of case records made available remotely by appellate courts, the requirements of rule 2.507 regarding information to be excluded cannot easily be adapted to apply to appellate court records. Because of these differences, and as the existing practices of the appellate courts have been adequate to provide information to the public and to protect privacy, the committees declined to make these suggested changes.

SDCBA suggested that the e-mail addresses of parties, victims, witnesses, and court personnel be included in the information required to be redacted from records to be made available online in extraordinary cases. Based on this comment, the committees have revised proposed rule 8.83(d)(2) to change "addresses and phone numbers of parties, victims, witnesses, and court personnel" to "addresses, e-mail addresses, and phone numbers of parties, victims, witnesses, and court personnel."

Contracts with vendors. OCBA suggested that the appellate rules should include a rule similar to trial court rule 2.505, which sets certain requirements for contracts with vendors for the provision of public access to electronic services. As discussed above, in developing the proposed appellate rules, the committees recognized that the needs of the appellate courts with regard to vendor contracts differ from those of the trial courts. The committees expressly decided not to include provisions similar to rule 2.505 in the proposed appellate court rules as they believed such provisions were not needed. The committees therefore declined to make this suggested change.

Several commentators also suggested additions to rule 8.85 to address concerns regarding the use of vendors to provide public access to electronic court records, the control such vendors might exercise over those records, and the fees that might be charged for access. Courthouse News Service (CNS), in particular, submitted extensive comments regarding issues of vendor control over access to records and the fees that might be charged for such access. CNS suggested several provisions to be added to rule 8.85 to put in place limits on vendor control of records, requirements for free public access to newly filed records, and a requirement for a fee option to allow frequent users of court records to get information without incurring excessive fees. SCDLS similarly suggested adding language to 8.85(b) requiring that any vendor fees promote equitable public access.

In response to these comments, rather than adding any of the suggested provisions, the committees revised proposed rule 8.85 to delete subdivision (b) entirely. As noted above, at the present time, appellate courts provide public access to any electronic court records directly, not

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using vendors. The committees concluded that the promulgation of rules regarding requirements for vendor agreements for the appellate courts is not necessary at this time.

Alternatives considered

In addition to the alternatives considered as a result of the public comments, discussed above, in developing these rules the committees considered a variety of alternatives with respect to the scope and proposed language of the proposed rules. The committees considered where the rules for the appellate courts should differ from those of the trial courts, and the rules as proposed reflect the decisions made with regard to those alternatives. For example, the committees considered whether the rules should provide for remote access only to those types of electronic records that are remotely accessible under the trial court rules, but decided that the proposed rules should reflect and maintain the current remote access to additional court records.

The committees also considered not proposing these rules at all. However, the committees concluded that it would be helpful to the public and the courts to clarify the scope of public access to electronic appellate court records.

Implementation Requirements, Costs, and Operational Impacts

This proposal should not impose significant implementation requirements on the courts because it mandates access to those electronic appellate court records that are already currently being made available electronically and, like the trial court rules, provides for further access only to the extent feasible. The proposed rules should provide guidance with respect to electronic access to appellate court records, which may reduce questions about such access for litigants and thus costs associated with inquiries about this access for both litigants and the courts.

Attachments and Links

1. Cal. Rules of Court, rules 8.80–8.85, at pages 9–15
2. Chart of comments, at pages 16–36, including as an attachment the full comment of the Courthouse News Service

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Rules 8.80–8.85 of the California Rules of Court are adopted, effective January 1, 2016, to read:

Article 6. Public Access to Electronic Appellate Court Records

Rule 8.80. Statement of purpose
Rule 8.81. Application and scope
Rule 8.82. Definitions
Rule 8.83. Public access
Rule 8.84. Limitations and conditions
Rule 8.85. Fees for electronic access

Rule 8.80. Statement of purpose

(a) Intent

The rules in this article are intended to provide the public with reasonable access to appellate court records that are maintained in electronic form, while protecting privacy interests.

(b) Benefits of electronic access

Improved technologies provide courts with many alternatives to the historical paper-based record receipt and retention process, including the creation and use of court records maintained in electronic form. Providing public access to appellate court records that are maintained in electronic form may save the courts and the public time, money, and effort and encourage courts to be more efficient in their operations. Improved access to appellate court records may also foster in the public a more comprehensive understanding of the appellate court system.

(c) No creation of rights

The rules in this article are not intended to give the public a right of access to any record that they are not otherwise entitled to access. The rules do not create any right of access to sealed or confidential records.

Advisory Committee Comment

The rules in this article acknowledge the benefits that electronic court records provide but attempt to limit the potential for unjustified intrusions into the privacy of individuals involved in litigation that can occur as a result of remote access to electronic court records. The proposed rules take into account the limited resources currently available in the appellate courts. It is contemplated that the rules may be modified to provide greater electronic access as the courts' technical capabilities improve and with the knowledge gained from the experience of the courts in providing electronic access under these rules.

Subdivision (c). Rules 8.45–8.47 govern sealed and confidential records in the appellate courts.

Rule 8.81. Application and scope

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(a) Application

The rules in this article apply only to records of the Supreme Court and Courts of Appeal.

(b) Access by parties and attorneys

The rules in this article apply only to access to court records by the public. They do not limit access to court records by a party to an action or proceeding, by the attorney of a party, or by other persons or entities that are entitled to access by statute or rule.

Rule 8.82. Definitions

As used in this article, the following definitions apply:

(1) "Court record" is any document, paper, exhibit, transcript, or other thing filed in an action or proceeding; any order, judgment, or opinion of the court; and any court minutes, index, register of actions, or docket. The term does not include the personal notes or preliminary memoranda of justices, judges, or other judicial branch personnel.

(2) "Electronic record" is a court record that requires the use of an electronic device to access. The term includes both a record that has been filed electronically and an electronic copy or version of a record that was filed in paper form.

(3) "The public" means an individual, a group, or an entity, including print or electronic media, or the representative of an individual, a group, or an entity.

(4) "Electronic access" means computer access to court records available to the public through both public terminals at the courthouse and remotely, unless otherwise specified in the rules in this article.

(5) Providing electronic access to electronic records "to the extent it is feasible to do so" means that electronic access must be provided to the extent the court determines it has the resources and technical capacity to do so.

(6) "Bulk distribution" means distribution of multiple electronic records that is not done on a case-by-case basis.

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Rule 8.83. Public access

(a) General right of access

All electronic records must be made reasonably available to the public in some form, whether in electronic or in paper form, except sealed or confidential records.

(b) Electronic access required to extent feasible

(1) Electronic access, both remote and at the courthouse, will be provided to the following court records, except sealed or confidential records, to the extent it is feasible to do so:

(A) Dockets or registers of actions;

(B) Calendars;

(C) Opinions; and

(D) The following Supreme Court records:

i. Results from the most recent Supreme Court weekly conference;

ii. Party briefs in cases argued in the Supreme Court for at least the preceding three years;

iii. Supreme Court minutes from at least the preceding three years.

(2) If a court maintains records in civil cases in addition to those listed in (1) in electronic form, electronic access to these records, except those listed in (c), must be provided both remotely and at the courthouse, to the extent it is feasible to do so.

(c) Courthouse electronic access only

If a court maintains the following records in electronic form, electronic access to these records must be provided at the courthouse, to the extent it is feasible to do so, but remote electronic access may not be provided to these records:

(1) Any reporter's transcript for which the reporter is entitled to receive a fee; and

(2) Records other than those listed in (b)(1) in the following proceedings:

(A) Proceedings under the Family Code, including proceedings for dissolution, legal separation, and nullity of marriage; child and spousal support proceedings; child custody proceedings; and domestic violence prevention proceedings;

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(B) Juvenile court proceedings;

(C) Guardianship or conservatorship proceedings;

(D) Mental health proceedings;

(E) Criminal proceedings;

(F) Civil harassment proceedings under Code of Civil Procedure section 527.6;

(G) Workplace violence prevention proceedings under Code of Civil Procedure section 527.8;

(H) Private postsecondary school violence prevention proceedings under Code of Civil Procedure section 527.85;

(I) Elder or dependent adult abuse prevention proceedings under Welfare and Institutions Code section 15657.03; and

(J) Proceedings to compromise the claims of a minor or a person with a disability.

(d) Remote electronic access allowed in extraordinary cases

Notwithstanding (c)(2), the presiding justice of the court, or a justice assigned by the presiding justice, may exercise discretion, subject to (d)(1), to permit remote electronic access by the public to all or a portion of the public court records in an individual case if (1) the number of requests for access to documents in the case is extraordinarily high and (2) responding to those requests would significantly burden the operations of the court. An individualized determination must be made in each case in which such remote electronic access is provided.

(1) In exercising discretion under (d), the justice should consider the relevant factors, such as:

(A) The privacy interests of parties, victims, witnesses, and court personnel, and the ability of the court to redact sensitive personal information;

(B) The benefits to and burdens on the parties in allowing remote electronic access; and

(C) The burdens on the court in responding to an extraordinarily high number of requests for access to documents.

(2) The following information must be redacted from records to which the court allows remote access under (d): driver's license numbers; dates of birth; social security

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numbers; Criminal Identification and Information and National Crime Information numbers; addresses, e-mail addresses, and phone numbers of parties, victims, witnesses, and court personnel; medical or psychiatric information; financial information; account numbers; and other personal identifying information. The court may order any party who files a document containing such information to provide the court with both an original unredacted version of the document for filing in the court file and a redacted version of the document for remote electronic access. No juror names or other juror identifying information may be provided by remote electronic access. Subdivision (d)(2) does not apply to any document in the original court file; it applies only to documents that are made available by remote electronic access.

(3) Five days' notice must be provided to the parties and the public before the court makes a determination to provide remote electronic access under this rule. Notice to the public may be accomplished by posting notice on the court's website. Any person may file comments with the court for consideration, but no hearing is required.

(4) The court's order permitting remote electronic access must specify which court records will be available by remote electronic access and what categories of information are to be redacted. The court is not required to make findings of fact. The court's order must be posted on the court's website and a copy sent to the Judicial Council.

(e) Access only on a case-by-case basis

With the exception of the records covered by (b)(1), electronic access to an electronic record may be granted only when the record is identified by the number of the case, the caption of the case, the name of a party, the name of the attorney, or the date of oral argument, and only on a case-by-case basis.

(f) Bulk distribution

Bulk distribution may be provided only of the records covered by (b)(1).

(g) Records that become inaccessible

If an electronic record to which electronic access has been provided is made inaccessible to the public by court order or by operation of law, the court is not required to take action with respect to any copy of the record that was made by a member of the public before the record became inaccessible.

Advisory Committee Comment

The rule allows a level of access by the public to all electronic records that is at least equivalent to the access that is available for paper records and, for some types of records, is much greater. At the same time, it seeks to protect legitimate privacy concerns.

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Subdivision (b). Courts should encourage availability of electronic access to court records at public off-site locations.

Subdivision (c). This subdivision excludes certain records (those other than the register, calendar, opinions, and certain Supreme Court records) in specified types of cases (notably criminal, juvenile, and family court matters) from remote electronic access. The committees recognized that while these case records are public records and should remain available at the courthouse, either in paper or electronic form, they often contain sensitive personal information. The court should not publish that information over the Internet. However, the committees also recognized that the use of the Internet may be appropriate in certain individual cases of extraordinary public interest where information regarding a case will be widely disseminated through the media. In such cases, posting of selected nonconfidential court records, redacted where necessary to protect the privacy of the participants, may provide more timely and accurate information regarding the court proceedings, and may relieve substantial burdens on court staff in responding to individual requests for documents and information. Thus, under subdivision (d), if the presiding justice makes individualized determinations in a specific case, certain records in individual cases may be made available over the Internet.

Subdivision (d). Courts must send a copy of the order permitting remote electronic access in extraordinary cases to: Legal Services, Judicial Council of California, 455 Golden Gate Avenue, San Francisco, CA 94102-3688.

Subdivisions (e) and (f). These subdivisions limit electronic access to records (other than the register, calendars, opinions, and certain Supreme Court records) to a case-by-case basis and prohibit bulk distribution of those records. These limitations are based on the qualitative difference between obtaining information from a specific case file and obtaining bulk information that may be manipulated to compile personal information culled from any document, paper, or exhibit filed in a lawsuit. This type of aggregate information may be exploited for commercial or other purposes unrelated to the operations of the courts, at the expense of privacy rights of individuals.

Rule 8.84. Limitations and conditions

(a) Means of access

Electronic access to records required under this article must be provided by means of a network or software that is based on industry standards or is in the public domain.

(b) Official record

Unless electronically certified by the court, a court record available by electronic access is not the official record of the court.

(c) Conditions of use by persons accessing records

Electronic access to court records may be conditioned on:

(1) The user's consent to access the records only as instructed; and

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(2) The user's consent to monitoring of access to its records.

The court must give notice of these conditions, in any manner it deems appropriate. Access may be denied to a member of the public for failure to comply with either of these conditions of use.

(d) Notices to persons accessing records

The court must give notice of the following information to members of the public accessing its records electronically, in any manner it deems appropriate:

(1) The identity of the court staff member to be contacted about the requirements for accessing the court's records electronically.

(2) That copyright and other proprietary rights may apply to information in a case file, absent an express grant of additional rights by the holder of the copyright or other proprietary right. This notice must advise the public that:

(A) Use of such information in a case file is permissible only to the extent permitted by law or court order; and

(B) Any use inconsistent with proprietary rights is prohibited.

(3) Whether electronic records are the official records of the court. The notice must describe the procedure and any fee required for obtaining a certified copy of an official record of the court.

(4) That any person who willfully destroys or alters any court record maintained in electronic form is subject to the penalties imposed by Government Code section 6201.

(e) Access policy

A privacy policy must be posted on the California Courts public-access website to inform members of the public accessing its electronic records of the information collected regarding access transactions and the uses that may be made of the collected information.

Rule 8.85. Fees for copies of electronic records

The court may impose fees for the costs of providing copies of its electronic records, under Government Code section 68928.

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SPR15-03

Appellate Procedure: Access to Electronic Appellate Court Records (adopt rules 8.80 to 8.85)

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

	Commentator	Position	Comment	Committee Response
1.	Court of Appeal, Second Appellate District by Thomas Kallay, Managing Attorney	NI	The Second Appellate District of the Court of Appeal has reviewed the materials, including the Invitations to Comment, forwarded to us by your message of April 20, 2015. The Second Appellate District has one comment on subdivision (1) of proposed rule 8.82. Subdivision (1) of proposed rule 8.82 provides: "Court record" is any document, paper, exhibit, transcript, or other thing filed in an action or proceeding; any order, judgment, or opinion of the court; and any court minutes, index, register of actions, or docket. *The term does not include the personal notes or preliminary memoranda of justices, judges, or other judicial branch personnel.* It is the view of the Second Appellate District that the second sentence of subdivision (1) of proposed rule 8.82, shown by italics, should be eliminated. The references to "personal notes" and "preliminary memoranda" in the second sentence suggest that some notes and some memoranda would be accessible. This would be undesirable in that draft opinions and comments on draft opinions obviously need to be protected from disclosure. Apart from this consideration, the second sentence should be eliminated since it serves no purpose. The first sentence of subdivision (1) of proposed rule 8.82 satisfactorily lists documents that should be and	The language of the sentence in question in proposed rule 8.82, subdivision (1), is taken directly from existing Rule 2.502, subdivision (1), pertaining to electronic access to trial court records, except that a references to "justices" has been added. This sentence is meant to clarify that these materials are not court records and therefore will not be subject to the rules regarding electronic access to court records. The language of rule 2.502 has not, to the committees' knowledge, posed difficulties for the trial courts with regard to determining what materials are available for public access, nor have private notes or memoranda been made publicly accessible. Moreover, differences in wording between the rule applicable to the trial courts and the rule applicable to the appellate courts might inadvertently create difficulties for the trial courts by calling into question the interpretation of what materials are meant to be included in "court records." The committees therefore recommend against making the language of the proposed rule for the appellate courts different from that of the existing rule for the trial courts.

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	Commentator	Position	Comment	Committee Response
			in fact are now accessible to the public. The second sentence is surplusage.	
2.	Courthouse News Service by Rachel E. Matteo-Boehm	AM	See full comment, attached. The central points of the comment are summarized below in numbered paragraphs for reference in reading the responses given. 1. Courthouse News Service (CNS) begins its comment by noting that that its experience is that electronic access is "best performed by the court itself" and that in its view, ideally, the rule would not allow for vendor controlled access. CNS asks that the proposed rules address the two main concerns raised by use of vendors: vendor control over the public court record and both the amount of, and the circumstance under which a fee may be charged.	1. As a preliminary matter, the committees note, in response to CNS's general concerns regarding the use of vendor services for access to electronic records, that the electronic information currently available from the appellate courts is accessed directly through the courts.ca.gov website. At the present time, the appellate courts expect to provide access to electronic records directly, as they do for paper records. The committees view, therefore, is that it is not necessary to adopt rules relating to vendors at this time. In addition, the committees' view is that it is important to move forward now with adopting the proposed rules. Adoption of the proposed rules is critically important to provide standards for allowing appropriate access to electronic appellate court records. Courthouse News Service (CNS) raises issues which should be considered and addressed as the appellate courts move forward in implementing procedures for electronic access. However, under rule 10.22, substantive changes to the Rules of Court need to circulated for public comment before they may be recommended for adoption by the Judicial Council. Since these

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	Commentator	Position	Comment	Committee Response
				subjects were not addressed in the proposal that was circulated for comment, rules addressing these subjects cannot be recommended for adoption at this time. The committee's view is that, consideration of the suggested changes should not hold up the adoption of the rules that were circulated. As the appellate courts, the public, CNS and other news services gain experience with the new rules and with new procedures for access to electronic appellate court records, the concerns raised by CNS can be considered in light of that experience, and the rules amended as needed. Indeed, the Information Technology Advisory Committee is leading a two-phase Rules Modernization Project, which in its second phase of substantive revision will offer an opportunity for comprehensive review of the rules governing access to electronic court records in both the trial courts and the appellate courts. The committees can consider CNS's suggestions as part of that comprehensive review.
			2. With regard to the issue of vendor control over access to public records, CNS notes the issues that arise when a vendor providing e-filing and e-access services to a court is also a part of a larger organization that engages in news reporting – for example, LexisNexis. These organizations may be able to use their access to and control over court records to gain a competitive advantage over other news organizations, because they have earlier access to information and can get it at no cost. CNS gives examples of standards and contracts used	2. The committees' view is that because the appellate courts are not currently using vendors to provide public access to records, the proposed addition is not necessary at this time. For the same reason, the committees further recommend that paragraph (b) of proposed rule 8.85 be deleted from that rule. As noted above, the electronic information currently available from the appellate courts is accessed directly through the courts.ca.gov website. At the present time, the appellate courts expect to continue to provide access to electronic records directly, rather than

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	Commentator	Position	Comment	Committee Response
			by trial courts in California and by courts in other states to prevent e-filing and e-access vendors from using their position to gain such a competitive advantage, and proposes language that would prohibit a vendor from "reselling, recombining, reconfiguring, or retaining any copies of the court's electronic records" except as called for by the agreement. 3. With regard to the fee related issues, CNS asks for two specific additions to the proposed rule: First, a new rule 8.85 (b)(1) would require that courthouse access be available, upon filing,through public access terminals at the courthouse at no charge. 4. Second, CNS proposes that rule 8.85(b)(2) be added to require that there be an option to allow frequent users of court records to access them without excessive cost.	through a vendor. 3. As noted above, the committees recommend against the suggested addition and recommend that paragraph (b) of rule 8.85 be deleted from that rule. 4. As noted above, the committees recommend against the suggested addition and recommend that paragraph (b) of rule 8.85 be deleted from that rule.
3.	Orange County Bar Association by Ashleigh Aitken, President Newport Beach	AM	1) The proposed rules do not appear to cover electronic records for small claims appeals & appeals of limited jurisdiction cases which are heard in the superior court [see Rule 8.81(a)]; those appeals are also not covered by the trial court rules found at Rules 2.500 - 2.507; those records must be addressed somewhere or a new set of rules adopted for them. (2) Rule 8.83 "Title" should be changed to "Remote electronic access allowed in extraordinary criminal cases" to match Rule	1) The committees appreciate this suggestion and intend to undertake consideration of rules to govern access to electronic records (as well as electronic filing) in the appellate divisions of superior courts. 2) As noted in the Invitation to Comment, proposed rule 8.83(d) is intended to allow an appellate court discretion to provide remote access

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	Commentator	Position	Comment	Committee Response
			2.503(e) and to more accurately describe that subsection.	to additional court records not only in extraordinary criminal cases but in other extraordinary cases as well. However, the proposed rule was inadvertently circulated without striking the reference to "criminal" in the language borrowed from rule 2.503(e) to achieve this broader application. The committees recommend that rule 8.83(d) be adopted as intended and as reflected in the Invitation to Comment memorandum, deleting the word "criminal" from the first sentence of rule 8.83 (d).
			(3) Language should be added under a new Rule 8.83(h) that matches existing Rule 2.503(i) concerning a requirement that the Courts should encourage the availability of electronic access "at public off-site locations"; no reason exists for downplaying this encouragement for appellate courts while keeping it for trial courts.	3) The language of rule 2.503(i) encouraging public off-site access is incorporated into the Advisory Committee Comment on proposed rule 8.83.
			(4) The language from existing Rule 2.505 concerning "Contracts with Vendors" should be included somewhere in these appellate court rules as no valid reason can exist for excluding these requirements for appellate court vendors.	4) Please see the response to the comments of Court News Service above. The committees recommend that the proposed rules be adopted without adding a rule parallel to Rule 2.505. The committee note that public access to electronic appellate court records is currently provided through the courts and contracting with a vendor to provide this service in not contemplated at this time. The committees view, therefore, is that it is not necessary to adopt rules relating to vendors at this time. In addition, the committees recognized that the situation for the appellate courts contracting with vendors for records access services will differ from that of the trial courts.

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	Commentator	Position	Comment	Committee Response
				While the fifty-eight trial courts might have many forms of contract and use many different vendors, all of the appellate courts will likely have the same contract with the same vendor, if a vendor is used, for access to records. Committee members noted that, in the event that a contract with a vendor is contemplated, the issues addressed in rule 2.505 for trial court contracts with vendors can be addressed in the appellate courts' negotiations with vendors. 5) The committees recommend against adding a rule parallel to rule 2.507 to this proposal. The current practices of the appellate courts with regard to the electronic information now made available to the public are in line with the requirements of the proposed addition. The committees therefore did not find it necessary to add an appellate rule similar to rule 2.507.
			(5) Similar language from existing Rule 2.507 for trial courts must be added as may be modified for appellate court actions since as proposed there is no language about the "intent" of these rules, the "minimum contents" for certain court records, and the "excludable information" not allowed to be accessible through those electronic records (protections for both the courts and the parties/participants are required).	
4.	San Diego County Bar Association, Appellate Practice Section by Victoria E. Fuller, Chair	AM	The Appellate Practice Section (formerly the Appellate Court Committee) of the San Diego County Bar Association appreciates the opportunity to comment on the latest proposed revisions to the California Rules of Court and, in particular, changes to the rules regulating civil appellate practice. We continue to support the Appellate Advisory Committee's ongoing effort to refine the Rules for the benefit of judges, appellate practitioners, and unrepresented litigants. In our comments below, we suggest modest modifications and identify a	

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	Commentator	Position	Comment	Committee Response
			few issues for further consideration. Our section approves of the new rules specifically addressing public access to electronic appellate court records. We understand that these proposed new rules are based on the existing rules addressing public access to electronic trial court records. We offer two minor revisions and suggest two substantive changes to the proposed rules: • The first and second sentences of proposed Rule 8.8l (b), should be revised to include the word "electronic" before the term "court records": • Under Rule 8.81(d)(2), the information to be redacted from records to which the court allows remote public access should include the Email addresses of parties, victims, witnesses, and court personnel. This appears to be just an oversight in the proposed rule. • Substantively, it appears Rule 8.83(d) does not provide a procedure for the court to exercise	The committees recommend against the suggested change to proposed rule 8.81(b). The language of the proposed rule as circulated is taken directly from rule 2.501(b). Moreover, in some places the proposed rules make reference to non-electronic court records. This appears to be a reference to proposed rule 8.83(d) (2). Again, the language of the proposed rule is taken directly from the parallel trial court rule, rule 2.503(e). Here, however, the committees agree that adding e-mail addresses to the list of information to be redacted is a sensible change. To address this concern, the committees have revised their proposal, in proposed rule 8.83(d) (2), to change "addresses and phone numbers of parties, victims, witnesses and court personnel" to "addresses, e-mail addresses and phone numbers of parties, victims, witnesses and court personnel". As noted above in the response to the comment by the Orange County Bar Association, the proposed

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	Commentator	Position	Comment	Committee Response
			its discretion. We suggest that the proposed rule include language stating that a motion may be presented. For example, the first sentence of Rule 8.83(d) could be revised to read (underscored language added): "Notwithstanding (c)(2)(E), by written motion or on the court's own motion, the presiding justice of the court ..." • Finally, Rule 8.83(d) should be revised to allow the presiding justice of the court, or a justice assigned by the presiding justice, to exercise discretion, subject to (e)(l), to permit remote electronic access by the public to all or a portion of the public court records in not only an individual criminal case under subdivision (c)(2)(E), but also in civil harassment proceedings, workplace violence prevention proceedings, and postsecondary school violence prevention proceedings addressed under (c)(2)(F), (G), and (H). The rationale for permitting remote access to criminal proceedings in high publicity cases applies with equal force to these quasi-criminal proceedings. In such an instance, the judicial officer should have the discretion, in a particular individual proceeding, to allow online public access.	rule was intended to give the appellate court discretion to allow remote access in any of the case types listed, but the limitation to criminal cases was inadvertently left in the language of the rule as circulated from the parallel trial court rule used as a model for this rule. As noted above in response to the comments of the Orange County Bar Association, committees recommend that rule 8.83(d) be adopted as intended and as reflected in the Invitation to Comment memorandum, deleting the word "criminal" from the first sentence of rule 8.83 (d)
5.	State Bar of California Committee on Appellate Courts by John Derrick, Chair	N	The Committee supports generally the principle of providing the public with "reasonable access" to appellate court records that are maintained in electronic form, but opposes the Rule's proposal to institute a bifurcated system wherein most	The committees appreciate the concerns raised by the Committee on Appellate Courts and are sensitive to the need to find an appropriate balance between the privacy rights of litigants and the public interest in making court records.

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	Commentator	Position	Comment	Committee Response
			civil records are made available remotely whereas records in other types of cases (notably criminal, juvenile, and family court matters) are limited to in-court access. The Committee believes that if the Court of Appeal or Supreme Court intends to make a judicial record publicly available, the California Rules of Court should not make certain types of records more difficult to access than others. Requiring the public to travel to a courthouse to access certain types of records threatens to impose a disproportionate burden on individuals in rural areas and those with the fewest financial resources. It also is a dubious strategy for protecting the privacy rights of litigants. While the rule makes it more tedious for the public to access a document in certain types of cases, it does nothing to actually prevent a motivated member of the public from accessing the underlying information. The Committee also notes that the rule's distinction between civil cases on the one hand, and criminal, juvenile, and family court matters on the other hand appears extremely overbroad. Certain criminal, juvenile, and family court matters include the filing of documents with sensitive information, but others do not. Likewise, civil matters also may involve the filing of sensitive personal information. Despite imposing greater access restrictions on certain types of matters, the rule does not appear narrowly tailored to the public interest in	accessible. As the appellate courts move towards modernization of their systems to allow more widespread e-filing of documents it is critical that guidelines be in place regarding access to electronic appellate court records. In creating the proposed rules on this subject, the committees looked to the rules already in place for the trial courts regarding access to electronic court records. These rules have proved over many years to provide a workable framework for the courts. The proposed rules for the appellate courts seek to build on the success of the rules for access to electronic court records in the trial courts, allowing for possible later amendment based on the experience of the public and the appellate courts with the implementation of these proposed rules. Although a general dividing line between access to electronic records in civil cases and access to electronic records in the other types of proceedings listed in proposed rule 8.83(c)(2) may be an imperfect means of balancing these interests, the proposed adoption of these rules is based on a record of workability in the trial courts. The committees' view is that if an alternate approach to establishing a dividing line is to be considered, it should be considered for both the trial and appellate rules at the same time. In the meantime, as noted in the responses above, the committees urge adoption of these rules to facilitate access to electronic access as the appellate courts modernize their records systems. Further changes can be made later, perhaps as part

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	Commentator	Position	Comment	Committee Response
			protecting individual privacy. It bears noting that although a 2002 report drafted for the Conference of Chief Justices on public access to judicial records contemplated that certain records might be made electronically available at the courthouse but not online, it cautioned that such a restriction should be limited to discrete categories of information such as identifying information for victims in criminal or domestic abuse cases, photographs of involuntary nudity, and medical records. *See* Nat'l Ctr. for State Courts, *Developing CCJ/COSCA Guidelines for Public Access to Court Records: A National Project to Assist State Courts* 39-44 (2002). The Committee encourages the drafters of the rule to consider a more tailored approach like that contemplated by the CCJ report and/or to explore further alternative methods identified in the CCJ report for protecting private information, such as remote access by subscription. *See id*. at 41-42.	of the ongoing Rules Modernization Project, to refine the distinctions made as to which records can be accessed remotely and which not.
6.	State Bar of California Standing Committee on the Delivery of Legal Services by Maria C. Livingston, Chair	N	<u>Does the proposal appropriately address the stated purpose?</u> No. The proposal adds new rules on public access to appellate court records of the Supreme Court and Courts of Appeal. The rules attempt to balance providing the public with reasonable access to records, while also protecting privacy interests that may be compromised with unlimited remote access. Therefore, the rules distinguish between records that would be available remotely and at the courthouse, and	

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	Commentator	Position	Comment	Committee Response
			records that would only be available at the courthouse. SCDLS recommends that the rules be redrafted with additional consideration and explanation of issues outlined in the additional specific comments below. Major issues include whether the rules adequately balance interests in publicly available court records and interests in the protection of personal and private information. In addition, some "line drawing" in the proposed rules, regarding the treatment of different categories of information, would benefit from additional clarification and explanation. **Additional Specific Comments** In general, SCDLS believes additional development may be needed to ensure that the rules more effectively attain the twin goals of providing for public access to court records and protecting individual privacy. In proposed rule 8.83(c) (courthouse access only), a large number of terms are not defined by reference to statute or otherwise, including "mental health proceedings." The rule is thereby unclear. The lack of clarity may make it difficult for a court to follow, as well as for a litigant to predict how the records would be treated. For example, is a mental health disability discrimination case a "mental health proceeding"? The committee's rationale for	With regard to the general concern as to whether the distinction made in the proposed rules as to which records will be made available remotely strikes the correct balance between privacy concerns and access concerns, please see response to comment by the State Bar Committee on Appellate Courts. With regard to the use of the term "mental health proceedings" in proposed rule 8.83(c)(1)(D), the committees note that this language is taken verbatim from the trial courts (in rule 2.503 (c)(4)) The committees are not aware that any difficulties have arisen in the trial courts with respect to the use of this term. The committees' view is that if a definition is to be considered, it should be considered for both the trial and appellate rules at the same time.

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	Commentator	Position	Comment	Committee Response
			selecting the particular proceedings that are exempt from remote access also appears unclear. Without such a rationale, the list contains some items that seem somewhat arbitrary. As to proposed rule 8.83 generally, the Judicial Council may want to consider whether the protections of private information in subdivision (d) (extraordinary disclosure of criminal records) – requiring redaction of personal, financial and health information – should apply more broadly to <u>all</u> publicly available information in electronic case records. Consideration should also be given to whether such privacy protections should apply equally to information obtained remotely and at a courthouse. There is a risk that the court may underestimate the extent to which case-by-case access and courthouse-only access may nevertheless be subject to data mining, invasion of privacy, and bulk distribution. The court's rule against bulk distribution, alone, may be readily circumvented by simply transmitting one case at a time, and in any event if the rule is broken there may be no effective remedy for the person whose personal data was mined. To ensure equitable access by members of the public and to prevent unreasonable charges to the public by private contractors, the Judicial Council is encouraged to consider modifying Rule 8.85(b) as follows: To the extent that public access to a court's electronic records is	As discussed above in response to the comment of the Orange County Bar Association suggesting that the proposed rules include a rule parallel to rule 2.507, the committees found that the current practices of the appellate courts are in line with the requirements placed on the trial courts, as to the information included in and excluded from electronic records made available remotely, and that a rule on the subject is not needed. Specifically as to Standing Committee's suggestion that the requirements for redaction under proposed rule 8.83(d)(2) apply to all publicly available information in electronic records, the committees note that the structure of the proposed new rules as to when the requirement for redaction applies is taken directly from the trial court rules. Based on the experience of the trial courts, the committees did not find it necessary to extend the protections of rule 8.83(d)((2). If the rules are adopted as proposed, and issues arise, the appellate courts can later consider whether changes are needed based on their experience in implementing the rules and providing public access to electronic records. Please see the response to the comments of the Courthouse News Service regarding proposed rule 8.85 (b), above. The committees' view is that because the appellate courts are not currently

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	Commentator	Position	Comment	Committee Response
			provided exclusively through a vendor, the contract with the vendor must ensure that any fees the vendor imposes for the costs of providing access are reasonable and promote equitable public access while covering the cost of providing access.	using vendors to provide public access to records, the addition suggested by the Standing Committee on the Delivery of Legal Services is not necessary at this time. For the same reason,the committees further recommend that paragraph (b) of proposed rule 8.85 be deleted from that rule.
7.	Superior Court of San Diego County by Michael M. Roddy, Executive Officer San Diego	A	Our court would like to emphasize the need to make sure that confidential documents, such as juvenile cases, remain confidential. We recognize the proposal does address this, but wanted to make sure this requirement was at the forefront of the drafters' consideration when making any additional changes to this rule.	The committees appreciate the commentator's reminder with regard to the importance of maintaining the confidentiality of confidential documents.

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VIA HAND DELIVERY

Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102-3688

Re: Comments of Courthouse News Service on Proposed Rules on Access to Electronic Appellate Court Records

Dear Sir/Madam:

On behalf of Courthouse News Service, we respectfully submit these comments and suggestions in response to the invitation to comment by the Judicial Council of California on the proposed rules related to Access to Electronic Appellate Court Records (SPR 15-03) ("Proposed Rules").

I. Introduction

Courthouse News Service is a nationwide news service that focuses on the court record, from the initial pleading through judgment and appeal. Its more than 3,000 subscribers include law firms in California and throughout the nation, as well as other media outlets, such as the Los Angeles Times and San Jose Mercury News, putting Courthouse News in the position of a pool reporter. On a national level, Courthouse News has a greater number of reporters covering courthouses than any other media outlet. Its web site, www.courthousenews.com, is updated daily with staff-written articles and columns and averages about 1 million readers per month. In recent months, Courthouse News has been credited as the source for stories by media outlets such as The Wall Street Journal, the Washington Post, and many others.

As a news service that focuses on the court record, Courthouse News is keenly interested in any proposed rules related to access to electronic court records, including appellate records. In reviewing the Proposed Rules, Courthouse News found much to like. However, it did identify one area of concern, namely, Proposed Rule of Court 8.85, which provides, in subsection (b), that "[t]o the extent that public access to a court's electronic records is provided exclusively through a vendor, the contract with the vendor must ensure that any fees the vendor imposes for the costs of providing access are reasonable."

As a preliminary matter, it has been Courthouse News' experience that public access to court records is best performed by the court itself, rather than by a vendor. There are several reasons for this, but the most important are the practical control over the court record that a court loses when a vendor controls that record, coupled with the higher user fees for access that tend to be charged by vendors (who by their very nature are seeking to maximize their profits). To this end, ideally, the proposed rules would not allow for vendor-controlled access systems at all.

However, to the extent a decision is made to allow courts to make their electronic records available exclusively through a vendor, at the very least the rules should address the two main issues that make in-house public access the preferred option: (1) vendor control over the public court record; and (2) the amount of, and circumstances under which, a fee may be charged.

Courthouse News is aware that the Proposed Rules are in many respects similar to the Rules of Court already in place for access to electronic trial court records. *See* Rules of Court 2.500-2.507. The concerns noted below are not unique to appellate records, but rather are informed, in large part, by Courthouse News' experience over the years in accessing electronic trial court records, including in California under Rules 2.500-2.507.

II. Vendors As Electronic Public Access Providers

The scope of a vendor's permitted use of court records is a serious issue, and becomes even more important when a court's chosen vendor – or its affiliates – are also engaged in news reporting activities. For example, the vendors currently active in the court records space include Thomson Reuters Court Management Solutions, formerly LT Court Tech, which is part of one of the world's leading publishers of legal information through Thomson Reuters' Westlaw division; Journal Technologies, Inc., which represents the merger of three smaller case management vendors – Sustain Technologies, ISD Corporation and New Dawn – and is owned by the Daily Journal Corporation, publisher of legal newspapers in California and Arizona; and LexisNexis, also one of the world's leading publishers of legal information, including offerings such as alerts and trackers through its CourtLink division.

It is important to keep in mind that the nature of the media and news reporting has changed dramatically in recent years. Whereas reporting about the courts used to be the exclusive domain of traditional print and broadcast media outlets, media entities reporting news and information about the courts now include a variety of electronic publishers that can instantly transmit information to targeted audiences.[1] Accordingly, news reporting about the courts now includes not only more

[1] As recently noted in The Guardian, "News nuggets are back and new gatekeepers emerging as we hark back to the days of the SMS text alert." Emily Bell, *Apple Watch Highlights the Need for Shorter News As Screen Sizes Shrink*, The Guardian, April 26, 2015, *available at* http://www.theguardian.com/media/media-blog/2015/apr/26/apple-watch-shrinking-news-apps. Indeed, many traditional news organizations are keenly aware of the importance of finding ways to push news alerts and other breaking news products to

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traditional in-depth reports about high-profile cases, but also summaries or alerts of what was filed in a given court on a given day or the latest developments in a case. These are often referred to euphemistically as "value-added services."

In those instances where a single private vendor acts as the electronic gatekeeper for the public court record – where copies of court records pass through or reside on the vendor's computer servers as part of a case management or e-filing system, or where the same vendor provides remote public access – that vendor also has priority access to the public court record. This control is valuable, especially for those vendors that also act as electronic publishers, because it gives them a virtually insurmountable advantage over their competitors in the news media in two ways: (1) timing and (2) cost.

With respect to timing, the chosen vendor will always be the first to receive the court records (including both the documents themselves and docket information about filings and case events), simply by virtue of its position with the court. Moreover, it receives those records in an electronically readable form that can be instantly analyzed and used to prepare and disseminate news reports to subscribers in a matter of minutes. Conversely, competing news entities must manually review these records (whether on paper or on a public access computer terminal), take notes, and create a news report, all of which takes time and means that the competing news entity is always "scooped" by the vendor. [2]

Similarly, with respect to cost, the vendor gets not only instantaneous access to court records, but access without charge, with those records delivered directly to the vendor's electronic doorstep. In contrast, competing media entities must either pay a fee to the very vendor they're competing with

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their audiences. For example, The New York Times, NBC News, Fox News, BBC News and The Guardian now all offer various alert products and options to their readers so they can stay abreast of breaking news – from emailed alerts to SMS messages to Twitter updates. As The Guardian explained, "It's an incredibly exciting time for news organisations to explore new and better ways to reach their audiences. And breaking news is the key editorial area where this is most important." Mario Andrade, *Extra! Extra! Rethinking the Guardian Breaking News Experience*, The Guardian, April 28, 2015, *available at* http://www.theguardian.com/info/developer-blog/2015/apr/28/extra-extra-rethinking-the-guardian-breaking-news-experience.

[2] More than ever, with the explosion of the Internet, "real-time reporting [has become] more prevalent." Peter Funt, *The Newswatch Never Stops – Nor Should It*, The Wall Street Journal, Jan. 21, 2011, at A13. "News outlets and individual reporters risk losing their relevance and their readerships if they fail to get stories up and out there in real-time." Elana Kirsh, *Untangling the Web: the 24-Minute News Cycle*, The Jerusalem Post, March 10, 2012, available at http://www.jpost.com/OnTheWeb/Article.aspx?id=286473. To "stand apart" in the competitive business of specialized news, one must "start[] earlier, writ[e] more and publish[] faster." Binyamin Appelbaum, *Joe Weisenthal vs. the 24-Hour News Cycle*, The New York Times, May 10, 2012, *available at* http://www.nytimes.com/2012/05/13/magazine/joe-weisenthal-vs-the-24-hour-news-cycle.html?pagewanted=all.

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for remote access, or send a reporter to the courthouse on a continual basis to review newly e-filed records, a significant cost that the vendor does not have to bear.

In short, giving a vendor that also engages in news reporting a preferential position with respect to access to the court record, whether as part of a case management, public access or e-filing system, is no different than telling the local newspaper that it can control the door to the courthouse and will always have a head start – at a lower cost – in reporting newsworthy new civil cases than all other media outlets.[3]

These concerns have come to fruition in other courts where publishers have control of one or more components of the court's computer system. A prime example is the Delaware Court of Chancery, which has an e-filing system built around what was formerly LexisNexis' File & Serve arm (which was acquired in 2012 by a third-party group and re-named File & ServeXpress). In a 2009 email blast advertising its "Reduced Pricing for Delaware Superior Court Documents" and its alert service – which, for a fee, provided instant notification when a lawsuit against a particular defendant had been filed – Lexis boasted, "Remember, File & Serve has these documents first because we are the Court's official e-filing provider." This notice was a clear exploitation of the vendor's unfair advantage, and in any instance where an e-filing or case management system vendor is also given control over public access, this inequality will always be a serious risk.

To address this risk, many state and local judicial entities are taking affirmative steps to ensure there are safety mechanisms in place, i.e., through court rules and/or contractual provisions, that limit what vendors who have access to electronic court records can do with court information and records that pass through their systems. As experience has shown, it is not enough for the contract to simply state that the court is the owner of its records and has the right to control their use, as existing Rules of Court currently require for contracts with vendors for trial court records. *See* Rule 2.505(b). Rather, the contract must make clear that the vendor may not use the court records for any purpose other than the service it is providing to the court. For example:

- Georgia's Statewide Minimum Standards for Electronic Filing, effective September 25, 2014 ("Georgia Minimum Standards"), provide that a vendor may be authorized to conduct e-

[3] It is fundamental that the government may not grant one media entity preferential access to the court record. *See Telemundo of Los Angeles v. City of Los Angeles*, 283 F. Supp. 2d 1095 (C.D. Cal. 2003) (city violated First Amendment by giving television station exclusive access to an official city event while requiring other broadcasters to rely on a video feed); *accord, e.g.*, *Anderson v. Cryovac, Inc.*, 805 F.2d 1, 9 (1st Cir. 1986) (trial court "erred in granting access [to discovery materials] to one media entity and not the other"); *American Broadcasting Cos., Inc. v. Cuomo*, 570 F.2d 1080, 1083 (2d Cir. 1977) ("once there is ... participation by some of the media, the First Amendment requires equal access to all of the media or the rights of the First Amendment would no longer be tenable"); *Westinghouse Broad. Co. v. Dukakis*, 409 F. Supp. 895, 896 (D. Mass. 1976) ("All representatives of news organizations must not only be given equal access, but within reasonable limits, access with equal convenience to official news sources.").

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filing only if the vendor "disclaims any ownership right in any electronic case or document or portion thereof, including any commercial right to resell, recombine, reconfigure or retain any database, document or portion thereof transmitted to or from the court." (§ 4(b))

- Tennessee Supreme Court Rule 46 prohibits e-filing vendors from "providing any fee-based services related to the e-filed documents." (Subsection B.4)

- A contract between the California Superior Court for the County of San Francisco and LexisNexis specifies that "Contractor shall not permit access to, release or distribute copies of case filings and document submissions retained in its system," except to the parties and Court users, and that "Contractor shall not provide access to or release Court records, official or unofficial, directly or indirectly, except as expressly authorized by the Court." (¶ 18)

- A contract between the California Superior Court for the County of Los Angeles and Journal Technologies, Inc., for case management services provides, "LASC Data shall be and remain the property of LASC and LASC shall retain exclusive rights and ownership thereto. The data of LASC shall not be used by Contractor for any purpose other than as required under this Agreement, nor shall such data or any part of such data be disclosed, sold, assigned, leased, or otherwise disposed of to third parties by Contractor or commercially exploited or otherwise used by or on behalf of Contractor, its officers, directors, employees, or agents." (§ 20.10)

Copies of these standards, rules and contracts are enclosed for your reference.

As the foregoing demonstrates, more and more courts recognize the importance of ensuring that vendors may not use their preferential position with respect to the electronic court record to gain an unfair advantage in disseminating information about courts. With this in mind, Courthouse News respectfully suggests that Proposed Rule 8.85 be amended to add language similar to that used in the Georgia Minimum Standards, as follows:

Rule 8.85. Fees for electronic access

* * *

(c) To the extent that public access to a court's electronic records is provided exclusively through a vendor, the contract with the vendor must ensure that the vendor is prohibited from reselling, recombining, reconfiguring, or retaining any copies of the court's electronic records or any portion thereof, other than in connection with providing the public access services pursuant to the agreement.

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III. Fees for Access

Whether access is provided by a vendor or the court itself, Courthouse News does not necessarily oppose charging a reasonable fee for the convenience of remote access over the Internet, so long as three concerns are addressed. *First*, to the extent a fee is charged for remote access over the Internet, there must also be some way for interested members of the press and public to access court records at the courthouse itself free of charge. *Second*, to the extent a fee is charged for remote access to newly filed court records, there should be some way for the press and public to review those records on the day they are filed without paying a fee. And *third*, any fee for remote access over the Internet should be structured in a way that makes it affordable to members of the press who have a legitimate and frequent need to access court records.

As currently drafted, the Proposed Rules fail to address these three concerns, and Courthouse News respectfully submits that the Proposed Rules should be amended accordingly.

First, as currently drafted, the rules allow a vendor to impose a fee for access to electronic records under all circumstances, even if that access is provided via a public access terminal at the courthouse itself, and even if those records are not available for review in paper form, such as an e-filed record. *See, e.g.*, Proposed Rules 8.85(b) ("To the extent that public access to a court's electronic records is provided exclusively through a vendor, the contract with the vendor must ensure that any fees the vendor imposes for the costs of providing access are reasonable."); 8.82(2) (defining "electronic record" as "a court record that requires the use of an electronic device to access," including, inter alia, e-filed records). While it is one thing to impose a fee to review records remotely over the Internet, respectfully, imposing a fee to simply look at a public court record, without any alternative for a free review, is presumptively unconstitutional.

Second, to the extent public access to electronic court records is provided free of charge via computer terminals at the courthouse, but for a fee over the Internet, care must be taken to avoid a situation in which records are available online for a fee before they may be reviewed free of charge at the courthouse itself, in effect imposing a fee for timely access to newly filed court records while only providing free-of-charge access on a delayed basis. This issue can arise if, for example, a court uploads newly filed electronic records after the courthouse has closed for the day, so that the only way to review newly filed court records on the same day they are filed is remotely over the Internet, with fees that can quickly add up. Indeed, this exact problem has arisen in at least two of California's trial courts. There are several ways to address this issue, including waiving any remote access fees for newly filed court records, such as those filed within the past 24 hours.

Third, to the extent that records can be viewed free of charge at the courthouse but a fee is assessed to review those same records remotely over the Internet, Courthouse News respectfully submits that the fee should be structured in a way that it does not become cost-prohibitive for journalists to perform their traditional role of reviewing newsworthy case records on a daily basis as they flow into the court. This problem arises when even seemingly modest fees are assessed to review

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records on a per-document or per-page basis. While such fees may not impose an undue burden on members of the public who only need to see a few documents on an occasional basis, they quickly add up for news organizations such as Courthouse News that have a frequent and legitimate need to review court records, with the effect that paid online access can become cost-prohibitive. Such a result would seem to be contrary to public policy, which should ***encourage*** press review of court records. *See, e.g., Cox Broad. Co. v. Cohn*, 420 U.S. 469, 492 (1975) ("in a society in which each individual has but limited time and resources with which to observe at first hand the operations of his government, he relies necessarily upon the press to bring to him in convenient form the facts of those operations").

There are a couple of different ways to address this concern. One way is to provide remote access to newly filed appellate court records free of charge. A second way is to offer a subscription-based fee for remote access, such as a reasonable monthly fee for unlimited remote access. Either set-up ensures that traditional free access at the courthouse continues, while giving journalists the ability to easily and conveniently access court records over the Internet so that they may provide information about new cases and case developments to the public.

With these three concerns in mind, Courthouse News urges the judiciary to amend the Proposed Rules as follows:

> Rule 8.85. Fees for electronic access
>
> * * *
>
> (b) To the extent that public access to a court's electronic records is provided exclusively through a vendor, the contract with the vendor must ensure any fees the vendor imposes for the costs of providing access are reasonable. In addition:
>
> (1) To the extent access to a court's electronic record is the exclusive means for the public to review that record, such access must be provided at no charge upon filing on public access terminals available at the courthouse.[4]

[4] *See, e.g.*, Georgia Minimum Standards, No. 3(d), which provides, "The clerk ensures that electronic documents are publicly accessible upon filing for viewing at no charge on a public access terminal available at the courthouse during regular business hours." In addition, the Advisory Committee note to Proposed Rule 8.85(b) could clarify that in situations where the court is unable to provide electronic public access at the courthouse itself to court records filed late in the day because the court has closed its doors to the public for the day, but those records are available via remote access after hours, fees for remote access to those records will be waived for a period of time – for example, for 24 hours after filing, or until the court opens for business the following day.

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(2) To the extent the vendor is permitted to impose a fee for the cost of providing access remotely over the Internet, there must be an option available to members of the public who have a frequent need to access records to do so without incurring excessive costs, such as through subscription-based fees.[5]

IV. Conclusion

Courthouse News greatly appreciates the consideration of its views on these matters. To the extent you have any questions, or would like to discuss these comments further, please do not hesitate to contact us.

Respectfully submitted,

Rachel E. Matteo-Boehm
On behalf of Courthouse News Service

cc: Courthouse News Service

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[5] Alternatively, the instruction in suggested Proposed Rule 8.85(b)(2) could be provided as part of an Advisory Committee note to Proposed Rule 8.85.

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 27, 2015

Title
Appellate Procedure: Appendixes

Agenda Item Type
Action Required

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 8.124

Effective Date
January 1, 2016

Recommended by
Appellate Advisory Committee
Hon. Raymond J. Ikola, Chair

Date of Report
August 12, 2015

Contact
Heather Anderson, 415-865-7691
heather.anderson@jud.ca.gov

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Executive Summary

The Appellate Advisory Committee proposes to amend the rule governing the use of appendixes in lieu of clerk's transcripts in unlimited civil appeals to eliminate the provision encouraging parties to prepare a joint appendix. This change is intended to reduce difficulties, and thus costs, for litigants associated with the efforts to reach a stipulation to use a joint appendix in cases in which litigants do not think this option is feasible.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2016, amend rule 8.124 of the California Rules of Court to eliminate the provision encouraging parties to prepare a joint appendix. The text of the amended rule is attached at page 5.

Previous Council Action

The Judicial Council adopted rule 8.124, which authorizes the use of an appendix in lieu of clerk's transcripts in civil appeals in the Court of Appeal, effective July 1, 1981. As adopted, this rule included a provision stating that "[c]ounsel have a duty to confer and attempt to reach an

agreement concerning a possible joint appendix." In explanation of this provision, the report to the Judicial Council recommending adoption of the appendix procedure stated that "[a] joint appendix would be more convenient for the court and counsel. While agreement on its contents cannot be mandated, it would seem desirable to require a minimum effort to try to agree." The council amended the language of this provision in 2001 as part of the overall rewrite of the appellate rules. Subdivision (a)(3) of this rule now provides that "[t]he parties may prepare separate appendixes, but are encouraged to stipulate to a joint appendix."

Rationale for Recommendation

Under rule 8.124, appellants and respondents may prepare either individual appendixes, which are filed with their respective briefs, or a joint appendix, which must be filed with the appellant's opening brief. Currently, subdivision (a)(3) of this rule provides that the parties may prepare separate appendixes, but are encouraged to stipulate to a joint appendix. Attorneys have reported that the provision encouraging stipulation to the use of a joint appendix is not necessary and sometimes causes problems for and disputes among litigants.

The view that that this provision is unnecessary stems from the fact that both a joint appendix and an appellant's appendix are actually required to contain the same items. Under rule 8.124(b)(1), both types of appendixes must contain (1) all the items required to be included in a clerk's transcript under rule 8.122 and (2) any other item that could be included in a clerk's transcript that is necessary for proper consideration of the issues on appeal, including "any item that the appellant should reasonably assume the respondent will rely on." Thus, if the appellant is able to fully anticipate all the items the respondent will need in the appendix, then no respondent's appendix will be needed—all the items necessary for the appeal will be in the appellant's appendix, and it will provide a single, unified record in the same way as would a joint appendix.

The practical problem for litigants is that it is generally not possible to be sure at the time the appellant's or joint appendix must be filed that it actually does include all the items a respondent will need to rely on. As noted above, both an appellant's and a joint appendix must be filed with the appellant's opening brief so the Court of Appeal can access the material from the record cited in that brief. In most cases, however, the respondent cannot be sure that an appendix includes all the items the respondent will need to rely on until after the appellant's brief is filed. The appellant's brief identifies what issues the appellant is raising on appeal which, in turn, allows the respondent to determine what items from the trial court record are relevant in responding to these issues. By allowing the respondent to file a supplemental respondent's appendix with his or her brief, the separate appendix procedure anticipates the possibility that some necessary materials may have been left out when an appendix is filed with the appellant's opening brief. Because the joint appendix procedure does not account for this possibility, respondents are unlikely to want to take the risk of using this procedure and then having to subsequently expend additional time and resources to file a motion to augment the record. As a result, attorneys, Court of Appeal justices, and appellate court staff all report that, despite the encouragement in the current rule, joint appendixes are rarely used. Given this, experienced appellate attorneys have

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expressed the view that it is not a good use of their time to try to come to an agreement to use a joint appendix. Based on the provision encouraging the use of joint appendixes, however, some litigants may insist on trying to do this, resulting in disputes between litigants and inefficiencies.

This proposal would delete the provision in current rule 8.124 that encourages parties to file a joint appendix. As in the current rule, the use of a joint appendix would continue to be an option specifically identified in the rule. Thus, this proposed amendment would not prevent litigants from preparing a joint appendix where it is worthwhile to do so. It would, however, eliminate the pressure to spend time on trying to reach a stipulation to use a joint appendix where using this procedure does not make sense.

Comments, Alternatives Considered, and Policy Implications

External comments

The proposed amendments to rule 8.124 were circulated for public comment between April 17 and June 19, 2015, as part of the regular spring comment cycle. Seven individuals or organizations submitted comments on this proposal. Five commentators agreed with the proposal and two 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 6–8. Based on these comments, the committee recommends adopting this proposal as circulated.

One of the commentators who did not agree with the proposal, an executive judicial assistant from a Court of Appeal, expressed concern that this rule change could result in an increase in the use of separate appellant's and respondent's appendixes, which could impact the workload of court employees. Under both the current rule and the proposed amendments to this rule, parties are free to choose whether or not to use joint appendixes. As discussed above, it is the committee's understanding that, under the current rule, joint appendixes are rarely used. Based on this, it is the committee's view that the recommended amendment should not appreciably impact the types of records that the parties are preparing and thus should not impact the workload for court employees. For this reason, the committee declined to modify the proposal based on this comment.

The other commentator that did not agree with the proposal saw no harm in encouraging the use of joint appendixes, even if they were infrequently used. It is also the committee's understanding, based on the experiences of committee members and other appellate practitioners, that some attorneys have faced difficulties associated with fruitless efforts to stipulate using a joint appendix. Therefore, the committee's view is that eliminating the language urging litigants to stipulate to joint appendixes should reduce attorney time, and thus litigant costs, without negatively impacting the courts. For this reason, the committee declined to modify the proposal based on this comment.

Alternatives

The committee considered not proposing this rule amendment. However, the committee concluded that eliminating the encouragement to use joint appendixes would reduce costs for

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litigants without likely impacting the appellate courts, and thus would improve the administration of justice in appellate proceedings.

Implementation Requirements, Costs, and Operational Impacts

This proposed change would not impose any implementation requirements on courts, and no operational impacts on courts are anticipated.

Attachments and Links

1. Cal. Rules of Court, rule 8.124, at page 5
2. Chart of comments, at pages 6–8

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Rule 8.124 of the California Rules of Court is amended, effective January 1, 2016, to read:

Rule 8.124. Appendixes

(a) Notice of election

(1)–(2) * * *

(3) The parties may prepare separate appendixes~~, but are encouraged to~~ or they may stipulate to a joint appendix.

(b)–(g) * * *

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SPR15-06
Appellate Procedure Appendixes (Amend Cal. Rules of Court, rule 8.124)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Jason J. Jarvis Levinson Arshonsky & Kurtz, LLP Sherman Oaks	N	I don't understand the reasoning behind eliminating the suggestion to prepare joint appendices. Just because it doesn't happen all the time doesn't mean the suggestion is a bad one. I like it. It encourages appellant and respondent to work together, hopefully gives the court less to read and certainly gives the court less to read in two different places; FRAP 30 basically says the same thing, and I think it is better to have more not less consistency with FRAP. Just my two cents.	Based on the weight of the public comments and the experience of committee members, the committee is recommending adoption of the proposal as circulated. It is the committee's understanding that under the current rule, joint appendixes are rarely used and that some litigants have experienced difficulties and increased costs associated with fruitless efforts to stipulate to using a joint appendix where the parties do not believe this is workable. As in the current rule, the use of a joint appendix would continue to be an option specifically identified in the rule that litigants could chose to use this option where it was workable. However, attorney time, and thus litigant costs, associated with trying to reach a stipulation to use a joint appendix in cases where it is not a workable option would be reduced.
2.	Orange County Bar Association by Ashleigh Aitken, President	A	No narrative comments submitted.	The committee notes the commentator's support for the proposal; no response required.
3.	San Diego Bar Association by Appellate Practice Section Victoria E. Fuller, Chair	A	Our section supports the revision to Rule 8.124, which removes the language encouraging the use of a joint appendix. We concur that the language is not necessary and sometimes can lead to problems and increased fees for litigants.	The committee notes the commentator's support for the proposal; no response required.

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SPR15-06
Appellate Procedure Appendixes (Amend Cal. Rules of Court, rule 8.124)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
4.	Ben Shatz Manatt, Phelps & Phillips, LLP Los Angeles	A	Strongly agree. The proposal correctly analyzes a very real problem and correctly solves it. Thanks!	The committee notes the commentator's support for the proposal; no response required.
5.	State Bar of California by John Derrick, Chair Committee on Appellate Courts	A	The Committee supports this proposal. We believe the rules should remain neutral as to whether litigants employ a joint appendix or separate appendixes. There are certain circumstances in which a joint appendix is useful, and the proposal leaves that option available for such situations. But in our experience, it is inefficient to use a joint appendix in many, if not most, cases. Therefore, we agree with the Appellate Advisory Committee that rule 8.124(a)(3) should not encourage the use of joint appendices.	The committee notes the commentator's support for the proposal; no response required.
6.	Superior Court of San Diego County by Michael M. Roddy, Executive Officer	A	• Would the proposal provide cost savings? No costs savings to the court, but we support this proposal to clear any confusion between the parties. • What would the implementation requirements be for courts? Minimal training and minimal procedure change. • Would 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes, but it is noted that	The committee notes the commentator's support for the proposal and appreciates the responses to the specific questions on the invitation to comment.

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

	Commentator	Position	Comment	Committee Response
			self-help resources on the Judicial Council website would ideally also have to be amended accordingly, including but not limited to Chapter 3 of The California Court of Appeal Step by Step, Civil Appellate Practices and Procedures for the Self-Represented in the Fourth Appellate District Division One	
7.	Kristina Zaldana, Executive Judicial Assistant First District Court of Appeal	N	I do not agree with the proposed change to omit the language encouraging the use of joint appendices due to the extra expenses incurred by the court to accommodate the consequences of such a proposal. If granted, court employees would spend more time reviewing the various records submitted by both parties, instead of having the ability to review a consolidated, joint record which enhances overall court efficiency and timeliness. Thank you for your consideration.	Based on the weight of the public comments and the experience of committee members, the committee is recommending adoption of the proposal as circulated. It is the committee's understanding that under the current rule, joint appendixes are rarely used so the recommended amendment should not impact the types of records that the parties are choosing to prepare or that court is currently receiving. As in the current rule, the use of a joint appendix would continue to be an option specifically identified in the rule. The parties would thus remain free to use joint appendixes where that was workable in the particular appeal.

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 27, 2015

Title
Appellate Procedure: Costs on Appeal

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 8.278; revise form MC-013

Recommended by
Appellate Advisory Committee
Hon. Raymond J. Ikola, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2016

Date of Report
August 13, 2015

Contact
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Executive Summary

The Appellate Advisory Committee recommends amending the rule governing costs on appeal to modify when a request for costs must be filed. It also recommends revising the form for specifying these costs so that it is more consistent with the rule and better reflects appellate practice. These changes, which are based on a suggestion received from the State Bar of California's Committee on Appellate Courts, are intended to improve the administration of appellate proceedings by making the time frame for filing a memorandum of costs clearer and by making the form easier for practitioners to complete and for courts to review.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2016:

1. Amend rule 8.278 of the California Rules of Court to require the memorandum of costs to be filed within 40 days of the date of issuance of the remittitur, rather than within 40 days after the clerk sends notice of issuance of the remittitur.

2. Revise *Memorandum of Costs on Appeal* (form MC-013) to:

   - Specifically include the cost of an appendix among the recoverable costs listed on the form and clarify that recoverable costs for the clerk's transcript or appendix include costs for an original, a copy, or both;

   - Specifically include the cost not only of printing, but of copying briefs among the recoverable costs listed on the form;

   - Eliminate notary fees from among the recoverable costs specifically listed on the form;

   - Merge "expenses of service" and "transmission and filing of record, briefs, and other papers" into a single line on the list of recoverable costs on the form;

   - Delete the proof of service on page 2 of the form and add a notice to the top of the form indicating that Judicial Council forms are available to provide proof of service; and

   - Rename this form as APP-013.

The text of the amended rule and revised form are attached at pages 6–8.

Previous Council Action

The Judicial Council adopted the predecessor to rule 8.278, which addresses costs on appeal, effective September 1, 1928, as part of the original Rules for the Supreme Court and District Courts of Appeal. Effective July 1, 1943, the council adopted a new set of Rules on Appeal which superseded the 1928 rules. The 1943 rule on costs included a list of the specific types of costs that were recoverable. Since 1943, the council has amended this provision on a number of occasions, generally to add or clarify recoverable costs. Most recently, effective January 1, 2013, the council amended this provision to clarify the recoverable costs associated with obtaining a bond on appeal or a substitute for such a bond.

Effective January 1, 1987, the council amended the rule on costs to add a subdivision establishing the procedure for claiming costs, including the time frame within which a memorandum of costs must be filed. As originally enacted, this provision required the memorandum to be filed within 30 days from the filing of the remittitur in the trial court. However, no notice was provided of filing of the remittitur, so it was difficult for attorneys to determine when to file the memorandum of costs. Effective July 1, 1989, the council therefore amended this provision to require that the memorandum be filed within 40 days after the clerk of the reviewing court mails the notice of issuance of the remittitur.

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Rationale for Recommendation

Rule 8.278

Rule 8.278 of the California Rules of Court addresses costs on appeal. Subdivision (c)(1) establishes the timeframe within which a memorandum of costs must be filed. Currently, this provision requires that the memorandum be filed within 40 days after the clerk sends notice of issuance of the remittitur. However, because reviewing courts do not use a proof of service when sending the notice of issuance of the remittitur, parties do not have an easy way to determine when this notice was sent. The committee recommends that rule 8.278 be amended to instead require the memorandum of costs to be filed within 40 days of the date of issuance of the remittitur. This date can easily be determined by the parties because it will be reflected in the notice of issuance of the remittitur, on the remittitur document itself, and on the docket, which is available online.

Memorandum of Costs on Appeal (*form MC-013*)

Memorandum of Costs on Appeal (form MC-013) is the mandatory Judicial Council form that must be used in requesting costs on appeal. This form includes a list of recoverable costs with spaces where users can indicate the amount sought to be recovered. Subdivision (d) of rule 8.278 also identifies those costs that may be recovered on appeal. There are, however, some differences between the list of recoverable costs in the rule and the list on the form.

Rule 8.278(d) includes among the recoverable costs the amount the party paid for any portion of the record. The accompanying advisory committee comment clarifies that this provision is intended to encompass the costs for an appendix prepared by a party under rule 8.124 in lieu of a clerk's transcript. Such appendixes are used quite frequently. However, while form MC-013 includes the cost of a clerk's transcript on its list of recoverable costs, it does not specifically include the cost of an appendix on this list. The committee recommends revising form MC-013 to specifically include the cost of an appendix among the recoverable costs listed on the form. Consistent with rule 8.278(d), the revision would also clarify that costs within this category include those for an original, a copy, or both.

Rule 8.278(d) also includes among the recoverable costs the cost to reproduce any brief. Form MC-013 lists the cost of "printing" briefs as a recoverable cost. However, briefs are commonly reproduced now through photocopying rather than printing. This proposal would revise form MC-013 to include the cost of copying briefs among the recoverable costs listed on the form.

Both rule 8.278(d) and form MC-013 currently include notary fees on their lists of recoverable costs. However, these are relatively uncommon costs in appellate proceedings and thus, it does not seem necessary for them to be separately listed on form MC-013. Instead, if these costs occur, they can be identified in the space on form MC-013 for "other" costs. This proposal would revise form MC-013 to eliminate notary fees from among the recoverable costs specifically listed.

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Currently, form MC-013 separately lists "Expenses of service" and "Transmission and filing of record, briefs, and other papers" as recoverable costs. In rule 8.278(d), these costs are listed together. It is also the committee's understanding that these costs are often paid as part of a single transaction, particularly when items are served and filed electronically. To better reflect both the rule and appellate practice, this proposal would merge these two provisions into a single line on form MC-013.

Form MC-013 currently includes, as a second page, an optional proof of service form. The Judicial Council has also adopted several separate proof of service forms, including *Proof of Service - Civil* (form POS-040). Consistent with recent recommendations it has made relating to other forms, to reduce the need to maintain multiple proof of service provisions on separate forms, the committee is proposing that the proof of service on page 2 of MC-013 be deleted and a notice box added to the top of the form indicating that Judicial Council forms may be used to provide proof of service.

Form MC-013 is currently grouped among the miscellaneous Judicial Council forms (hence the MC designation in the form name). Because of this miscellaneous designation, this form may be difficult for some parties to locate. The committee is therefore proposing that this form be grouped among the appellate forms and renamed as APP-013. This would put the form in a more logical sequence with other forms used in appellate proceedings.

Comments, Alternatives Considered, and Policy Implications

External comments

The proposed amendments to rule 8.278 and revisions to form MC-013 were circulated for public comment between April 17 and June 19, 2015, as part of the regular spring comment cycle. Four individuals or organizations submitted comments on this proposal. All four commentators agreed with the proposal. A chart with the full text of the comments received and the committee's responses is attached at pages 9–10. Based on these comments, the committee recommends adopting this proposal as circulated.

Alternatives

The committee considered not proposing the rule amendments or form revisions. However, the committee concluded that these proposed changes would improve appellate proceedings by making the time frame for filing a memorandum of costs clearer and by making the form better reflect both the rule and practice, which will make the form easier for practitioners to complete and courts to review.

Implementation Requirements, Costs, and Operational Impacts

These proposed changes would not impose any implementation requirements on courts, and no operational impacts on courts are anticipated from these proposed changes.

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Attachments and Links

1. Cal. Rules of Court, rule 8.248, at pages 6–7
2. Revised *Memorandum of Costs on Appeal* (form APP-013), at page 8
3. Chart of comments, at pages 9–10

DRAFT

Rule 8.278 of the California Rules of Court is amended, effective January 1, 2016, to read:

Article 4. Hearing and Decision in the Court of Appeal

Rule 8.278. Costs on appeal

(a)–(b) * * *

(c) Procedure for claiming or opposing costs

(1) Within 40 days after ~~the clerk sends notice of~~ issuance of the remittitur, a party claiming costs awarded by a reviewing court must serve and file in the superior court a verified memorandum of costs under rule 3.1700.

(2)–(3) * * *

(d) Recoverable costs

(1) A party may recover only the following costs, if reasonable:

(A) Filing fees;

(B) The amount the party paid for any portion of the record, whether an original or a copy or both. The cost to copy parts of a prior record under rule 8.147(b)(2) is not recoverable unless the Court of Appeal ordered the copying;

(C) The cost to produce additional evidence on appeal;

(D) The costs to notarize, serve, mail, and file the record, briefs, and other papers;

(E) The cost to print and reproduce any brief, including any petition for rehearing or review, answer, or reply;

(F) The cost to procure a surety bond, including the premium, the cost to obtain a letter of credit as collateral, and the fees and net interest expenses incurred to borrow funds to provide security for the bond or to obtain a letter of credit, unless the trial court determines the bond was unnecessary; and

(G) The fees and net interest expenses incurred to borrow funds to deposit with the superior court in lieu of a bond or undertaking, unless the trial court determines the deposit was unnecessary.

(2) Unless the court orders otherwise, an award of costs neither includes attorney's fees on appeal nor precludes a party from seeking them under rule 3.1702.

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Advisory Committee Comment

This rule is not intended to expand the categories of appeals subject to the award of costs. See rule 8.493 for provisions addressing costs in writ proceedings.

Subdivision (c). * * *

Subdivision (d). Subdivision (d)(1)(B) is intended to refer not only to a normal record prepared by the clerk and the reporter under rules 8.122 and 8.130 but also, for example, to an appendix prepared by a party under rule 8.124 and to a superior court file to which the parties stipulate under rule 8.128.

"Net interest expenses" in subdivisions (d)(1)(F) and (G) means the interest expenses incurred to borrow the funds that are deposited minus any interest earned by the borrower on those funds while they are on deposit.

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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 byt the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
Plaintiff: Defendant:	
MEMORANDUM OF COSTS ON APPEAL	CASE NUMBER:

NOTE: You must file a proof of service of this document. For this purpose, Judicial Council proof of service forms are available. (See *www.courts.ca.gov/forms.htm?filter=POS*.) An appropriate form may be completed and filed to show proof of service.

Prevailing party *(name):*

claims from *(name):*

the following costs on appeal:

	TOTALS
1. Filing fees	1. $
2. Preparation of the original and copies of clerk's transcript or appendix	2. $
3. Preparation of reporter's transcript	3. $
4. Printing and copying of briefs	4. $
5. Production of additional evidence	5. $
6. Transmitting, filing, and serving of record, briefs, and other papers	6. $
7. Premium on any surety bond on appeal	7. $
8. Other expenses reasonably necessary to secure surety bond	8. $
9. Other: *(specify authority):*	9. $
TOTAL COSTS:	$

I am ☐ the party ☐ counsel for the party ☐ agent for the party who claims the costs listed above.
To the best of my knowledge, the items of cost are correct and were necessarily incurred in this case on appeal.

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
APP-013 [Rev. January 1, 2016]

Code of Civil Procedure, § 1034(b);
Cal. Rules of Court, rule 8.272
www.courts.ca.gov

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SPR15-07

Appellate Procedure: Costs on Appeal (amend rule 8.278, and revise form MC-013)

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

	Commentator	Position	Comment	*Suggested* Committee Response
1.	Orange County Bar Association By Ashleigh Aitken, President	A	The proposal appropriately addresses the stated purpose. There is no need to separate costs of filing from costs of service.	The committee notes the commentator's support for the proposal and appreciates the response to the specific question in the invitation to comment.
2.	San Diego Bar Association Appellate Practice Session By Victoria E. Fuller, Chair	A	Our section supports the revision to Rule 8.278, to clarify that a memorandum of costs on appeal must be filed within 40 days of the date of issuance of the remittitur.	The committee notes the commentator's support for the proposal; no response required.
3.	State Bar of California Committee on Appellate Courts By John Derrick, Chair	A	The Committee supports this proposal, which is based on the Committee's suggestion. The Committee appreciates the Appellate Advisory Committee's pursuit of this proposal.	The committee notes the commentator's support for the proposal; no response required
4.	Superior Court of San Diego County By Michael M. Roddy, Executive Officer	A	• Does the proposal appropriately address the stated purpose? Yes. Specifically, the proposed changes to the Memorandum of Costs form provide clarification. • Should the cost of service continue to be identified separately on the memorandum of costs to facilitate identifying and determining the reasonableness of this cost? Yes - judicial officers and court staff are familiar with the memorandum of costs form and the process. *[Note – in a subsequent communication, the commentator clarified that the court*	The committee notes the commentator's support for the proposal and appreciates the responses to the specific questions in the invitation to comment

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SPR15-07
Appellate Procedure: Costs on Appeal (amend rule 8.278, and revise form MC-013)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	*Suggested* Committee Response
			approves of modifying the form so that the cost of service is no longer separately identified on the form] • Would the proposal provide cost savings? No change in costs. • What are the implementation requirements for courts? None. • Would 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.	

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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: October 27, 2015

Title
Appellate Procedure: Prehearing Conferences

Agenda Item Type
Action Required

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 8.248

Effective Date
January 1, 2016

Recommended by
Appellate Advisory Committee
Hon. Raymond J. Ikola, Chair

Date of Report
August 12, 2015

Contact
Heather Anderson, 415-865-7691
heather.anderson@jud.ca.gov

DRAFT

Executive Summary

The Appellate Advisory Committee recommends that rule 8.248, which governs prehearing conferences in the Court of Appeal, be amended to limit the circumstances under which a justice who participates in such a conference is barred from subsequently participating in or influencing the determination of the appeal to when settlement of the case was addressed at the conference. This proposal, which is based on a suggestion from the presiding justice of a Court of Appeal, is intended to facilitate the use of prehearing conferences in appellate proceedings for case management, which can save the parties and the appellate courts time and resources.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2016, amend California Rules of Court, rule 8.248, to limit the circumstances under which a justice who participates in a prehearing conference is barred from subsequently participating in or influencing the determination of the appeal to when the settlement of the case was addressed at the conference. The text of the amended rule is attached at page 4.

Previous Council Action

The Judicial Council adopted rule 8.248, which authorizes prehearing conferences in the Court of Appeal, effective July 1, 1977. The purpose of the rule, as discussed in the October 1976 report to the Judicial Council recommending adoption of the rule, was to provide for settlement conferences in appeals. As adopted, this rule included a provision prohibiting a justice from participating in the determination of an appeal when he or she had participated in a prehearing conference related to that appeal. The Judicial Council has renumbered and amended this rule, but this provision has remained substantively unchanged since 1977.

Rationale for Recommendation

California Rules of Court, rule 8.248, currently allows the presiding justice of a Court of Appeal to order the parties/counsel on appeal to attend a conference to consider narrowing the issues on appeal, settlement, and other relevant matters. Subdivision (c) of this rule currently provides that "[n]either the presiding officer nor any court personnel present at a conference may participate in or influence the determination of the appeal." This statement effectively forbids any justice who participates in such a conference to be on the panel that decides the matter.

Holding a prehearing conference for case management purposes can be helpful, particularly in large, complex appeals. A prehearing conference can provide an opportunity to discuss such procedural matters as consolidating or severing cases or issues, coordinating briefing schedules, and augmenting the record. This discussion can save the parties and the appellate courts time and resources. However, the current prohibition on subsequent participation in the determination of the appeal appears to discourage the use of these conferences for these case management purposes.

This proposal would make two changes to rule 8.248 intended to facilitate the use of prehearing conferences in appellate proceedings for case management. First, to clarify the potential use of these conferences for case management, it would replace the reference to using prehearing conferences "to consider a narrowing of the issues" with a broader reference to using such conferences "to consider case management issues." Second, it would limit the prohibition on subsequent participation in the determination of the appeal to situations in which settlement was addressed at the prehearing conference. The committee notes that the California Code of Judicial Ethics canon 3B(12) cautions judges to keep in mind the effect that the judge's participation in dispute resolution efforts, such as settlement conferences, may have on the judge's impartiality or the appearance of impartiality. At least two appellate districts have also adopted local settlement conference procedures that are designed to ensure that a justice who facilitates settlement discussions is not involved in any subsequent adjudication of a case.[1] In light of the

[1] The First Appellate District's local rule 3(c)(1) relating to settlement conferences provides that "[a] justice selected by the court from outside the division to which the appeal is assigned shall preside over the settlement conference." The Fourth Appellate District's local rule 4(g)(1) provides that "[a] justice or assigned justice who participates in a settlement conference that does not result in complete settlement shall not thereafter participate in any way in the consideration or disposition of the case on its merits."

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caution in the Code of Judicial Ethics and these existing local procedures, the committee is not proposing a change in the current prohibition on a justice participating in or influencing the determination of the appeal if the justice participated in prehearing conference at which settlement was addressed.

Comments, Alternatives Considered, and Policy Implications

External comments

The proposed amendments to rule 8.248 were circulated for public comment between April 17 and June 19, 2015, as part of the regular spring comment cycle. Four individuals or organizations submitted comments on this proposal. All four commentators agreed with the proposal. A chart with the full text of the comments received and the committee's responses is attached at page 5. Based on these comments, the committee recommends adopting this proposal as circulated.

Alternatives

The committee considered proposing amendments that would have permitted parties to waive the prohibition on a justice who participated in a prehearing conference involving settlement discussions from subsequent participation in the determination of an appeal. Ultimately, both because of the caution in the Code of Judicial Ethics discussed above and because, unlike in the trial court, waivers of potential disqualifications are not typically used in the appellate courts, the committee decided not to pursue such amendments.

The committee also considered not proposing these rule amendments at all. However, the committee concluded that narrowing the current prohibition could facilitate the use of prehearing conferences on appeal for case management purposes, which may reduce costs for litigants and the courts. Given these potential costs savings, the committee concluded that it should propose these rule amendments at this time.

Implementation Requirements, Costs, and Operational Impacts

This proposal will not impose any implementation requirements on the courts because holding these conferences is optional. This amendment should facilitate the use of prehearing conferences on appeal for case management, which may reduce costs for litigants and the courts.

Attachments and Links

1. California Rules of Court, rule 8.248, at page 4
2. Chart of comments, at page 5

DRAFT

Rule 8.248 of the California Rules of Court is amended, effective January 1, 2016, to read:

Rule 8.248. Prehearing conference

(a) Statement and conference

After the notice of appeal is filed in a civil case, the presiding justice may:

(1) Order one or more parties to serve and file a concise statement describing the nature of the case and the issues presented; and

(2) Order all necessary persons to attend a conference to consider ~~a narrowing of the~~ case management issues, settlement, and other relevant matters.

(b) Agreement

* * *

(c) Proceedings after conference

(1) Unless allowed by a filed agreement, no matter recited in a statement under (a)(1) or discussed in a conference under (a)(2) may be considered in any subsequent proceeding in the appeal other than in another conference.

(2) If settlement is addressed at the conference, other than an inquiry solely about the parties' interest in settlement, neither the presiding officer nor any court personnel present Eat ~~a~~ the conference may participate in or influence the determination of the appeal.

(d) Time to file brief

* * *

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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: October 27, 2015

Title
Appellate Procedure: Record on Appeal in Civil Cases

Rules, Forms, Standards, or Statutes Affected
Revise forms APP-003, APP-010, APP-103, and APP-110

Recommended by
Appellate Advisory Committee
Hon. Raymond J. Ikola, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2016

Date of Report
August 12, 2015

Contact
Heather Anderson, 415-865-7691
heather.anderson@jud.ca.gov

DRAFT

Executive Summary

The Appellate Advisory Committee recommends revising the forms for designating the record on appeal in unlimited and limited civil cases to (1) state that the fee waiver application is *submitted with* rather than *attached to* the record designation form; and (2) clarify that the respondent must pay for additional proceedings that he or she designates to be included in the record. The first change, which is based on suggestions from a superior court, is intended to avoid the unintentional release of confidential information and reduce court costs associated with identifying and detaching fee waiver applications from record designation forms. The second change is intended to eliminate confusion for litigants and reduce court costs associated with litigant errors caused by that confusion.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2016:

1. Revise *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003); *Respondent's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-010); *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103); and *Respondent's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-110) to state that the fee waiver application is *submitted with* rather than *attached to* the record designation form; and

2. Further revise *Respondent's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-010) to move the section of the form regarding the cost of transcribing additional proceedings that the respondent has designated for inclusion in a reporter's transcript so that it follows immediately after the section regarding designation of those proceedings.

The text of the revised forms is attached at pages 5–21.

Previous Council Action

The Judicial Council approved *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003) for optional use effective July 1, 2004, to assist litigants, particularly self-represented litigants, by providing them with a standardized mechanism for requesting the clerk's and court reporter's transcripts in the appeal of an unlimited civil case. The Judicial Council similarly approved *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) for optional use effective January 1, 2010, as part of a set of new forms intended to assist litigants, particularly self-represented litigants, seeking appellate review in the superior court appellate division. The council has revised these forms on several occasions, including effective July 1, 2010, to include spaces for additional information required or permitted by statute or rule.

The Judicial Council approved both *Respondent's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-010) and *Respondent's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-110) for optional use effective January 1, 2010, to assist respondents in appellate proceedings in filing notices relating to the record on appeal.

The Judicial Council revised the forms for unlimited civil appeals effective January 1, 2014, and for limited civil appeals effective March 1, 2014, to reflect changes in the rules relating to reporters' transcripts in civil appeals.

Rationale for Recommendation

In a civil appeal, the appellant is generally responsible for choosing the form of the record on appeal and identifying (designating) items to be included in that record. Depending on the type of record chosen, the respondent then has an opportunity to designate additional items to include in the record. Courts charge fees to prepare or make copies of some forms of the record on appeal, such as a clerk's transcript. If a party who is indigent files an application for an initial fee waiver and the court grants that application, these fees will be waived.

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Four Judicial Council optional forms are available for parties to use to designate the record on appeal in unlimited and limited civil cases: *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003); *Respondent's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-010); *Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103); and *Respondent's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-110). In one or more places on each of these forms, the designating party may indicate that, in lieu of submitting the required court fee for a particular form of the record, the party is attaching a fee waiver application.

Attaching a fee waiver application to these designation forms may cause problems and create additional work for those courts that are scanning and storing records electronically. While designation forms are public court records, fee waiver applications are confidential (see Cal. Rules of Court, rule 3.54) and must not be disclosed to the public. To prevent inadvertent inclusion of a fee waiver application in scanned records that will be publically available, clerks must check each designation form to ensure that such an application is not attached. Several courts have indicated that it takes additional time and scarce staff resources to identify and detach fee waiver applications from record designation forms before the forms can be scanned. To eliminate these potential problems and thereby reduce court costs, this proposal would modify the designation forms to instead provide that a fee waiver application may be *submitted with*, rather than *attached to*, the designation form.

The committee is also recommending an additional change to *Respondent's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-010). Under rule 8.130, when a respondent designates additional proceedings to be included in a reporter's transcript on appeal, the respondent is responsible for the cost of transcribing those additional proceedings. Currently, however, on form APP-010 the section regarding these costs does not immediately follow the section regarding designation of these proceedings; an intervening section asks whether and in what form the respondent would like a copy of the reporter's transcript. This placement may create confusion. The committee therefore proposes moving the section of the form regarding these costs so that it immediately follows the section regarding designation of additional proceedings to be included in a reporter's transcript. This move should clarify the responsibility for these costs for litigants and thereby reduce court costs associated with correcting litigant errors in connection with deposits for these costs.

Comments, Alternatives Considered, and Policy Implications

External comments

The proposed revisions to these record designation forms were circulated for public comment between April 17 and June 19, 2015, as part of the regular spring comment cycle. Five individuals or organizations submitted comments on this proposal. Four commentators agreed with the proposal, and one agreed with the proposal if amended. A chart with the full text of the comments received and the committee's responses is attached at pages 22–26. Based on these comments, the committee recommends adopting this proposal as circulated.

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The Superior Court of San Diego County, which approved the proposal if amended, suggested that the forms be modified to specify that the copy of the fee waiver application or order being submitted to the court with the record designation is a "true and correct copy." The committee respectfully declined to make this change to the forms. The committee's view is that the obligation to submit true and correct copies of documents is implicit. The additional language suggested by the court does not appear at other places on this form where attachments are referenced or on other forms that refer to attachments. The committee was concerned that adding this language here when it does not appear in connection with other documents attached to or submitted with forms could create the impression that the obligation to submit true and correct copies does not apply in those other situations.

Alternatives

The committee considered not proposing these form revisions. However, the committee concluded that revising these forms is likely to reduce the risk of inadvertent disclosure of confidential information and result in cost savings to the courts and therefore that it would be beneficial to pursue this proposal.

Implementation Requirements, Costs, and Operational Impacts

No implementation costs should be associated with these form revisions; instead, these revisions should result in cost *savings* for the courts.

Attachments and Links

1. Forms APP-003, APP-010, APP-103, and APP-110, at pages 5–21
2. Chart of comments, at pages 22–26

DRAFT

ATTORNEY *(Name, State Bar number, and address):* STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO. *(if available):* E-MAIL ADDRESS *(if available):* ATTORNEY FOR (*name*):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)	**SUPERIOR COURT CASE NUMBER:**
RE: Appeal filed on *(date):*	**COURT OF APPEAL CASE NUMBER *(if known)*:**

Notice: Please read form APP-001 before completing this form. This form must be filed in the superior court, not in the Court of Appeal.

1. **RECORD OF THE DOCUMENTS FILED IN THE SUPERIOR COURT**

I elect to use the following method of providing the Court of Appeal with a record of the documents filed in the superior court *(check a, b, c, d, or e and fill in any required information):*

a. ☐ A clerk's transcript under rule 8.122. *(You must check (1) or (2) and fill out the clerk's transcript section on page 2 of this form.)*

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

(2) ☐ I request that the clerk's transcript be provided to me at no cost because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record *(check (a) or (b)):*

(a) ☐ An order granting a waiver of court fees and costs under rule 3.50 et seq.; or

(b) ☐ An application for a waiver of court fees and costs under rule 3.50 et seq. (*Use* Request to Waive Court Fees *(form FW-001) to prepare and file this application.*)

b. ☐ An appendix under rule 8.124.

c. ☐ The original superior court file under rule 8.128. (NOTE: *Local rules in the Court of Appeal, First, Third, Fourth, and Fifth Appellate Districts, permit parties to stipulate to use the original superior court file instead of a clerk's transcript; you may select this option if your appeal is in one of these districts and all the parties have stipulated to use the original superior court file instead of a clerk's transcript in this case. Attach a copy of this stipulation.*)

d. ☐ An agreed statement under rule 8.134. *(You must complete item 2b(2) below and 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 rule 8.134(a).)*

e. ☐ A settled statement under rule 8.137. *(You must complete item 2b(3) below and attach to your proposed statement on appeal copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.137(b)(3).)*

2. **RECORD OF ORAL PROCEEDINGS IN THE SUPERIOR COURT**

I elect to proceed:

a. ☐ WITHOUT a record of the oral proceedings in the superior court. I understand that without a record of the oral proceedings in the superior court, the Court of Appeal will not be able to consider what was said during those proceedings in determining whether an error was made in the superior court proceedings.

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Form Approved for Optional Use
Judicial Council of California
APP-003 [Rev. January 1, 2016]

APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL (Unlimited Civil Case)

Cal. Rules of Court, rules 3.50, 8.121–8.124, 8.128, 8.130, 8.134, 8.137
www.courts.ca.gov

CASE NAME:	SUPERIOR COURT CASE NUMBER:

2. b. ☐ WITH the following record of the oral proceedings in the superior court:

(1) ☐ A reporter's transcript under rule 8.130. *(You must fill out the reporter's transcript section on page 3 of this form.)* I have *(check all that apply):*

(a) ☐ Deposited the approximate cost of transcribing the designated proceedings with this notice as provided in rule 8.130(b)(1).

(b) ☐ Attached a copy of a Transcript Reimbursement Fund application filed under rule 8.130(c)(1).

(c) ☐ Attached the reporter's written waiver of a deposit for *(check either (i) or (ii)):*

(i) ☐ all of the designated proceedings.

(ii) ☐ part of the designated proceedings.

(d) ☐ Attached a certified transcript under rule 8.130(b)(3)(C).

(2) ☐ An agreed statement. *(Check and complete either (a) or (b) below.)*

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

(b) ☐ All the parties have agreed in writing (stipulated) to try to agree on a statement. *(You must attach a copy of this stipulation to this notice.)* I understand that, within 40 days after I file the notice of appeal, 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.

(3) ☐ A settled statement under rule 8.137. *(You must attach the motion required under rule 8.137(a) to this form.)*

3. **RECORD OF AN ADMINISTRATIVE PROCEEDING TO BE TRANSMITTED TO THE REVIEWING COURT**

☐ I request that the clerk transmit to the reviewing court under rule 8.123 the record of the following administrative proceeding that was admitted into evidence, refused, or lodged in the superior court *(give the title and date or dates of the administrative proceeding):*

Title of Administrative Proceeding	Date or Dates

4. **NOTICE DESIGNATING CLERK'S TRANSCRIPT**

(You must complete this section if you checked item 1a. above indicating that you elect to use a clerk's transcript as the record of the documents filed in the superior court.)

a. **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

(1) Notice of appeal

(2) Notice designating record on appeal *(this document)*

(3) Judgment or order appealed from

(4) Notice of entry of judgment *(if any)*

(5) 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)*

(6) Ruling on one or more of the items listed in (5)

(7) Register of actions or docket *(if any)*

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CASE NAME:	SUPERIOR COURT CASE NUMBER:

4. NOTICE DESIGNATING CLERK'S TRANSCRIPT

b. **Additional documents.** *(If you want any documents from the superior court proceeding in addition to the items listed in 4a. above to be included in the clerk's transcript, you must identify those documents here.)*

☐ I request that the clerk include the following documents from the superior court proceeding in the transcript. *(You must 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
(8)	
(9)	
(10)	
(11)	
(12)	

☐ See additional pages.

c. **Exhibits to be included in clerk's transcript**

☐ I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the superior court *(for each exhibit, give the exhibit number, such as Plaintiff's #1 or Defendant's A, and a brief description of the exhibit. Indicate whether or not the court admitted the exhibit into evidence):*

Exhibit Number	Description	Admitted (Yes/No)
(1)		
(2)		
(3)		
(4)		
(5)		

☐ See additional pages.

5. NOTICE DESIGNATING REPORTER'S TRANSCRIPT

(You must complete this section if you checked item 2b(1) above indicating that you elect to use a reporter's transcript as the record of the oral proceedings in the superior court. Please remember that you must pay for the cost of preparing the reporter's transcript.)

a. I request that the reporters provide *(check one):*

(1) ☐ My copy of the reporter's transcript in paper format.

(2) ☐ My copy of the reporter's transcript in computer-readable format.

(3) ☐ My copy of the reporter's transcript in paper format and a second copy in computer-readable format.

(Code Civ. Proc., § 271; Cal. Rules of Court, rule 8.130(f)(4).)

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CASE NAME:	SUPERIOR COURT CASE NUMBER:

5. b. **Proceedings**

I request that the following proceedings in the superior 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	Full/Partial Day	Description	Reporter's Name	Prev. prepared?
(1)						☐ Yes ☐ No
(2)						☐ Yes ☐ No
(3)						☐ Yes ☐ No
(4)						☐ Yes ☐ No
(5)						☐ Yes ☐ No
(6)						☐ Yes ☐ No
(7)						☐ Yes ☐ No

c. The proceedings designated in 5b ☐ include ☐ do not include all of the testimony in the superior court.

If the designated proceedings DO NOT include all of the testimony, state the points that you intend to raise on appeal *(rule 8.130(a)(2) provides that your appeal will be limited to these points unless, on motion, the reviewing court permits otherwise)*.

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Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF APPELLANT OR ATTORNEY)

ATTORNEY *(name, State Bar number, and address):* STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO. *(if available)*: E-MAIL ADDRESS *(if available)*: ATTORNEY FOR (*name*):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
RESPONDENT'S NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)	SUPERIOR COURT CASE NUMBER:
Re: Appeal filed on *(date):*	COURT OF APPEAL CASE NUMBER *(if known)*:

Notice: Please read Judicial Council form APP-001 before completing this form. This form must be filed in the superior court, not in the Court of Appeal.

1. **RECORD OF THE DOCUMENTS FILED IN THE SUPERIOR COURT**

The appellant has elected to use a clerk's transcript under rule 8.122.

a. ☐ **Additional documents.** *(If you want any documents from the superior court proceedings in addition to the documents designated by the appellant to be included in the clerk's transcript, you must identify those documents here.)*

In addition to the documents designated by the appellant, I request that the clerk include in the transcript the following documents from the superior court proceedings. *(You must 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
(1)	
(2)	
(3)	

☐ See additional pages.

b. ☐ **Additional exhibits.** *(If you want any exhibits from the superior court proceedings in addition to those designated by the appellant to be included in the clerk's transcript, you must identify these exhibits here.)*

In addition to the exhibits designated by the appellant, I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the superior court. *(For each exhibit, give the exhibit number, such as Plaintiff's #1 or Defendant's A, and a brief description of the exhibit. Indicate whether or not the court admitted the exhibit into evidence.)*

Exhibit Number	Description	Admitted (Yes/No)
(1)		
(2)		
(3)		

☐ See additional pages.

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Form Approved for Optional Use
Judicial Council of California
APP-010 [Rev. January 1, 2016]

Cal. Rules of Court, rules 3.50, 8.121–8.124, 8.128, 8.130, 8.134, 8.137
www.courts.ca.gov

CASE NAME:	SUPERIOR COURT CASE NUMBER:

1. c. ☐ Copy of clerk's transcript. I request a copy of the clerk's transcript. *(check (1) or (2).)*

   (1) ☐ I will pay the superior court clerk for this transcript when I receive the clerk's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, I will not receive a copy.

   (2) ☐ I request that the clerk's transcript be provided to me at no cost because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record *(check (a) or (b)):*

   (a) ☐ An order granting a waiver of court fees and costs under rule 3.50 et seq.; or

   (b) ☐ An application for a waiver of court fees and costs under rule 3.50 et seq. (*Use* Request to Waive Court Fees *(form FW-001) to prepare and file this application.*)

2. **RECORD OF ORAL PROCEEDINGS IN THE SUPERIOR COURT**

   The appellant has elected to use a reporter's transcript under rule 8.130.

   a. ☐ **Designation of additional proceedings.** *(If you want any oral proceedings in addition to the proceedings designated by the appellant to be included in the reporter's transcript, you must identify those proceedings here.)*

   (1) In addition to the proceedings designated by the appellant, I request that the following proceedings in the superior 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	Full/Partial Day	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

☐ See additional pages.

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CASE NAME:	SUPERIOR COURT CASE NUMBER:

2. a. (2) **Deposit for additional proceedings**

I have *(check a, b, c, or d):*

(a) ☐ Deposited the approximate cost of transcribing the designated proceedings with this notice as provided in rule 8.130(b)(1).

(b) ☐ Attached a copy of a Transcript Reimbursement Fund application filed under rule 8.130(b)(3)(B).

(c) ☐ Attached the reporter's written waiver of a deposit for *(check either (i) or (ii)):*

(i) ☐ All of the designated proceedings.

(ii) ☐ Part of the designated proceedings.

(d) ☐ Attached a certified transcript under rule 8.130(b)(3)(C).

b. **Copy of reporter's transcript.**

(1) ☐ I request a copy of the reporter's transcript.

(2) ☐ I request that the reporters provide *(check (a), (b), or (c))* :

(a) ☐ My copy of the reporter's transcript in paper format.

(b) ☐ My copy of the reporter's transcript in computer-readable format.

(c) ☐ My copy of the reporter's transcript in paper format and a second copy of the reporter's transcript in computer-readable format.

(*Code Civ. Proc., § 271; Cal. Rules of Court, rule 8.130(f)(4).*)

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Date:

_____ ▶ _____

(TYPE OR PRINT NAME) (SIGNATURE OF APPELLANT OR ATTORNEY)

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

Clerk stamps date here when form is filed.

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 *(if available):* _____

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 *(if available):* _____

Fax *(if available):* _____

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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 the Documents Filed in the Trial Court

3 I elect (choose)/My client elects to use the following record of the documents filed in the trial court *(check a or b 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	

(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 more space to list other documents and attach a separate page or pages listing those documents. At the top of each page, write "APP-103, item 3a(2)."*

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3 a. (continued)

(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 more space to list other exhibits and attach a separate page or pages listing those exhibits. At the top of each page, write "APP-103, item 3a(3)."*

(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.

(ii) ☐ An application for a waiver of court fees and costs under rules 3.50–3.58 *(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. ☐ **Agreed statement.** *(You must complete item 5 d, below and 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 3a(1) above and in rule 8.832 of the California Rules of Court.)*

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 do not, the appellate division will not be able to consider what was said during the trial court proceedings in deciding whether a legal error was made in those proceedings.

4 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 5; sign and date this form*). I understand that if I proceed without a record of the oral proceedings, the appellate division will not be able to consider what was said in the trial court during those proceedings in deciding whether a legal error was made.

(Write initials here): _____

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4 (continued)

b. ☐ WITH a record of the oral proceedings in the trial court *(complete item 5 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): _____

5 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 more space to list other proceedings and attach a separate page or pages listing those proceedings. At the top of each page, write "APP-103, item 5a."*

(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 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 5a(2)."*

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5 a. (continued)

(3) **Payment for reporter's transcript.** I will pay for this transcript myself or request payment from the Transcript Reimbursement Fund when I receive the court reporter's estimate of the costs of this transcript. I understand that if I do not pay the trial court clerk's office for this transcript, file with the court a written waiver of this deposit signed by the reporter, or receive approval of my Transcript Reimbursement Fund application, the transcript will not be prepared and provided to the appellate division.
(Write initials here): _____

☐ I request that the reporters provide *(check one):*
(i) ☐ My copy of the reporter's transcript in paper format.
(ii) ☐ My copy of the reporter's transcript in computer-readable format.
(iii) ☐ My copy of the reporter's transcript in paper format and a second copy of the reporter's transcript in computer-readable 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. (Check and complete (1) or (2).):*

(1) ☐ 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.

(2) ☐ I am asking that the 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 (a) or (b) and submit the appropriate document):*
(a) ☐ An order granting a waiver of the cost under rules 3.50–3.58.
(b) ☐ An application for a waiver of court fees and costs under rules 3.50–3.58. *(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 costs 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.
(b) ☐ An application for a waiver of court fees and costs under rules 3.50–3.58. *(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.)*

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5 (continued)

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.

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.

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Date: _____

_____ ▶ _____

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

APP-110 Respondent's Notice Designating Record on Appeal (Limited Civil Case)

Clerk stamps date here when form is filed.

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*.
- 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 *(if available):* _____

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 *(if available):* _____

Fax *(if available):* _____

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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 elected (chose) to use a clerk's transcript under rule 8.832 as the record of the documents filed in the trial court.

a. ☐ **Additional documents or exhibits.** *If you want any documents or exhibits in addition to those designated by the appellant to be included in the clerk's transcript, you must identify those documents here.*

(1) **Documents**

☐ In addition to the documents designated by the appellant, 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)	

☐ *Check here if you need more space to list other documents and attach a separate page or pages listing those documents. At the top of each page, write "APP-110, item 4a(1)."*

(2) **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

☐ *Check here if you need more space to list other exhibits and attach a separate page or pages listing those exhibits. At the top of each page, write "APP-110, item 4a(2)."*

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4 (continued)

b. ☐ **Copy of clerk's transcript.** I request a copy of the clerk's transcript. *(Check (1) or (2).)*

(1) ☐ I will pay the trial court clerk for this transcript myself when I receive the clerk's estimate of the costs of the transcript.

(2) ☐ I am asking that a copy of 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 (a) or (b) and submit the checked document):*

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

(b) ☐ An application for a waiver of court fees and costs under rules 3.50–3.58. (*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.)*

Record of Oral Proceedings in the Trial Court

5 The appellant elected to use the following record of what was said in the trial court proceedings *(check and complete **only one** of the following below—a, b, or c):*

a. ☐ **Reporter's Transcript.** The appellant elected to use a reporter's transcript under rule 8.834 as the record of the oral proceedings in the trial court.

(1) ☐ **Designation of additional proceedings to be included in the reporter's transcript.** *(If you want any proceedings in addition to the proceedings designated by the appellant to be included in the reporter's transcript, you must identify those proceedings here.)*
In addition to the proceedings designated by the appellant, 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 more space to list other proceedings and attach a separate page or pages listing those proceedings. At the top of each page, write "APP-110, item 5a(1)."*

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5 a. (continued)

(2) **Copy of reporter's transcript.**

(a) ☐ I request a copy of the reporter's transcript. I will pay for this transcript myself or request payment from the Transcript Reimbursement Fund when I receive the court reporter's estimate of the costs of this transcript. I understand that if I do not pay the trial court clerk's office for this transcript or file with the court a waiver of this deposit signed by the court reporter or receive approval of my Transcript Reimbursement Fund application, I will not receive a copy.

(b) ☐ I request that the court reporter provide *(check one):*

(i) ☐ My copy of the reporter's transcript in paper format.
(ii) ☐ My copy of the reporter's transcript in computer-readable format.
(iii) ☐ My copy of the reporter's transcript in paper format and a second copy of the reporter's transcript in computer-readable format.

OR

b. ☐ **Transcript From Official Electronic Recording.** The appellant elected to use the transcript from an official electronic recording as the record of the oral proceedings in the trial court under rule 8.835(b). I request a copy of this transcript. *(Check and complete (1) or (2).):*

(1) ☐ I will pay the trial court clerk for this transcript myself when I receive the clerk's estimate of the cost of the transcript.

(2) ☐ I am asking that the 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 (a) or (b) and submit the appropriate document):*

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

(b) ☐ An application for a waiver of court fees and costs under rules 3.50–3.58 *(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.** The appellant and I have agreed to use the official electronic recording itself as the record of the oral proceedings in the trial court under rule 8.835(a). I request a copy of this recording. *(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 costs of this copy.

(2) ☐ I am asking that the 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 (a) or (b) and submit the appropriate document):*

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

(b) ☐ An application for a waiver of court fees and costs under rules 3.50–3.58 *(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.)*

Date: _____

_____ ▶ _____

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

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SPR15-01
Appellate Procedure: Record on Appeal-Civil Cases (revise forms App-003, app-010, App-103, and form App-110)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	*Suggested* Committee Response
1.	Law Offices of Azar Elihu by Azar Elihu, Attorney Los Angeles	A	No narrative comments submitted.	The committee notes the commentator's support for the proposal; no response required.
2.	Orange County Bar Association By Ashleigh Aitken, President	A	No narrative comments submitted.	The committee notes the commentator's support for the proposal; no response required.
3.	San Diego County Bar Association Appellate Practice Section By Victoria E. Fuller	A	The Appellate Practice Section (formerly the Appellate Court Committee) of the San Diego County Bar Association appreciates the opportunity to comment on the latest proposed revisions to the California Rules of Court and, in particular, changes to the rules regulating civil appellate practice. We continue to support the Appellate Advisory Committee's ongoing effort to refine the Rules for the benefit of judges, appellate practitioners, and unrepresented litigants. In our comments below, we suggest modest modifications and identify a few issues for further consideration. Our section supports the proposed revisions to forms APP-003, APP-010, APP-103, and APP-110. We believe the proposed changes adequately address the dual purposes stated in the proposal: (1) to avoid clerical problems arising from the submission of confidential fee waiver applications that are physically attached to public court records; and (2) to clarify that under Rule 8.130, a respondent designating additional proceedings is responsible for the costs of preparing the additional transcripts. We suggest one modest change to the proposed	The committee notes the commentator's support for the proposal. The committee respectfully declines to make this

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	Commentator	Position	Comment	*Suggested* Committee Response
			language to further address the first purpose stated above. We propose the revised forms state that the applicant has submitted a "separate" document with the notice designating the record, to further guide the applicant that his or her fee waiver application or order should not be attached to the form being submitted. For example, on page 1 of Form APP-003, the proposed language in bold, with our modest change in brackets, would state: (2) I request that the clerk's transcript be provided to me at no cost because I cannot afford to pay this cost. I have submitted the following [separate] document with this notice designating the record (check (a) or (b)): We believe this slight modification would further the stated purpose of reducing submissions that contain confidential fee applications attached to the public judicial counsel form documents.	change to the forms. The committee's view is that it will be clear from the proposed language of the form regarding submitting the fee waiver application with the notice designating the record that the fee waiver application is a separate document.
4.	State Bar of California Committee on Appellate Courts By John Derrick, Chair	A	The Committee supports this proposal.	The committee notes the commentator's support for the proposal; no response required.
5.	Superior Court of San Diego County By Michael M. Roddy, Executive Officer	AM	• Would the proposal provide cost savings? There will be a time savings for the imaging unit who will not need to detach the fee waiver (FW-001) form from the designation. Also, the appeals clerks will not need to review the designation to ensure that the confidential fee waiver is not attached and may spend less time	The committee appreciates these responses to the specific questions in the invitation to comment

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	Commentator	Position	Comment	*Suggested* Committee Response
			explaining the forms. • What would the implementation requirements be for courts? For example, training staff. Minimal time to train staff. No need to change codes or procedures. • Would two 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 size of the court would not impact implementation. **Comments regarding Forms APP-003 and APP-010:** See separately attached PDF of annotations of suggested revisions to forms. **Additional comments relative to forms -- Form APP-103 Appellant's Notice Designating Record on Appeal and Form APP-110 Respondent's Notice Designating Record on Appeal:** Since the proposed revision contemplates that, going forward, the appellant will be *submitting* the relevant document, revise all relevant checkboxes, which currently state "☐ An order granting a waiver of the cost under 3.50-3.58" to read:	The committee appreciates these suggestions for additional changes to these forms. However, these changes are beyond the scope of the current proposal. The committee will consider these suggestions during a later rules cycle. The committee respectfully declines to make this change to the forms. The committee's view is that that the obligation to submit true and correct copies is implicit. The suggested additional language does not appear at other places on this form where attachments are referenced or on other forms that refer to attachments (see, for example,

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	Commentator	Position	Comment	*Suggested* Committee Response
			"☐ A true and correct copy of the order granting waiver of the cost under 3.50-3.58." Same revision in multiple locations of relevant text box in APP-103, including 3(a)(4)(b)(i), 5(b)(2)(a), 5(c)(2)(a) and in APP-110, including 4(b)(2)(a), 5(b)(2)(a) and 5(c)(2)(a).	forms CM-110, DE-111, and GC-210). Adding this language here when it does not appear in connection with other documents submitted with or attached to forms could create the impression that the obligation to submit true and correct copies does not apply in these other situations.
			Additional Comment relative to Form APP-103 Appellant's Notice Designating Record on Appeal: Introductory section entitled "Record of Oral Proceedings in the Trial Court" and/or the election to proceed WITHOUT a record of the oral proceedings should be revised to more specifically inform appellant of the limited scope of the appeal if he or she elects to proceed without an oral record. Currently, section 4(a) states in part: "I understand that if I proceed without a record of the oral proceedings, the appellate division will not be able to consider what was said in the trial court during those proceedings in deciding whether legal error was made." The following possible revision is suggested: "I understand that if I elect to proceed without a record of the oral proceedings, the appeal will be strictly limited to legal error, and I will not be able to claim that the evidence was insufficient to support the judgment or to raise any other evidentiary issues."	The committee appreciates this suggestion for additional changes to this form. However, these changes are beyond the scope of the current proposal. The committee will consider this suggestion during a later rules cycle.

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	Commentator	Position	Comment	*Suggested* Committee Response
			As explained by *Rutter, Civil Appeals and Writs*, §4:45 Absence of a record of the oral proceedings (a) bars appellant from claiming the evidence was insufficient to support the judgment or raising any other evidentiary issues and (b) also precludes a determination that the trial court abused its discretion. [*Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 C4th 121, 132, 87 CR2d 132, 140; *Nielsen v. Gibson* (2009) 178 CA4th 318, 324, 100 CR3d 335, 339–340; *Barak v. Quisenberry Law Firm* (2006) 135 CA4th 654, 660, 37 CR3d 688, 692; *see also* ¶ *4:3*] Many self-represented appellants, who elect to proceed without an oral record, do not understand this limitation on appellate review and only learn of it at the end of the appellate process during oral argument or when they receive a written decision affirming the trial court on that basis.	

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JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 27, 2015

Title
Electronic Service: Authorization of Electronic Service on Trial and Appellate Courts

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 2.251 and 8.71

Recommended by
Appellate Advisory Committee
Hon. Raymond J. Ikola, Chair
Information Technology Advisory Committee
Hon. Terence L. Bruiniers, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2016

Date of Report
August 24, 2015

Contact
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Executive Summary

The Appellate Advisory Committee and the Information Technology Advisory Committee recommend amending rules 2.251 and 8.71 of the California Rules of Court to authorize electronic service on consenting courts. There is some ambiguity in the current rules regarding whether electronic service is authorized not only by, but also on, a court. This rule proposal would add language to rules 2.251 and 8.71 to clarify that electronic service on a court is permissible under the rules.

Recommendation

The Appellate Advisory Committee and Information Technology Advisory Committee recommend that the Judicial Council, effective January 1, 2016, amend rules 2.251 and 8.71 of the California Rules of Court to:

1. Add new subdivisions (j)(2) to rule 2.251 and (g)(2) to rule 8.71 that would authorize trial and appellate courts to consent to electronic service by either serving a notice on all parties or adopting a local rule; and
2. Make nonsubstantive amendments to subdivisions (a) and (c) of rule 8.71 that would make this rule more consistent with the language of trial court rule 2.251 and would consolidate provisions relating to the authorization for electronic service in the appellate courts.

Amended rules 2.251 and 8.71 are attached at pages 7–8.

Previous Council Action

The Judicial Council sponsored Senate Bill 367 in 1999 (Stats. 1999, ch. 514). This legislation enacted Code of Civil Procedure section 1010.6, which authorizes the electronic filing and service of documents in the trial courts. It also directed the council to adopt uniform rules, consistent with the statute, for electronic filing and service. Effective January 1, 2003, the Judicial Council adopted rules establishing procedures for electronic filing and service. Relevant to this proposal, the rules provided that a trial court may electronically serve any notice, order, judgment, or other document prepared by the court in the same manner that parties may serve documents by electronic service.

The Judicial Council later cosponsored SB 1274 (Stats. 2010, ch. 156), which amended Code of Civil Procedure section 1010.6 to recognize electronic service by a court of any notice, order, judgment, or other document. Although the bill introduced other substantive changes to the statute, this specific amendment placed the existing language of the rules into the statute for clarity.

The Judicial Council adopted rules, effective July 1, 2010, authorizing the Second Appellate District of the Court of Appeal to conduct a pilot project to test the use of electronic filing and service. Mirroring the provisions in the statute and trial court rules, these rules recognize electronic service by a court of any notice, order, opinion, or other document issued by the court. The scope of these appellate rules was extended, effective January 1, 2012, to all Courts of Appeal and to the California Supreme Court.

Rationale for Recommendation

Several California Rules of Court require that certain documents in appellate proceedings be served on the superior court. For example, rule 8.212(c)(1) requires that one copy of each brief in a civil appeal be served on the superior court clerk for delivery to the trial judge. Similar language also appears in rule 8.360 (briefs in felony appeals), rule 8.412 (briefs in juvenile appeals), and rule 8.630 (briefs in capital appeals). Rules 8.500 and 8.508, governing petitions for review filed in the Supreme Court, similarly require that copies of the petition be served on both the superior court and the Court of Appeal.

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There is some ambiguity as to whether the current rules authorize electronic service on a court. Rule 8.25(a), which generally addresses service of documents in appellate proceedings, requires that the parties serve documents "by any method permitted by the Code of Civil Procedure." Code of Civil Procedure section 1010.6 (electronic service and filing in the trial courts), rule 2.250 (electronic service in the trial courts), and rule 8.70 (electronic filing and service in the appellate courts) all define "electronic service" as service of a document "*on a party or other person*" (italics added); they do not expressly provide for service on a court.

Arguably, the term "other person" in these provisions could be interpreted to encompass courts. Rule 1.6(14) offers some support for this interpretation because it defines the term "person" as including "a corporation *or other legal entity* as well as a natural person." (Italics added.)

Nevertheless, Code of Civil Procedure section 1010.6 and rules 2.251 and 8.71 specifically address electronic service *by* a court without mentioning service *on* a court. This absence could be interpreted as indicating that the rules now only contemplate service by a court and do not contemplate service on a court.

This proposal would eliminate the ambiguity in the rules by expressly authorizing electronic service on a trial and appellate court with that court's consent. Electronic service may benefit the courts by improving efficiency because the clerk could forward the electronic copies to the trial judge by e-mail. It would also be more efficient and less costly for the parties in many cases.

Electronic service authorized on consenting courts

The amendment would add a new paragraph (2) to rules 2.251(j) and 8.71(g), which currently address electronic service by a court. The initial paragraph of these new subdivisions is modeled on the language of current rules 2.251(e)(2) and 8.71(c)(2), which provide that a document may not be served on a nonparty unless that nonparty consents or electronic service is otherwise provided for by law or court order.[1] The draft of new 2.251(j)(2) and 8.71(g)(2) would similarly prohibit electronic service on a court without the court's consent unless such service is provided for by law or court order.

Subparagraphs (A) and (B) of rules 2.251(j)(2) and 8.71(g)(2) would specify how a court indicates its agreement to accept electronic service. Subparagraph (A) is modeled on 2.251(b)(1)(A) and 8.71(a)(2)(A), which provide that a party may indicate that it agrees to accept electronic service by serving a notice on all parties. New 2.251(j)(2)(A) and 8.71(g)(2)(A) would similarly provide that a court may indicate that it agrees to accept electronic service by serving a notice on all the parties. Subparagraph (B) would provide that the court may also indicate its agreement to accept electronic service by adopting a local rule stating so.

[1] This rules proposal would relocate subdivision (c)(2) to new subdivision (a)(4), but would not amend its content.

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Nonsubstantive amendments to rule 8.71

Additional amendments to rule 8.71(a) and (c) are proposed. These nonsubstantive amendments make this rule more consistent with the language of trial court rule 2.251 and consolidate provisions relating to the authorization for electronic service in the appellate courts. The amendments would clarify that a document may be electronically served on a party or other person if electronic service is provided for by law or court order or if the party or person consents to this service. The amendments would also move the provision regarding service on a nonparty from subdivision (c) to subdivision (a).

Comments, Alternatives Considered, and Policy Implications

Comments

This rules proposal was circulated for public comment from April 17 to June 17, 2015. Nine comments were received in response. Five commentators agreed with the proposal, and three agreed with the proposal if modified. Although the California Department of Child Support Services did not expressly indicate its position with respect to the proposal, it did state its general support of modernization efforts that would increase efficiencies with its justice partners, including rules that would allow parties to serve documents electronically on the courts. Each of four specific modifications proposed by the commentators is discussed below.

First, the Civil Unit Managers of the Superior Court of Orange County recommended adding a new subpart (C) to rule 2.25(g)(3) that would provide as follows:

> The court designates a specific timeframe a hyperlink would be available for documents to be downloaded and each court maintains the original e-served document(s) for the public to obtain via the register of actions.

The Information Technology Advisory Committee (ITAC) declined to pursue the Civil Unit Managers' recommendation to amend subdivision (g) of rule 2.251. Rule 2.251(g) applies to all documents served by electronic notification and places the responsibility on the party, not the court, for maintaining a hyperlink where the document may be viewed and downloaded. Under rule 2.251(g)(3), the party must maintain this hyperlink until either (1) all parties in the case have settled or the case has ended and the time for appeals has expired, or (2) if the party is no longer in the case, the party has provided notice to all other parties that it is no longer in the case and that they have 60 days to download any documents, and 60 days have passed after the notice was given. Requiring courts to share the burden of maintaining the hyperlink, as recommended by the Civil Managers Unit, would effect a substantive rule change that is beyond the scope of this proposal and would require additional public comment.

In addition, ITAC declines to pursue this recommendation because the trial court rules separately address public access to court records in rules 2.500 et seq. These rules define which documents are accessible by the public and whether they are accessible remotely or only at the courthouse. Rule 2.507 defines the content required for electronically accessible registers of action. It is

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beyond the scope of this rules proposal to amend the trial court rules on public access to court records.

Second, Ms. Debbie Mochizuki, Supervising Attorney at the Court of Appeal, Fifth Appellate District, objected to the limited number of means identified in rule 8.71(g)(2) for courts to indicate their consent to electronic service. She explained that the Court of Appeal and superior courts in its jurisdiction have reached an oral agreement whereby the superior courts have agreed to accept appellate decisions and orders transmitted electronically. The Appellate Advisory Committee (AAC) is sensitive to Ms. Mochizuki's concern about disrupting the oral agreement described in her comment. Fortunately, the amendment to rule 8.71 would not appear to affect the validity of that oral agreement. Because rule 8.267(a) requires only that the Court of Appeal clerk "send," not "serve," the court's orders and opinions to the lower court or tribunal, the proposed amendment to rule 8.71(g), which addresses electronic service, would not apply.

Ms. Mochizuki also explained that requiring the adoption of local rules would be unnecessary and time consuming where the court is not mandating electronic service, but only indicating its consent to accept electronic service. AAC is sympathetic to the burden imposed on the appellate courts in adopting local rules of court. Rule 1.6(9) defines "local rule" as "every rule, regulation, order, policy, form or standard of general application adopted by a court to govern practice and procedure in that court." A general policy adopted by the court of accepting electronic service would appear to fall within this definition of a local rule. Rule 10.1030, in turn, provides that a "Court of Appeal must submit any local rule it adopts to the Reporter of Decisions for publication in the advance pamphlets of the Official Reports" and that a "local rule cannot take effect sooner than 45 days after the publication date of the advance pamphlet in which it is printed." While acknowledging the burden imposed on appellate courts in adopting local rules of court, the AAC determined that it was outside the scope of this rules proposal, as circulated, to amend either the existing definition of a local rule or the existing requirements relating to adoption of such rules. Nevertheless, the committee may consider a proposal to lessen the burden on appellate courts in future rules cycles.

Third, the San Diego Bar Association recommended using the term "consent" in lieu of "accept" and "agrees to accept" in proposed new subdivisions (j)(2) of rule 2.251 and (g)(2) of rule 8.71. The language in proposed new subdivisions mirrors subdivisions (b)(1) of rule 2.251 and (a)(2) of rule 8.71. Rules 2.251(b)(1) and 8.71(a)(2), which govern the consent by parties to electronic service, use the term "consent" and the phrase "agrees to accept" interchangeably. ITAC and AAC decline to pursue the bar association's recommendation where the language in rules 2.251(b)(1) and 8.71(a)(2) has not resulted in any known issues in the trial or appellate courts. The committees reasoned that any effort to make uniform the language in rules 2.251 and 8.71 should be comprehensive in scope, rather than piecemeal.

Lastly, the State Bar's Committee on Appellate Courts (CAC) recommended encouraging superior courts and the Courts of Appeal to include information about electronic service on their websites. Specifically, CAC suggested requiring the Courts of Appeal to list on their websites the

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superior courts within their district that accept electronic service and the e-mail addresses where those courts accept electronic service. This recommendation was not pursued as it is outside the scope of this rules proposal.

Alternatives

The committees considered not recommending any amendments to the rules. The rules may be interpreted to allow for electronic service on a court. The committees did not elect this alternative, however, because the rules are ambiguous and it may not be clear to all parties that courts can accept electronic service. The amendments to the rule would also clarify how a party may consent to electronic service.

Implementation Requirements, Costs, and Operational Impacts

Under this proposed rule, implementation of electronic service on a court would generally be voluntary; each court would determine whether to consent to electronic service. For those courts that chose to implement such service, the rule would require the court either to adopt a local rule or to provide notice in individual cases. These courts would also have to establish and monitor an e-mail account to receive documents served by the parties on the court. Because implementation would be voluntary, however, each court could determine whether potential efficiencies would outweigh these implementation costs. Potential efficiencies for the courts include being able to forward copies of briefs by e-mail to judges. The proposed amendment might also provide cost-savings for the parties because they would not have to pay the costs incurred by physical filing, including any copying, transportation, and mailing expenses.

Attachments

1. Cal. Rules of Court, rules 2.251 and 8.71, at pages 7–8
2. Comment chart, at pages 9–14

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Rules 2.251 and 8.71 of the California Rules of Court are amended, effective January 1, 2016, to read:

Rule 2.251. Electronic service

(a)–(i) * * *

(j) Electronic service by or on court

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

(2) A document may be electronically served on a court if the court consents to electronic service or electronic service is otherwise provided for by law or court order. A court indicates that it agrees to accept electronic service by:

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

(B) Adopting a local rule stating that the court accepts electronic service. The rule must indicate where to obtain the electronic service address at which the court agrees to accept service.

Rule 8.71. Electronic service

(a) ~~Consent to~~ Authorization for electronic service

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

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

~~(1)~~ (B) ~~When a~~ If the recipient agrees to accept electronic services as provided by these rules and the document ~~may be~~ is otherwise authorized to be served by mail, express mail, overnight delivery, or fax transmission~~, electronic service of the document is permitted when authorized by these rules~~.

(2)–(3) * * *

(4) 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.

(b) * * *

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(c) Service by the parties

~~(1)~~ Notwithstanding (b), parties are responsible for electronic service on all other parties in the case. A party may serve documents electronically directly, by an agent, or through a designated electronic filing service provider.

~~(2) A document may not be electronically served on a nonparty unless the nonparty consents to electronic service or electronic service is otherwise provided for by law or court order.~~

(d)–(f) * * *

(g) Electronic service by <u>or on</u> court

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

(2) A document may be electronically served on a court if the court consents to electronic service or electronic service is otherwise provided for by law or court order. A court indicates that it agrees to accept electronic service by:

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

(B) Adopting a local rule stating that the court accepts electronic service. The rule must indicate where to obtain the electronic service address at which the court agrees to accept service.

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SPR15-02 Electronic Filing and Service: Authorization of Electronic Service on Trial and Appellate Courts
Amend Cal. Rules of Court, rules 2.251 and 8.71
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	California Department of Child Support Services by Alisha A. Griffin, Director	NI	The California Department of Child Support Services (DCSS) appreciates the opportunity to provide input, express our ideas, and experiences with respect to the proposal identified above. DCSS supports modernizing and increasing efficiencies with our justice partners including rules that would allow parties to serve documents electronically to the courts.	DCSS's support is noted.
2.	Civil Unit Managers Superior Court of Orange County by Deborah Coel, Operations Analyst	AM	1. Position on Proposal Agree with the proposed changes with the following recommendation noted below in section 2. 2. Recommendation: Amend California Rules of Court 2.251(g) The Court agrees with the proposal. However, the Court respectfully requests that the Judicial Council consider amending California Rules of Court 2.251(g) in the following ways: a. Add letter (C) after 2.251(g)(3)(B): "(C) The court designates a specific timeframe a hyperlink would be available for documents to be downloaded and each court maintains the original e-served document(s) for the public to obtain via the register of actions."	The Civil Unit Managers' support is noted. ITAC declines to pursue the recommendation to amend subdivision (g) of rule 2.251. This subdivision applies to all documents served by electronic notification. It places the responsibility on the party, not the court, for maintaining a hyperlink where the document may be viewed and downloaded. The party must maintain this hyperlink until either (1) all parties in the case have settled or the case has ended and the time for appeals has expired, or (2) if the party is no longer in the case, the party has provided notice to all other parties that it is no longer in the case and that they have 60 days to download any documents, and 60 days have passed after the notice was given. Requiring courts to share the burden of maintaining the hyperlink is a substantive change to the rule that is beyond the scope of this proposal and would require

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	Commentator	Position	Comment	Committee Response
				additional public comment. It may be considered by ITAC in the future. In addition, the trial court rules separately address public access to court records in rules 2.500 et seq. These rules define which documents are accessible by the public and whether they are accessible remotely or only at the courthouse. Rule 2.507 defines the content required for electronically accessible registers of action. It is beyond the scope of this rules proposal to amend the trial court rules on public access to court records, but the recommendation may be considered by ITAC in the future.
			3. Request for Specific Comments a. Does the proposal appropriately address the stated purpose? The Court believes that this proposal addresses the intended purpose. Amending the Rules of Court will clarify when and how the Court may be served in the specific examples mentioned in the proposal. b. Would the proposal provide cost savings? If the Court elects to allow electronic service, an email inbox will need to be established to enable review of incoming service to the court. While the process functionality will be established, this won't necessarily be a cost savings for some courts.	The Civil Managers Unit's comments are noted. The proposed rule amendment leaves it in the court's discretion whether to accept electronic service of documents on the court. In making this decision, each court may consider whether the costs outweigh the benefits.

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	Commentator	Position	Comment	Committee Response
3.	Debbie Mochizuki, Supervising Attorney, Fifth Appellate District Court of Appeal	AM	The proposed language of rule 8.71(g)(2) appears too restrictive in terms of how a court may indicate that it agrees to accept electronic service. For example, our appellate court has implemented mandatory e-filing. To maximize efficiencies to be gained with e-filing in the appellate court, our court reached out to the CEOs of the superior courts in our district and secured their oral agreement to accept electronic service of our orders and opinions. Neither of the options in rule 8.71(g)(2) as proposed take our approach into account. As the court of appeal is not a party, serving the notice described in rule 8.71(g)(2)(A) would not work for us. Also, the adoption of a local rule of court appears an unnecessary and time consuming requirement given that the superior court is simply giving its consent to receiving electronic service and it is NOT mandating electronic service. A local rule of court is ordinarily used to notice an additional requirement that a local court will impose over and above the state rules of court. It seems a court should be able to announce its willingness to accept electronic service in whatever manner it deems fit provided it includes the electronic service address at which it agrees to accept service.	AAC notes Ms. Mochizuki's concerns, but concludes that this rules proposal would not impact the type of agreement identified in her comment. The scope of the proposed rule amendment is narrow in that it only applies to service on a court. Because rule 8.267(a) only requires that the Court of Appeal clerk *send* the court's orders and opinions to the lower court or tribunal, the proposed amendment to rule 8.71(g) would not apply. The oral agreement described in the comment would remain valid regardless of whether the council adopts this rules proposal. AAC is sympathetic to the burden imposed on courts in adopting local rules of court. Rule 1.6(9) defines "local rule" as "every rule, regulation, order, policy, form or standard of general application adopted by a court to govern practice and procedure in that court." A general policy adopted by the court of accepting electronic service would appear to fall within this definition of a local rule. Rule 10.1030, in turn, provides that a "Court of Appeal must submit any local rule it adopts to the Reporter of Decisions for publication in the advance pamphlets of the Official Reports" and that a "local rule cannot take effect sooner than 45 days after the publication date of the advance pamphlet in which it is printed." While acknowledging the burden imposed on courts in adopting local rules of court, the committees conclude that it is outside the scope of this rules proposal, as circulated, to amend either the existing definition of a local rule or the existing requirements relating to adoption

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	Commentator	Position	Comment	Committee Response
				of such rules.
4.	Orange County Bar Association by Ashleigh Aitken, President	A	No specific comments provided.	The Orange County Bar Association's support is noted.
5.	San Diego Bar Association Appellate Practice Session by Victoria E. Fuller, Chair	AM	We agree with the Appellate Advisory Committee's conclusion that there is some ambiguity as to whether the current rules authorize electronic service on a court. We also agree that the proposed revisions attempt to remove that ambiguity by expressly stating that electronic service on consenting courts is allowed under Rules 2.251 and 8.71. Express codification reduces doubt, removes uncertainty, and is a good thing. But we suggest a slight linguistic revision to maintain consistency within the proposed change. If the intention of the proposed change is to make it clear that electronic service on "consenting" courts is permitted, then the proposed changes should incorporate that expressly throughout. The current proposal uses language that varies between "consent," "indicates that it agrees" and "accept," which may lead to confusion among some practitioners. We therefore suggest the following revisions to proposed Rules 2.251(j)(2) and 8.71(g)(2), which address the manner in which a court consents to electronic service:	The San Diego Bar Association's comments are noted. The language proposed for new subdivisions (j)(2) of rule 2.251 and (g)(2) of rule 8.71 mirrors the language in subdivisions (b)(1) of rule 2.251 and (a)(2) of rule 8.71, which govern consent by parties to electronic service. Rules 2.251(b)(1) and 8.71(a)(2) use the term "consent" and the phrase "agrees to accept" interchangeably. ITAC and AAC decline to pursue the bar association's recommendation where the language in rules 2.251(b)(1) and 8.71(a)(2) has not resulted in any known issues in the trial or appellate courts. The committees reasoned that any effort to make uniform the language in rules 2.251 and 8.71 should be comprehensive in scope, rather than piecemeal.

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	Commentator	Position	Comment	Committee Response
			(2) A document may be electronically served on a court if the court consents to electronic service or electronic service is otherwise provided for by law or court order. A court ~~indicates that it agrees~~ [consents] ~~to accept~~ service by: (A) Serving notice on all parties that the court ~~accepts~~ [consents to] electronic service. The notice must include the electronic service address at which the court ~~agrees to~~ [will] accept service; or (B) Adopting a local rule stating that the court ~~accepts~~ [consents to] electronic service. The rule must indicate where to obtain the electronic service address at which the court ~~agrees to~~ [will] accept service.	
6.	The State Bar of California Committee on Appellate Courts by John Derrick, Chair	A	The Committee supports this proposal, with a recommendation for implementation. In response to the specific requests for comments, the Committee believes that electronic service on the courts would unquestionably save time and costs for litigants in terms of printing and mailing service copies of briefs and other filings. The cost savings could be especially meaningful for the State, in aggregate, in criminal appeals handled by appointed attorneys, in which the State currently reimburses the attorneys for printing and mailing costs for service copies.	The Committee on Appellate Court's (CAC) support is noted.

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	Commentator	Position	Comment	Committee Response
			In terms of implementation, the Committee recommends encouraging both superior courts and the Courts of Appeal to include information about electronic service on their websites. It would be particularly helpful for litigants to have the Court of Appeal websites in each District keep a current list of the superior courts in that District that accept electronic service, along with the individual email address for those courts, to indicate where documents should be served.	ITAC and AAC decline to pursue the CAC's recommendation because it is beyond the scope of this rules proposal. However, the committees may consider this recommendation in the future.
7.	Superior Court of Los Angeles County	A	No specific comments provided.	The superior court's support is noted.
8.	Superior Court of San Diego County by Michael Roddy, Executive Officer	A	Does the proposal appropriately address the stated purpose? Yes Would the proposal provide cost savings? Cost savings to the court of appeal on paper costs and minimal time savings for trial court appeals staff who would email the trial judge versus the current process of forwarding a hard copy.	The superior court's comments are noted.
9.	TCPJAC/CEAC Joint Rules Subcommittee	A	The JRS agrees that implementation of electronic service on a court needs to remain voluntary. The proposed language concerning a court's consent to electronic service provides additional clarity for the court. The proposed process for implementation of electronic service appears to be a very simple approach. The JRS concluded that this proposal will not lead to any significant implementation costs.	The subcommittee's support is noted.

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JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 26, 2015

Title
Civil Cases: Continued Suspension of Case Management Rules

Rules, Forms, Standards, or Statutes Affected
Amend. Cal. Rules of Court, rule 3.720

Recommended by
Civil and Small Claims Advisory Committee
Hon. Patricia M. Lucas, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2016

Date of Report
August 12, 2015

Contact
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Executive Summary

The Civil and Small Claims Advisory Committee recommends that a statewide rule of court on civil case management be amended to further extend the period during which courts have discretion to exempt certain types or categories of civil cases from the mandatory case management rules. The 2013 amendments to rule 3.720 were intended to help courts better address the state's fiscal crisis by decreasing the time spent by court staff and judicial officers in filing case management statements, setting and holding individual case management conferences, and performing other actions required by the case management rules. In light of the continuing fiscal crisis, the Civil and Small Claims Advisory Committee recommends a four-year extension of the discretion to grant such exemptions.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council amend rule 3.720 of the California Rules of Court, effective January 1, 2016, to extend until January 1, 2020, the period during which courts, by local rule, may exempt certain categories of general civil cases from the mandatory case management rules.

The text of the proposed amendment to the rule is attached at page 8.

Previous Council Action

Pursuant to the Trial Delay Reduction Act,[1] in 2001, the Judicial Council approved a major revision of civil case management rules,[2] to modernize case management practices, establish greater uniformity, and promote good case management.[3] One of the major substantive changes approved was the addition of new requirements for individualized case management review in all general civil cases,[4] within 180 days of the filing of the complaint, with specified exceptions, and that a case management conference be conducted in all applicable unlimited civil cases unless the court found it unnecessary.[5]

The case management rules have not been substantively amended since 2001. They were renumbered in 2007 as part of an overall rules reorganization. In 2009, an amendment added a new topic—issues relating to discovery of electronically stored information—to the list of items about which parties must meet and confer before the case management conference.[6] Other than those amendments, the case management rules remained the same until 2013, with courts holding individual case management conferences in all applicable unlimited general civil cases and performing individual case management review (although generally not holding conferences) in all limited general civil cases.[7]

In 2013, following requests from the superior courts in Los Angeles and Sacramento, the Judicial Council amended rules 3.712 and 3.720. The amendments authorized courts to adopt local rules exempting specified types or categories of general civil cases from mandatory case management rules if they had alternative procedures in place for case processing and trial setting for those cases.[8] The amendments were intended to be temporary, applying only to cases filed before January 1, 2016. The purpose was to help courts in addressing the current fiscal crisis by decreasing the time that court staff and judicial officers spent in filing case management statements, setting and holding individual case management conferences, and performing other actions required by the case management rules.

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[1] Gov. Code, § 68600 et seq.

[2] All references to rules in this report are to the California Rules of Court, unless otherwise noted.

[3] Judicial Council of Cal., Civ. & Small Claims Advisory Com. Rep., *Case Management* (Dec. 7, 2001), p. 3; *id.*, mins. (Dec. 18, 2001), pp. 16–18.

[4] See rule 1.6(4) (" 'General civil case' means all civil cases" except probate, guardianship, conservatorship, juvenile, family law, small claims, and unlawful detainer proceedings, and certain civil petitions).

[5] See rules 3.721 and 3.722 (formerly rule 212(a), (b)).

[6] See rule 3.724(8).

[7] Rule 3.722(e) authorizes courts to provide by local rule that counsel and parties need not attend case management conferences in limited civil cases.

[8] Judicial Council of Cal., Civ. & Small Claims Advisory Com. Rep., *Civil Cases: Temporary Suspension of Case Management Rules* (Jan. 31, 2013); *id.*, mins. (Feb. 26, 2013), p. 8.

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Rationale for Recommendation

Most courts throughout the state have not implemented local rules adopting exemptions from case management rules as authorized by rule 3.720. But at least six courts have implemented local rules adopting exemptions, suspending the mandated case management procedures for some or all of the general civil cases in their court. Other courts may wish to do so if the rule is amended to extend the sunset date until January 1, 2020.[9]

The Superior Court of Los Angeles County is one of the six that has exercised the temporary discretion afforded under rule 3.720.[10] It reports that it has exempted all general civil personal injury cases (more than 16,000) and also all limited civil cases from the case management rules, after determining that those cases typically required fewer appearances and less direct case management than other general civil cases. Taking this step allowed the court to consolidate the pretrial handling of cases. Attorneys and the public reportedly have endorsed the action, and it has produced substantial savings, because fewer court appearances and filings are required and fewer courtrooms require staffing.

The Superior Court of Shasta County reported a similar experience. By exempting all limited and unlimited civil cases from the case management rules,[11] it was able to combine two civil departments into one, freeing the other to assist in alleviating expanding family law calendars. The court reports that the changes have been embraced by local civil and family law attorneys and have produced sufficient savings in staff resources that it may be possible to restore clerks' office hours for the public in the new fiscal year. Both courts report that continuation of the discretion afforded by the temporary amendment to rule 3.720, allowing exemptions from the case management rules, is critical to their functioning in light of ongoing funding reductions.[12]

Although individualized case management conferences have been considered the best practice for a court's oversight of the pace of civil litigation for more than 10 years, under current budgetary constraints it is not possible for all courts to employ optimal case management practices. Extending the period during which courts may exempt certain cases from mandated case management procedures will allow courts the continued flexibility to determine whether they can more effectively manage their civil cases overall, with current limited resources, by

[9] Although courts have seen modest budget increases recently, they continue to manage nearly $290 million in ongoing reductions.

[10] See Super. Ct. L.A. County, Local Rules, rule 3.23 ("Exemption From Case Management Rules").

[11] See Super. Ct. Shasta County, Local Rules, rule 3.02 ("All Purpose Assignment; Exemption From Case Management Conference").

[12] The Monterey, Sacramento, San Bernardino, and San Joaquin courts also report having exercised the temporary discretion afforded under rule 3.720. (See Super. Ct. Monterey County, *Alternative to Civ. Case Management, www.monterey.courts.ca.gov/Documents/Civil/2013-Alternative-to-Civil-Case-Management.pdf* [exempting all civil cases]; Super. Ct. Sacramento County, Local Rules, rules 2.21, 2.52 [all limited and short cause civil cases]; Super. Ct. San Bernardino County, Local Rules, rule 411 [all general civil cases and complex cases]; Super. Ct. San Joaquin County, Local Rules, rule 3–102.A.6.)

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eliminating individualized case management conferences and review for some types of cases. Having the ability to do so will free court staff from filing and processing case management statements and scheduling case management conferences, and will decrease judicial officer time spent reviewing cases and holding conferences.

At the same time, the mandates of the Trial Delay Reduction Act remain in effect and courts remain responsible for overseeing the progress of cases before them, eliminating delay in the progress and ultimate resolution of litigation. The proposed amendment would retain the provision, added to rule 3.720 in 2013, requiring that courts have an alternative method in place for processing civil cases and to ensure trial dates are set.

Comments, Alternatives Considered, and Policy Implications

Comments received

This proposal was circulated for public comment from April 17 to June 17, 2015. In addition to asking for general comments on the appropriateness of the proposed amendment, the committee specifically asked whether four years was an appropriate period for the proposed extension. The committee also asked courts for input on the following cost and implementation matters:

- Whether the proposal would provide cost savings;
- What steps would be required to implement the proposal;
- Whether two months would provide sufficient time for implementation; and
- How well the proposal would work in courts of different sizes.

Seven comments were received, with commentators including four courts, one county bar association, the California Judges Association (CJA), and the Joint Rules Subcommittee of the Judicial Council's Trial Court Presiding Judges and Court Executives Advisory Committees (Joint Rules Subcommittee). All agreed with the proposal. A chart summarizing all comments and the committee's responses is attached at pages 9–16.

Comments generally supporting the proposal. As noted, all of the commentators supported the proposal. CJA relayed that, with only one dissent, its membership overwhelmingly supported the proposal. The consensus was that it would allow individual courts discretion, in "uncertain financial times," to adopt alternative procedures for case processing (for example, relying on telephone status conferences instead of case management conferences). The Joint Rules Subcommittee observed that the proposal would allow courts "to modify or streamline their civil case management process to reflect their economic and staffing realities," and expressed appreciation that the proposal retained discretion for courts in this area, making the provision voluntary.

The Superior Court of Los Angeles County reported that it "strongly support[s]" the proposal, and considers approval of the proposal to be "critical" to the court's functioning. The Superior Court of Shasta County also "urges" approval of the proposal because it will give all courts "the flexibility necessary to make independent administrative and operational decisions that are best

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suited for each respective court." The Shasta court noted that it particularly needs this flexibility because it has significantly fewer staff (41.5 vacant support staff positions) and a dramatically increased number of criminal, family law, and traffic filings.

Length of the extension. Five commentators specifically responded to the question about whether four years would be an appropriate extension of the temporary discretion to exempt certain categories of cases from case management rules (i.e., the Los Angeles and San Diego courts, the Joint Rules Subcommittee, the bar association, and CJA). All agreed that four years would be an appropriate period. The bar association noted that four years would allow other courts time to evaluate and implement the temporary provision, by adopting a local rule. A four-year period, the bar association observed, also would allow courts and parties to evaluate the results in terms of management of court time and resources and the effect of the exemption for certain types of cases.

CJA reported that, with one exception, its membership overwhelmingly supported either the proposed four-year extension or eliminating the sunset provision altogether. The committee has concluded that extending the sunset date by four years would be the best course as it would provide all courts further time to use the temporary provision in dealing with the continuing fiscal crisis. It also would allow the committee sufficient time to consider whether further changes should be recommended to the case management rules.

Cost savings. Four commentators specifically responded to the question about whether the proposal would provide court savings, all agreeing that it would do so. The Joint Rules Subcommittee commented that the proposal would reduce costs because fewer court staff would be required. The bar association concurred, observing, as noted, that case management conferences generally "are time-consuming" for litigants and courts, and do not appear to improve case management.

The Los Angeles court reported that it has realized "substantial savings" as a result of the discretion that the proposal would preserve, as the court is able to handle cases with "far fewer appearances," fewer filings are required, and fewer courtrooms require staffing. The Shasta court reported that the temporary provision had allowed it to condense two dedicated civil law and motion departments into a single department, freeing the other department to help alleviate an "ever-increasing family law calendar." The court has been able reassign support staff to areas of more critical need. If the proposal is adopted, the Shasta court anticipates the resulting savings may allow it to restore services to the public by expanding the civil clerks' office hours.

Effective date of the proposed rule change. Two commentators, the Joint Rules Subcommittee and the Superior Court of Los Angeles County, responded to the specific question about whether a two month period between council approval and the effective date of the rule change would be sufficient. Both agreed that two months would suffice.

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Courts of different sizes. Two commentators, the Joint Rules Subcommittee and the Superior Court of Shasta County, responded to the specific question about whether the proposal would work well in courts of different sizes. The Joint Rules Subcommittee commented that it would work "very well" because courts could exercise discretion in implementing it according to their individual needs. The Shasta court agreed, observing that the proposal would "provide courts throughout California with the flexibility" to make "independent administrative and operational decisions" best suited for their individual circumstances.

Alternatives considered

Before circulating the proposal for comments, the advisory committee considered the alternative of taking no action to extend the sunset date stated in the rule. It concluded, however, that several courts are relying on the flexibility that the temporary provision affords to manage the fiscal crisis and very much wanted to continue doing so.

The committee also considered the appropriate length of time for the extension of the sunset date, and concluded that four years was appropriate. Four years would provide courts—including recent adopters[13]—sufficient time to realize the benefits afforded by the temporary provision. It also would allow the committee time to consider whether it should propose other ongoing changes to case management rules.

Implementation Requirements, Costs, and Operational Impacts

If approved, this proposed rule change would not require any action and should not raise any costs or place any operational impacts on the courts. The proposal would retain for courts the discretion to exempt certain types or categories of general civil cases from the case management rules. A court would only avail itself of the option if it determined that doing so would assist it in better managing its resources. As the Joint Rules Subcommittee observed in its comments, if the proposal is approved, a court would only need to amend its local rules and provide notice to the local bar to avail itself of the alternative that it allows. The Los Angeles and Shasta courts both observed that they already had taken the necessary steps and do not anticipate approval of the proposal would require further action on their parts. The committee observes that rule 10.613(i) offers a method for expediting changes to courts' local rules, if good cause exists, and that this may allow courts still wishing to do so, to implement the proposed rule change without significant delay.

Relevant Strategic Plan Goals and Operational Plan Objectives

The recommendation falls within the ambit of Strategic Plan Goal III: Modernization of Management and Administration, which, among other things, recommends a policy of developing and promoting "innovative and effective practices to foster the fair, timely, and efficient processing and resolution of all cases."[14] It also is consistent with the Operational Plan,

[13] The Superior Court of Shasta County, for example, reportedly just took the requisite action last fall.

[14] Judicial Council of Cal., *Justice in Focus: The Strategic Plan for California's Judicial Branch 2006–2016* (Dec. 12, 2014), p. 20.

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Objective 5: "Develop and implement effective trial and appellate case management rules, procedures, techniques, and practices to promote the fair, timely, consistent, and efficient processing of all types of cases."[15]

Attachments

1. Cal. Rules of Court, rule 3.720, at page 8
2. Chart of comments, at pages 9–16

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[15] Judicial Council of Cal., *The Operational Plan for California's Judicial Branch, 2008–2011*, p. 12.

California Rules of Court, rule 3.720 would be amended, effective January 1, 2016, to read:

Rule 3.720. Application

(a) * * *

(b) Emergency suspension of rules

A court by local rule may exempt specified types or categories of general civil cases filed before January 1, ~~2016~~ 2020, from the case management rules in this chapter, provided that the court has in place alternative procedures for case processing and trial setting for such actions, including, without limitation, compliance with Code of Civil Procedure sections 1141.10 et seq. and 1775 et seq. The court must post the alternative procedures on its website.

(c) * * *

Advisory Committee Comment

Subdivision (b) of this rule is an emergency measure in response to the limited fiscal resources available to the courts as a result of the current fiscal crisis and is not intended as a permanent change in the case.

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Civil Cases: Continued Suspension of Case Management Rule (amend rule 3.720)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	California Judges Association by Joan P. Weber, President	A	In 2013, the Judicial Council amended the statewide rules of court on civil case management to give courts the discretion to exempt certain types or categories of general civil cases from the mandatory case management rules. (Rule 3.720) The amendments were an emergency measure, intended to help courts to better address the state's fiscal crisis by decreasing the time spent by court staff and judicial officers in filing case management statements, setting and holding individual case management conferences, and performing other actions requir3ed by the case management rules. The exemption provided in the rule was intended to be temporary, and by the terms of the amended rule applies only to cases filed before January 1, 2016. The proposal would extend the exemption in light of the continuing fiscal crisis. With the exception of one dissenting opinion, the overwhelming response was that Rule 3.720 should either be extended or amended with no sunset provision. As to those expressing support for the extension, all voiced support for the proposition that in these uncertain financial times each Court should have the ability and the discretion to suspend the CMC rules so long as alternative procedures are available for case processing. The TSC has proven to be a more appropriate case management tool. California Judges Association supports extending the rule or making it permanent.	The committee notes the commentator's support for extending or eliminating the sunset date provided in rule 3.720(b). The committee concluded that a four-year extension was appropriate. This will provide courts further time to use the temporary provision in dealing with the fiscal crisis, including courts that just recently adopted a local rule or that may have been considering whether to do so. It also will allow the committee sufficient time to consider whether further changes should be recommended to the case management rules.

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

SPR15-10
Civil Cases: Continued Suspension of Case Management Rule (amend rule 3.720)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
2.	Orange County Bar Association By Ashleigh Aitken, President	A	The proposal adequately addresses the stated purpose and/or goal. This will save time and resources for courts which will be better spent elsewhere. CMCs are generally time-consuming for all parties, courts and staff, do not appear to result in greater case management by the courts and parties, and create unnecessary expense. The four-year time period appears to be appropriate for continuing the emergency exemption. This time period will allow the courts to continue to evaluate and implement the exemption. The time will further allow the courts and parties to determine how utilizing the exemption affects the court's time and resources and how it affects (if it does at all) the management of certain cases.	The committee notes the commentator's agreement with the proposal.
3.	Superior Court of Los Angeles County	A	We strongly support the advisory committee's proposed extension until 2020 of the exemption from the case management rules found in Rule 3.720 of the California Rules of Court. This exemption in 2012 has allowed the Los Angeles Superior Court to address the fiscal crisis that we faced and still face while still meeting our obligations to the public. Following this exemption, and in compliance with our local rule 3.23, the Court exempted general civil personal injury cases from the case management rules. These cases currently are consolidated in four courtrooms for all pretrial matters, whereas far more courtrooms would be needed to handle them without the exemption. The feedback that our Court has received from the bench, bar,	The committee notes the commentator's support for the proposal.

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SPR15-10
Civil Cases: Continued Suspension of Case Management Rule (amend rule 3.720)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			and the general public is positive with an acceptance and an approval of the management of these cases. The exemption has resulted in substantial savings in that we are able to handle these cases with far fewer court appearances, filings, and staffed courtrooms. The committee asks whether four years is appropriate for the extension. We believe that it is. The committee has also asked whether there would be implementation requirements, and whether two months would be sufficient for implementation. Because we already are functioning with the exemption, there would be no new implementation requirements, and no time is needed for implementation. The continuation of the exemption is critical to our Court's functioning, and we are grateful that the advisory committee is considering recommending its continuation.	
4.	Superior Court of Riverside County	A	No specific comment.	The committee notes the commentator's agreement with the proposal.
5.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	Does the proposal appropriately address the stated purpose? Yes. Is four years an appropriate period for extending the emergency exemption? Yes.	The committee notes the commentator's agreement with the proposal.
6.	Superior Court of Shasta County by Hon. Gregory S. Gaul	A	Shasta County Superior Court (hereinafter "Court") employed two hundred (200) employees prior to 2008. As budget cuts began being imposed in 2008, the Court realized that	The committee notes the commentator's agreement with the proposal.

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Civil Cases: Continued Suspension of Case Management Rule (amend rule 3.720)
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	Commentator	Position	Comment	Committee Response
			all vacant positions would need to remain unfilled, unless essential to keeping courtrooms open to the public, or as required for public safety within the courthouse. Despite exploring all available cost-cutting measures, including employee furloughs, the Court was faced with reducing services to the public. This included closure of the clerks' offices at 2:00 p.m. each day and closing the branch court located in Burney, California. At the end of fiscal year 2013/2014, the Court had more than thirty vacant employee positions, but was still faced with making tough decisions to address the projected 2014/2015 fiscal year budget shortfall. In June 2014, the Court was forced to lay off support staff for the first time in the Court's history. As a result, the Court currently has 41.5 vacant support staff positions. Despite a dramatic increase in criminal, family law, and traffic filings, the Court was, and is currently performing an increasing workload with more than twenty percent (20%) fewer employees. The resulting increase in workload, being performed by less people, meant the Court needed to have flexibility in making the best administrative and operational decisions for our specific Court. One solution to this dilemma was the Court's decision to suspend the use of civil case management conferences for all limited and unlimited civil cases, which has allowed our court to condense two dedicated civil law	

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	Commentator	Position	Comment	Committee Response
			departments into one. A significant operational benefit from this change is that a courtroom was freed up to be available to assist in alleviating the ever-increasing family law calendars. More importantly, this change allowed the court to reassign support staff to areas of more critical need. The Court held brown bag meetings with the civil bar before and after the January 1, 2015 suspension of case management conferences. These changes have been implemented without negative repercussions, and they have been both welcomed and embraced by the local civil and family law attorneys. Significantly, from a budgetary point of view, the suspension of case management conferences has resulted in the elimination of two case management conference calendars, the support staff necessary to process case management conference filings, the support staff necessary to pull and return the files for cases that were previously calendared for case management proceedings, and the research attorney time spent reviewing and preparing the files for a judicial officer. The primary goal of our Court during fiscal year 2015/2016, will be to restore services to the public upon any receipt of restored funding. This will include expanding the civil clerk's office hours to the public. However, the saving of staff resources realized through the	

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SPR15-10
Civil Cases: Continued Suspension of Case Management Rule (amend rule 3.720)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			suspension of civil case management conferences is essential to the Court's desire to increase the hours of public access to court services. Shasta County Superior Court urges the Judicial Council to approve the proposed amendment to California Rules of Court, Rule 3.720(b), to provide that the emergency suspension of the case management rules currently scheduled to sunset in 2016, be amended to sunset in 2020. Such an amendment will provide courts throughout California with the flexibility necessary to making independent administrative and operational decisions that are best suited for each respective court.	
7.	Judicial Council Trial Court Presiding Judges and Court Executives Advisory Committee By Joint Rules Subcommittee (JRS)	A	The JRS identified the following fiscal/operational impact on the trial courts: • Significant positive fiscal impact; and • Requires development of local rules and/or forms. This proposal would allow courts to modify or streamline their civil case management process to reflect their economic and staffing realities. The original rule required courts to enact a new local rule, and not all courts have done that because of the lead time involved. The proposed extension will allow courts to better assess their capacity and make appropriate local rule	The committee notes the commentator's agreement with the proposal.

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

	Commentator	Position	Comment	Committee Response
			changes. The subcommittee appreciates that the exemption of specified types or categories of general civil cases filed before January 1, 2020, from the case management rules in this chapter remains voluntary and at the courts' discretion. **The following are responses to the proposal's Request for Specific Comments:** Does the proposal appropriately address the stated purpose? ***Yes.*** Is four years an appropriate period for extending the emergency exemption? ***Yes.*** Would the proposal provide cost savings? If so please quantify. ***Yes. Fewer staff would be required if a court opts out of some or all of the civil case management process.*** 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 requirements would include a local rule change and a notice to the local bar.*** Would two months from Judicial Council approval of this proposal until its effective date	

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SPR15-10
Civil Cases: Continued Suspension of Case Management Rule (amend rule 3.720)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			provide sufficient time for implementation? ***Yes.*** How well would this proposal work in courts of different sizes? ***Very well. Courts can adapt it to meet their own needs.***	

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

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 27, 2015

Title
Civil Practice and Procedure: Summary Judgment Proceedings

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 3.1350 and 3.1354

Recommended by
Civil and Small Claims Advisory Committee
Hon. Patricia M. Lucas, Chair
Appellate Advisory Committee
Hon. Raymond J. Ikola, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2016

Date of Report
August 21, 2015

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Executive Summary

To reduce the amount of facts and evidence presented in motions for summary judgment and not pertinent to a decision on the motion, the Civil and Small Claims Advisory Committee and the Appellate Advisory Committee recommend amending the California Rules of Court relating to summary judgment motions. Specifically, the committees recommend amending rule 3.1350 to define "material facts" and clarify that the separate statement of undisputed material facts in support of or opposition to a motion for summary judgment should include only material facts and not any facts that are not pertinent to the disposition of the motion. In addition, they recommend amending rule 3.1354 to eliminate one example of an objection on relevance grounds to evidence in support of summary judgment.

Recommendation

The Civil and Small Claims Advisory Committee and the Appellate Advisory Committee recommend that the Judicial Council, effective January 1, 2016:

1. Amend rule 3.1350 to define "material facts" and clarify that the separate statement of undisputed material facts in support of or opposition to a motion for summary judgment should include only material facts; and

2. Amend rule 3.1354 to eliminate one example of an objection on relevance grounds to evidence in support of summary judgment.

The text of the amended rules is attached at pages 9–14.

Previous Council Action

Rule 3.1350 was amended effective January 1, 2008, to revise the format for separate statements submitted in support of a motion for summary judgment or summary adjudication of issues. Effective January 1, 2007, the council amended rule 3.1354 to specify the format of written objections to evidence in summary judgment and summary adjudication motions and to require the objecting party to provide a proposed order for ruling on the objections.

Rationale for Recommendation

The suggestion that led to this proposal and a related legislative proposal originated with the Ad Hoc Advisory Committee on Court Efficiencies, Cost Savings, and New Revenue. In spring 2012, the ad hoc committee proposed amending Code of Civil Procedure section 437c to limit the requirement that the court rule on objections to evidence. The proposal, which is intended to reduce the time and expense of court proceedings, would have added to subdivision (g) the following: "The court need rule only on those objections to evidence, if any, on which the court relies in determining whether a triable issue exists." In support of this amendment, the ad hoc committee stated, in part:

> Motions for summary judgment are some of the most time-consuming pretrial matters that civil courts handle. Judges may spend hours ruling on evidentiary objections for a single summary judgment motion. Frequently, the number of objections that pertain to evidence on which a court relies in determining whether a triable issue of fact exists is a small subset of the total number of objections made by the parties. Substantial research attorney and judicial time would be saved by the proposed amendment, thus allowing the trial courts to handle other motions more promptly.

The proposal was referred to the Civil and Small Claims Advisory Committee, which determined that working with the Appellate Advisory Committee on this issue would be helpful. Through a joint subcommittee, the advisory committees developed this rule proposal and a companion proposal to amend Code of Civil Procedure section 437c.

Both proposals are intended to reduce the burden of large numbers of evidentiary objections on trial courts, without resulting in a corresponding negative impact on the appellate courts.

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Although the courts have not collected comprehensive data on the time and resources expended in ruling on objections to evidence offered in support of or opposition to summary judgment motions, anecdotal reports from advisory committee members (both judges and attorneys) indicate that they are substantial. Advisory committee members state that many objections are unnecessary and there is no need for rulings on those objections. In one reported case, the moving papers in support of summary judgment totaled 1,056 pages, plaintiff's opposition was nearly three times as long and included 47 objections to evidence, and the defendants' reply included 764 objections to evidence. (*Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 249, 250–251, and 254.)

Currently, some judges rule on evidentiary objections only if the evidence objected to is offered in support of a fact the judge is considering in determining whether to grant the motion. Many judges don't have the time to rule on all evidentiary objections, including those that will have no effect on the determination of the motion.[1] This approach was put forward in *Biljac Assocs. v. First Interstate Bank* (1990) 218 Cal.App.3d 1410, 1419–1420, which was overruled in part and disapproved in *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 532 to the extent it permits the trial court to avoid ruling on specific evidentiary objections. (Under *Biljac*, rather than a ruling on each evidentiary objection, the trial court judge's statement that the summary judgment decision was based only on competent and admissible evidence would have been sufficient. (See *Biljac, supra*, 218 Cal.App.3d at p. 1419.)

Until the California Supreme Court issued its opinion in *Reid*, the effect of a trial court's failure to rule on evidentiary objections that were properly presented was unclear. Some Courts of Appeal had held that objections made in writing were waived if not raised by the objector at the hearing and ruled on by the court.[2] In *Reid, supra*, 50 Cal.4th at pp. 531–532, the court disapproved this prior case law as well as its own prior opinions[3] to the extent they held that the failure of the trial court to rule on objections to summary judgment evidence waived those objections on appeal.

The court also held that the trial court must expressly rule on properly presented evidentiary objections, disapproving a contrary procedure outlined in *Biljac*. Thus, under *Reid*, evidentiary objections made in writing or orally at the hearing are deemed "made at the hearing" under section 437c(b)(5) and (d), must be ruled on by the trial court, and if not ruled on by the trial court, are presumed to have been overruled and are preserved for appeal. "[I]f the trial court fails to rule expressly on specific evidentiary objections, it is presumed that the objections have been overruled, the trial court considered the evidence in ruling on the merits of the summary judgment motion, and the objections are preserved on appeal." (*Reid, supra*, 50 Cal.4th at p.

[1] *California Judges Benchbook: Civil Proceedings—Before Trial*, 2d ed. (CJER 2008) § 13.50 and anecdotal reports.

[2] For example, *Charisma R. v. Kristina S*. (2009) 175 Cal.App.4th 361, 369 and *Jones v. P.S. Development Co., Inc.* (2008) 166 Cal.App.4th 707, 711.

[3] *Ann M. v. Pacific Plaza Shopping Center* (1993) 6 Cal.4th 666, 670, fn. 1 and *Sharon P. v. Arman, Ltd.* (1999) 21 Cal.4th 1181, 1186, fn. 1.

534.) The Supreme Court declined to address the standard of review that would apply to objections that were presumed to have been overruled, stating, "we need not decide generally whether a trial court's rulings on evidentiary objections based on papers alone in summary judgment proceedings are reviewed for abuse of discretion or reviewed de novo." (*Id.* at p.535.)

The *Reid* court recognized "that it has become common practice for litigants to flood the trial courts with inconsequential written evidentiary objections, without focusing on those that are critical. [Footnote omitted.] Trial courts are often faced with 'innumerable objections commonly thrown up by the parties as part of the all-out artillery exchange that summary judgment has become.' [Citation omitted.]" (*Reid, supra,* 50 Cal.4th at p. 532.) The Supreme Court proposed a solution: "To counter that disturbing trend, we encourage parties to raise only meritorious objections to items of evidence that are legitimately in dispute and pertinent to the disposition of the summary judgment motion. In other words, litigants should focus on the objections that really count. Otherwise, they may face informal reprimands or formal sanctions for engaging in abusive practices." (*Ibid*.)

Rule 3.1350. To encourage attorneys to raise only objections to evidence truly in dispute, rule 3.1350 of the California Rules of Court is amended to add the following definition of "material facts": "facts that relate to the cause of action, claim for damages, issue of duty, or affirmative defense that is the subject of the motion and that could make a difference in the disposition of the motion." The definition is based on *Los Angeles Nat. Bank v. Bank of Canton* (1991) 229 Cal.App.3d 1267, 1274, in which the court stated, "In order to prevent the imposition of a summary judgment, the disputed facts must be 'material,' i.e., relate to a claim or defense in issue which could make a difference in the outcome." The advisory committees determined that this amendment is consistent with the requirement in Code of Civil Procedure section 437c(c) that provides, in part, "In determining whether the papers show that there is no triable issue as to any material fact the court shall consider *all* of the evidence set forth in the papers, except that to which objections have been made and sustained by the court." (Italics added.) The committees defined "material facts" to clarify that the facts to be included in a separate statement are those that show whether there is a triable issue under the statute.

In addition to defining material facts, the rule is amended to provide that the separate statements in support of and opposition to summary judgment should contain only material facts and not facts that are not pertinent to the court's disposition of the motion. Specifically, subdivision (d) is amended to add the following provision:

> (2) The separate statement should include only material facts and not any facts that are not pertinent to the disposition of the motion.

Subdivision (f) is amended to add the following:

> (3) If the opposing party contends that additional material facts are pertinent to the disposition of the motion, those facts must be set forth in the separate

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> statement. The separate statement should include only material facts and not any facts that are not pertinent to the disposition of the motion. Each fact must be followed by the evidence that establishes the fact. Citation to the evidence in support of each material fact must include reference to the exhibit, title, page, and line numbers.

If the material facts and supporting evidence are limited to those that are pertinent to the disposition of the motion, objections to the evidence should similarly be limited, which would further the goals of the proposal. The committees expect that these changes will clarify for attorneys filing and opposing summary judgment motions that their separate statements should address only facts claimed to be without dispute and pertinent to the court's decision on the motion. An advisory committee comment to the rule reiterates this and cites to *Los Angeles Nat. Bank* and *Reid*, stating:

> Subdivision (a)(2). This definition is derived from statements in *Los Angeles Nat. Bank v. Bank of Canton* (1991) 229 Cal.App.3d 1267, 1274 ("In order to prevent the imposition of a summary judgment, the disputed facts must be 'material,' i.e., relate to a claim or defense in issue which could make a difference in the outcome.") and *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 532–533 ("[W]e encourage parties to raise only meritorious objections to items of evidence that are legitimately in dispute and pertinent to the disposition of the summary judgment motion.").
>
> Subdivisions (d)(2) and (f)(3). Consistent with *Reid*, these provisions are intended to eliminate immaterial facts from separate statements and thereby reduce the number of unnecessary objections to evidence.

Rule 3.1354. Rule 3.1354 of the California Rules of Court is amended to require that objections on specific evidence be referenced by the objection number in a column of a separate statement in opposition or reply to a motion. Currently, the rule provides that objections on specific evidence *may* be referenced in this manner.

The rule is also amended to eliminate one particular example of an objection on relevance grounds to evidence that is not pertinent to a decision on the motion. The advisory committees believe that, particularly in light of the proposed changes to rule 3.1350, this example is not helpful to include in the rule because the inclusion of irrelevant evidence should be rare.

These changes are intended to reduce the number of unnecessary objections and the need to rule on all objections—even those not material to disposition of the summary judgment motion—and to result in significant reduction of time spent by trial court research attorneys and judges, without causing a significant increase in appellate court time.

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Comments, Alternatives Considered, and Policy Implications

The proposal circulated for public comment from April 17 to June 17, 2015. Nine commentators submitted comments; six agreed with the proposal and the other three agreed but suggested modifications.[4] Commentators included two superior courts, the California Judges Association (CJA), the Joint Rules Subcommittee (JRS) of the Trial Court Presiding Judges and Court Executives Advisory Committees, State Bar of California committees, and local bar associations. Commentators that agreed with the proposal and did not suggest any modifications included the CJA, the JRS, the Superior Courts of Los Angeles and San Diego Counties, a State Bar committee, and the Orange County Bar Association. The most significant comments are discussed below.

Rule 3.1350: Content of separate statement

Discussing the amendments that address what should be in the separate statements in support of and opposition to summary judgment (subdivisions (d)(2) and (f)(3), respectively), the State Bar Committee on Administration of Justice (CAJ) and its Committee on Appellate Courts suggested limiting the text to the following: "The separate statement should include only material facts." These commentators suggested that the additional language in the proposal that circulated, which states that the separate statement should not include "background facts or other facts that are not pertinent to the disposition of the motion," is unclear and likely to lead to confusion. The committees believe it would be helpful to describe what should not be included in these statements. The proposed amendment is designed to give direction to attorneys to focus on what is in dispute and not include other facts. The committees therefore declined to make the specific change suggested by the commentators, but after thorough discussions, decided to shorten the text and eliminate the word "background." The committees also believe that use of "not pertinent" is clear and declined to change it. The provisions now read "The separate statement should include only material facts and not any facts that are not pertinent to the disposition of the motion."

The State Bar Litigation Section Rules and Legislation Committee suggested that subdivision (f)(3) be revised to state that the opposing party must list in its separate statement any additional material facts that it contends are undisputed and show that the moving party is not entitled to summary judgment or summary adjudication. The current rule provides only that the opposing party set out the moving party's facts and state whether they are disputed (and if so, provide supporting evidence) or undisputed and any additional material facts that are disputed. The suggested change would add to the items to include in the separate statement in opposition undisputed facts that show the moving party should not be granted summary judgment. The commentator notes that many practitioners already do this and it is helpful to trial courts. The commitees discussed this thoroughly. They noted that Code of Civil Procedure section 437c(b)(3) sets out what the opposition papers must include:

[4] The text of all comments received and committee responses is included in a comment chart attached at pages 15–25.

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- A response to each of the material facts contended by the moving party to be undisputed, indicating whether the opposing party agrees or disagrees that those facts are undisputed; and

- Any other material facts that the opposing party contends are disputed. Each fact claimed to be disputed must be followed by a reference to the supporting evidence.

To ensure that the rule amendment is consistent with section 437c, the committees declined to add a provision stating that the opposing party should or must include specifically any *undisputed* facts that would defeat summary judgment. The committees concluded that what is significant is whether the facts would defeat summary judgment, not whether the opposing party contends that the facts are disputed or undisputed. For this reason, the committees decided to modify the proposed amendment to the subdivision addressing the separate statement in opposition so that it provides, "If the opposing party contends that additional material facts are pertinent to the disposition of the motion, those facts must be set forth in the separate statement." (See proposed rule 3.1354(f)(3).)

Case citation for "material facts"

CAJ also suggests adding a citation in the advisory committee comment because the case cited (for the definition of "material facts") "merely quotes prior decisional authority" that, in turn, cites another case. Because the case cited, *Los Angeles Nat. Bank v. Bank of Canton* (1991) 229 Cal.App.3d 1267, 1274, is acceptable authority and the committees do not believe that additional authority is needed, they declined to add a citation to another case.

Rule 3.1354

Currently, rule 3.1354(b) includes among the examples of proper formatting of objections to evidence an example of irrelevant evidence and a corresponding objection on relevance grounds. CAJ does not support deletion of this example. Advisory committee members believe that this example is poor because, particularly in light of the proposed amendments to rule 3.1350, the inclusion of irrelevant evidence in separate statements should be rare, and they therefore recommend deleting it.

Alternatives

The advisory committees considered proposing the amendment of only rule 3.1350 but concluded that also amending rule 3.1354 and Code of Civil Procedure section 437c would better achieve the goals of reducing unnecessary evidentiary objections in summary judgment proceedings and the need for rulings on all evidentiary objections.[5] The advisory committees believe that education of the bar will be a necessary component for courts to reap the most benefits from the proposed changes but believe education alone would be insufficient to achieve the desired goals.

[5] See pending legislation in Senate Bill 470.

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Implementation Requirements, Costs, and Operational Impacts

The proposal is expected to benefit the judicial branch, especially superior courts, by reducing the time spent in deciding summary judgment motions. Addressing this topic in response to questions in the invitation to comment, the JRS commented that the proposal would have a positive operational impact on trial courts and the amendments should decrease the time that court staff, including research attorneys, spend on reviewing motions for summary judgment. The JRS noted that the operational impact will vary by court and be proportional to the volume of summary judgment motions handled by a particular court. The CJA described the amendments as "modest" and stated that it is doubtful they will substantially succeed in teaching counsel to distinguish material facts from immaterial ones. The CJA commented, nevertheless, that the amendments might help and it supports the proposal.

Relevant Strategic Plan Goals and Operational Plan Objectives

This proposal is consistent with strategic Goal III, Modernization of Management and Administration, which, among other things, recommends a policy of developing and promoting "innovative and effective practices to foster the fair, timely, and efficient processing and resolution of all cases."[6] It also is consistent with objective III.B.5 of the related operational plan: "Develop and implement effective trial and appellate case management rules, procedures, techniques, and practices to promote the fair, timely, consistent, and efficient processing of all types of cases."[7]

Attachments and Links

1. Cal. Rules of Court, rules 3.1350 and 3.1354, at pages 9–14
2. Chart of comments, at pages 15–25

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[6] Judicial Council of Cal., *Justice in Focus: The Strategic Plan for California's Judicial Branch, 2006–2016* (Dec. 12, 2014), p. 20.

[7] Judicial Council of Cal., *Justice in Focus: The Operational Plan for California's Judicial Branch, 2008–2011* (2008), p. 33.

Rules 3.1350 and 3.1354 of the California Rules of Court are amended, effective January 1, 2016, to read:

Rule 3.1350. Motion for summary judgment or summary adjudication

(a) ~~Motion~~Definitions

As used in this rule:

(1) "Motion" refers to either a motion for summary judgment or a motion for summary adjudication.

(2) "Material facts" are facts that relate to the cause of action, claim for damages, issue of duty, or affirmative defense that is the subject of the motion and that could make a difference in the disposition of the motion.

(b)–(c) * * *

(d) Separate statement in support of motion

(1) The Separate Statement of Undisputed Material Facts in support of a motion must separately identify:

(A) Each cause of action, claim for damages, issue of duty, or affirmative defense~~,~~ that is the subject of the motion; and

(B) Each supporting material fact claimed to be without dispute with respect to the cause of action, claim for damages, issue of duty, or affirmative defense that is the subject of the motion.

(2) The separate statement should include only material facts and not any facts that are not pertinent to the disposition of the motion.

(3) The separate statement must be in ~~a~~ the two-column format~~,~~ specified in (h). The statement must state in numerical sequence the undisputed material facts in the first column followed by the evidence that establishes those undisputed facts in that same column. Citation to the evidence in support of each material fact must include reference to the exhibit, title, page, and line numbers.

(e) Documents in opposition to motion

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Except as provided in Code of Civil Procedure section 437c(r) and rule 3.1351, the opposition to a motion must consist of the following documents, separately stapled and titled as shown:

(1) [*Opposing party's*] memorandum in opposition to [*moving party's*] motion for summary judgment or summary adjudication or both;

(2) [*Opposing party's*] separate statement ~~of undisputed material facts~~ in opposition to [*moving party's*] motion for summary judgment or summary adjudication or both;

(3) [*Opposing party's*] evidence in opposition to [*moving party's*] motion for summary judgment or summary adjudication or both (if appropriate); and

(4) [*Opposing party's*] request for judicial notice in opposition to [*moving party's*] motion for summary judgment or summary adjudication or both (if appropriate).

(f) ~~Opposition to Motion;~~ Content of separate statement in opposition to motion

The Separate Statement in Opposition to Motion must be in the two-column format specified in (h).

(1) Each material fact claimed by the moving party to be undisputed must be set out verbatim on the left side of the page, below which must be set out the evidence said by the moving party to establish that fact, complete with the moving party's references to exhibits.

(2) On the right side of the page, directly opposite the recitation of the moving party's statement of material facts and supporting evidence, the response must unequivocally state whether that fact is "disputed" or "undisputed." An opposing party who contends that a fact is disputed must state, on the right side of the page directly opposite the fact in dispute, the nature of the dispute and describe the evidence that supports the position that the fact is controverted. ~~That~~ Citation to the evidence in support of the position that a fact is controverted must ~~be supported by citation~~ include reference to the exhibit, title, page, and line numbers ~~in the evidence submitted~~.

(3) If the opposing party contends that additional material facts are pertinent to the disposition of the motion, those facts must be set forth in the separate statement. The separate statement should include only material facts and not any facts that are not pertinent to the disposition

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of the motion. Each fact must be followed by the evidence that establishes the fact. Citation to the evidence in support of each material fact must include reference to the exhibit, title, page, and line numbers.

(g)–(i) * * *

Advisory Committee Comment

Subdivision (a)(2). This definition is derived from statements in *L.A. Nat. Bank v. Bank of Canton* (1991) 229 Cal. App. 3d 1267, 1274 ("In order to prevent the imposition of a summary judgment, the disputed facts must be 'material,' i.e., relate to a claim or defense in issue which could make a difference in the outcome.") and *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 532–533 (Parties are encouraged "to raise only meritorious objections to items of evidence that are legitimately in dispute and pertinent to the disposition of the summary judgment motion.")

Subdivisions (d)(2) and (f)(3). Consistent with *Reid*, *supra*, these provisions are intended to eliminate from separate statements facts that are not material, and, thereby reduce the number of unnecessary objections to evidence.

Rule 3.1354. Written objections to evidence

(a) * * *

(b) Format of objections

All written objections to evidence must be served and filed separately from the other papers in support of or in opposition to the motion. Objections ~~on~~ to specific evidence ~~may~~ must be referenced by the objection number in the right column of a separate statement in opposition or reply to a motion, but the objections must not be restated or reargued in the separate statement. Each written objection must be numbered consecutively and must:

(1) Identify the name of the document in which the specific material objected to is located;

(2) State the exhibit, title, page, and line number of the material objected to;

(3) Quote or set forth the objectionable statement or material; and

(4) State the grounds for each objection to that statement or material.

Written objections to evidence must follow one of the following two formats:

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(First Format):

Objections to Jackson Declaration

Objection Number 1

"Johnson told me that no widgets were ever received." (Jackson declaration, page 3, lines 7–8.)

Grounds for Objection 1: Hearsay (Evid. Code, § 1200); lack of personal knowledge (Evid. Code, § 702(a)).

~~**Objection Number 2**~~

~~"A lot of people find widgets to be very useful." (Jackson declaration, page 17, line 5.)~~

~~**Grounds for Objection 2:** Irrelevant (Evid. Code, §§ 210, 350–351).~~

(Second Format):

Objections to Jackson Declaration

Material Objected to:	**Grounds for Objection:**
1. Jackson declaration, page 3, lines 7–8: "Johnson told me that no widgets were ever received."	Hearsay (Evid. Code, §1200); lack of personal knowledge (Evid. Code, § 702(a)).
~~2. Jackson declaration, page 17, line 5: "A lot of people find widgets to be very useful."~~	~~Irrelevant (Evid. Code, §§ 210, 350–351).~~

(c) Proposed order

A party submitting written objections to evidence must submit with the objections a proposed order. The proposed order must include places for the court to indicate whether it has sustained or overruled each objection. It must also include a place for the signature of the judge. The proposed order must be in one of the following two formats:

(First Format):

Objections to Jackson Declaration

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Objection Number 1

"Johnson told me that no widgets were ever received." (Jackson declaration, page 3, lines 7–8.)

Grounds for Objection 1: Hearsay (Evid. Code, § 1200); lack of personal knowledge (Evid. Code, § 702(a)).

Court's Ruling on Objection 1:	Sustained: _____ Overruled:_____

~~**Objection Number 2**~~

~~"A lot of people find widgets to be very useful." (Jackson declaration, page 17, line 5.)~~

~~**Grounds for Objection 2:** Irrelevant (Evid. Code, §§ 210, 350–351).~~

~~**Court's Ruling on Objection 2:**~~	~~Sustained: _____~~ ~~Overruled:_____~~

(Second Format):

Objections to Jackson Declaration

Material Objected to:	**Grounds for Objection:**	**Ruling on the Objection**
1. Jackson declaration, page 3, lines 7–8: "Johnson told me that no widgets were ever received."	Hearsay (Evid. Code, § 1200); lack of personal knowledge (Evid. Code, § 702(a)).	Sustained: _____ Overruled:_____
~~2. Jackson declaration, page 17, line 5: "A lot of people~~	~~Irrelevant (Evid. Code, §§210, 350–351).~~	~~Sustained: _____~~ ~~Overruled:_____~~

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~~find widgets to be very useful.”~~		
Date:	_____	_____ Judge

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SPR15-09
Civil Practice and Procedure: Evidentiary Objections in Summary Judgment Proceedings (amend rules 3.1350 and 3.1354)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Proposed Committee Response
1.	California Judges Association by Joan P. Weber, President	A	Summary judgment and summary adjudication are possible only if the material facts are undisputed. However, neither Code of Civil Procedure section 437c nor California Rules of Court, rule 3.1350, define "material facts." ***Description of Proposed Rule*** This proposal would amend California Rules of Court, rule 3.1350 by, inter alia: 1. Expressly defining "material facts" as being "facts that relate to the cause of action, claim for damages, issue of duty, or affirmative defense that is the subject of the motion and that could make a difference in the disposition of the motion. 2. Including a provision that a "separate station should include only material facts and not background facts or other facts that are not pertinent to the disposition of the motion." ***Analysis of the Proposal*** The goal of the proposal is to ease the burden on the Courts of ruling on motions for summary judgment and summary adjudication. It is hoped that, by defining material facts and by expressly stating that background and other immaterial facts do	The committees note the commentator's support for the proposal. No response necessary.

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	Commentator	Position	Comment	Proposed Committee Response
			not belong in separate statements of undisputed facts, counsel will be more likely to exclude immaterial facts from the separate statements, thereby both shortening the list of facts that the court must consider and eliminating facts that otherwise might draw unnecessary and time-consuming evidentiary objections. The proposal is part of a package addressing these motions. The other half of the package is SB 470, a Judicial Council-sponsored bill that would amend Code of Civil Procedure section 437c to provide that judges need rule only on those evidentiary objections that the judge deems material to its disposition of the motion. All other objections would be deemed to have been overruled and preserved for appeal. While I doubt that these modest amend-ments to rule 3.1350 will substantially succeed in teaching counsel to distinguish material facts from immaterial ones, it might help, and it couldn't hurt. CJA supports this proposal.	
2.	Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee	A	Amending rule 3.1350 would reduce burdens on the trial courts associated with evidentiary objections in summary judgment proceedings. Trial courts	The committees note the commentator's support for the proposal.

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	Commentator	Position	Comment	Proposed Committee Response
			encounter a lot of unnecessary information within statements of material facts that do not assist the court in deciding the motion. Many objections are unnecessary and there is no need for ruling on those objections. A "material fact" should not be included in the separate statement unless it tends to prove or disprove a necessary element of the cause of action/defense/claim in question. Amending rule 3. 1354 may, but is unlikely to accomplish the purpose of reducing time spent in deciding motions for summary judgment. Most evidentiary objections list multiple grounds for objection. The JRS concluded that this proposal would have a positive operational impact on trial courts. The proposed changes should decrease the time that court staff, including research attorneys, spend on reviewing motions for summary judgment. The operational impact will vary by court and be proportional to the volume of summary judgment motions handled by a particular court.	The committee is hopeful that this proposal and a companion proposal to amend Code of Civil Procedure section 437c will reduce the total number of evidentiary objections made and the number of objections that a court must rule on. Under the proposed legislation, multiple grounds for objection need not be ruled on if the evidence objected to isn't material to disposition of the summary judgment motion.
3.	Orange County Bar Association By Ashleigh Aitken, President	A	No specific comment.	The committees note the commentator's support for the proposal. No response necessary.
4.	San Diego County Bar Association	AM	Finally, we understand that SPR-09 and the	

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SPR15-09

Civil Practice and Procedure: Evidentiary Objections in Summary Judgment Proceedings (amend rules 3.1350 and 3.1354)

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

	Commentator	Position	Comment	Proposed Committee Response
	Appellate Practice Section		related proposal to amend Code of Civil Procedure section 437c are intended to reduce the trial courts' increasing burden associated with ruling on voluminous and potentially unnecessary evidentiary objections in connection with summary judgment motions. Our section members report anecdotal comments offered by local judicial officers, stating that substantial judicial time and resources are squandered addressing extensive objections to evidence offered in support of or in opposition to summary judgment motions. It is important for the rules to address these concerns while balancing practitioners' historical concerns about the need to preserve appellate challenges to evidentiary objections where there is no express trial court ruling. We anticipate that the proposed amendment to section 437c will address this latter concern by adding language to the summary judgment statute, consistent with the holding in *Reid v. Google, Inc.* (2010) 50 Cal. 4th 512, 534, affirming that objections made in writing, or orally at the hearing, if not ruled upon, are presumed to have been overruled and preserved for appeal. However, it would also be helpful if *Reid's* recognition about the rising tide of unnecessary evidentiary objections and its	The proposed amendment to the statute does include a provision stating that objections not ruled on for purposes of the motion for summary judgment are deemed overruled and preserved on appeal.

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	Commentator	Position	Comment	Proposed Committee Response
			encouragement that parties "raise only meritorious objections to items of evidence that are legitimately in dispute and pertinent to the disposition of the summary judgment motion" is also incorporated into proposed Rule 3.1354 or cited in the Advisory Committee Comments to Rule 3.1354, as it is in Rule 3.1350.	The committee believes that the best place to include such a statement is in the advisory committee comment to rule 3.1350, as it addresses the content of separate statements.
5.	State Bar of California Committee on Admin. of Justice	AM	The State Bar of California's Committee on Administration of Justice (CAJ) has reviewed and analyzed the Judicial Council's Invitation to Comment, and appreciates the opportunity to submit these comments. CAJ supports this proposal subject to the comments below. A. <u>Proposed amendments to California Rules of Court, rule 3.1350</u> CAJ supports adding a definition of "Material Facts" to Rule 3.1350 and supports the proposed definition. With respect to the proposed changes to subdivision (d)(2) and the proposed identical sentence in the first sentence of the second paragraph of (f)(3), CAJ recommends that both sentences be limited to the following: "The separate statement should include only material facts." CAJ believes the balance of the proposed	**Subdivision (d)(2)** The committee used "background facts or other facts that are not pertinent to the disposition of the motion" to emphasize what should not be included. The committee believes that this description is useful but in response to the comment, shortened the statement to read, "The separate statement should

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	Commentator	Position	Comment	Proposed Committee Response
			sentence ("and not background facts or other facts that are not pertinent to the disposition of the motion") is problematic for several reasons. It is not clear whether "background facts" is meant to be an example of the types of facts the proposals seek to limit or whether "pertinent facts" is intended to modify "background" i.e., background facts which are themselves not pertinent. Background facts may be "material" within the meaning of the proposed new definition, and their inclusion should be guided by that definition. In addition, the statement that parties should not include facts that are "not pertinent" is likely to lead to confusion. CAJ recognized that this use of "pertinent" comes from *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, but this proposal would define "material" and not "pertinent." If the two words are intended to have the same meaning, the proposal would essentially say that parties should include only material facts, but should not include facts that are not material. If the two words are intended to have different meanings, the extra language concerning what *should not* be included becomes ambiguous, and may result in unnecessary disputes. CAJ believes that an affirmative statement in	include only material facts and not any facts that are not pertinent to the disposition of the motion." "Not pertinent to the disposition of the motion" is another way of describing facts that will not make a difference in the disposition of the motion and are, therefore, not material facts.

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	Commentator	Position	Comment	Proposed Committee Response
			subdivisions (d)(2) and (f)(3) as to what the separate statement should include is preferable and adds clarity to the point being made. CAJ also believes that moving parties will ultimately be self-guided by the practicality of citing only those facts, both by way of background and otherwise, that are most likely to persuade the trial court that judgment should be entered in their favor. With respect to the Advisory Committee Comment to subdivision (a)(2), CAJ suggests that consideration be given to adding a citation to Pettus v. Standard Cabinet Works (1967) 249 Cal.App.2d 64, 69. This suggestion is based upon the fact that the authority cited in support of subdivision (a)(2), L.A. Nat. Bank v. Bank of Canton (1991) 229 Cal.4th 512, 532-33 merely quotes prior decisional authority, i.e. Burton v. Security National Bank (1988) 197 CA3d 972, 978. Burton, in turn, cited Pettus. Pettus was felt to be preferable to citing Burton since Burton was questioned on unrelated grounds in Guz v. Bechtel National (2000) 24 Cal.4th 317, 351. B. <u>Proposed amendments to California Rules of Court, rule 3.1354</u>	The *Los Angeles Nat. Bank v. Bank of Canton* (1991) 229 Cal.App.3d 1267 citation is acceptable authority and the committees do not think it necessary to add a citation to another case. The citation is different from the one cited by the commentator (229 Cal.App.3d 1267 compared to 229 Cal.4th 512).

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SPR15-09
Civil Practice and Procedure: Evidentiary Objections in Summary Judgment Proceedings (amend rules 3.1350 and 3.1354)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Proposed Committee Response
			CAJ does not support this part of the proposal. Under Evidence Code section 350, relevance remains a viable objection in summary judgment/adjudication proceedings. In light of the addition of a definition of "material facts" to rule 3.1350(a)(2), CAJ does not anticipate that retention of a relevance objection as an example would have the effect of "encouraging attorneys to list evidence in their separate statements that is not pertinent." Instead, CAJ believes the relevance objection may become even more important as a means of <u>discouraging</u> the inclusion of facts in violation of the amended rules - given the added definition of "material facts" and the restrictive language proposed for rule 3.1350 (d)(2) and (f)(3) that separate statements should include "only" material facts.	Committee members believe that the example in rule 3.1354 is a poor one, particularly in light of the proposed amendments to rule 3.1350 because the inclusion of irrelevant evidence in separate statements should be rare.
6.	State Bar of California Committee on Appellate Courts By John Derrick, Chair	AM	The Committee supports this proposal but believes it should be modified to delete surplusage from the proposed new subdivision (d)(2) and (f)(3) of rule 3.1350 as follows: "The separate statement should include only material facts. ~~and not~~	**Subdivisions (d)(2) and (f)(3)** The committee used "background facts or other facts that are not pertinent to the disposition of the motion" to emphasize what should not be included. The committee believes that these examples are useful, but in

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	Commentator	Position	Comment	Proposed Committee Response
			~~background facts or other facts that are not pertinent to the disposition of the motion~~." The term "material facts" is accurately and sufficiently defined in proposed new subdivision (a)(2) of rule 3.1350. Further reference to "background facts" and "facts that are not pertinent . . ." in (d)(2) and (f)(3) is surplusage and will generate confusion. We recognize that the language is derived from case authority, but used here it may trigger rules of interpretation that would give "not pertinent" a meaning other than "not material." Assuming those terms are intended to have different meanings, the difference is not clear. Also, background facts are sometimes material when combined with other facts to support an inference.	response to the comment shortened the statement to read, "The separate statement should include only material facts and not any facts that are not pertinent to the disposition of the motion." "Not pertinent to the disposition of the motion" is another way of describing facts that will not make a difference in a difference in the disposition of the motion and are, therefore, not material facts.
7.	State Bar of California Litigation Section Rules and Legislation Committee by Reuben A. Ginsburg, Chair	A	The Committee supports the proposed revisions and believes that they appropriately address the stated purpose of reducing the burden on the trial court associated with evidentiary objections on summary judgment motions without increasing the burden on the appellate courts. Please consider the following additional suggestions. We would revise the final sentence in rule	

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	Commentator	Position	Comment	Proposed Committee Response
			3.1350(f)(2) to parallel the language in rule 3.1350(d)(3), which we believe more accurately conveys the notion that evidence cited in the separate statement should be referenced in a particular manner. We suggest the following revisions: "~~That~~ Citation to the evidence in support of the position that a fact is controverted must include reference ~~be supported by citation~~ to the exhibit, title, page, and line numbers." We believe that an opposing separate statement may not only indicate which material facts are disputed and cite evidence showing a dispute, but it may also very helpfully set forth additional material facts that are undisputed and show that the moving party is not entitled to summary judgment or summary adjudication. (See Rylaarsdam & Edmon, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2014) ¶ 10:196.2, p. 10-81 ["Although neither CCP §437c nor CRC 3.1350 expressly so provides, the opposing party should also include any undisputed material facts which would *defeat* the motion and which have not been raised by the moving party"].) Many practitioners already do this, and we believe it is helpful	The committees made this change.

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SPR15-09
Civil Practice and Procedure: Evidentiary Objections in Summary Judgment Proceedings (amend rules 3.1350 and 3.1354)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Proposed Committee Response
			to the trial court. Accordingly, we suggest that rule 3.1350(f)(3) be revised to state that the opposing party must list in its separate statement any additional material facts that it contends are undisputed and show that the moving party is not entitled to summary judgment or summary adjudication. Finally, we would revise the second sentence in rule 3.1354(b) as follows: "Objections ~~on~~ to specific evidence . . . ."	The committees thoroughly discussed this and decided to recommend amending rule 3.1350(f)(3) to provide that the opposing party must include in the separate statement additional material facts that are pertinent to the disposition of the motion. The committee agrees and this change has been made.
8.	Superior Court of Los Angeles County (no name indicated)	A	No specific comment.	The committees note the commentator's support for the proposal. No response necessary.
9.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	No specific comment.	The committees note the commentator's support for the proposal. No response necessary.

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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: TBD

Title
Judicial Council Forms - Proof of Service

Agenda Item Type
Action Required

Rules, Forms, Standards, or Statutes Affected
Revise Form POS-040

Effective Date
January 1, 2016

Recommended by
Civil and Small Claims Advisory Committee
Hon. Patricia M. Lucas, chair

Date of Report
August 12, 2015

Contact
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Executive Summary

The Civil and Small Claims Advisory Committee recommends revising Judicial Council form POS-040, *Proof of Service—Civil* to correct two legal errors in the current form. The recommended revisions to the form would conform it to statute.

Recommendation

The Civil and Small Claims Advisory Committee recommends revising Form POS-040, *Proof of Service—Civil*, to:

1. Remove electronic service as one of the manners of service for which the form may be used; and

2. Modify the language regarding personal service on an attorney to accurately reflect the circumstances in which statute requires that personal service on an attorney by leaving a copy at an attorney's office must be accomplished between the hours of 9:00 am and 5:00 pm.

Previous Council Action

Form POS-040 was last revised effective July 1, 2011.

Rationale for Recommendation

Statute provides that electronic service may be performed directly by a party, by an agent of a party, including the party's attorney, or through an electronic filing service provider.[1] Current Judicial Council form POS.040, *Proof of Service—Civil,* incorrectly requires that the person serving electronically state that he or she is "not a party to this action" (See Item 1 and **General Instructions** on page 3: "A party to the action cannot serve the documents.").

There is a separate form POS-050 for Proof of Electronic Service. Therefore, it is not necessary that POS-040 provide for proof of electronic service as one of its options. The Civil and Small Claims Advisory Committee therefore recommends that POS-040 be revised to remove electronic service as one of the manners of service for which the form may be used. This change will resolve the error in requiring that electronic service be effected by a nonparty in a very simple way without any loss of functionality to form users.

There is also an error on POS-040 at Item 6(a) of the form and also in the Declaration of Messenger. The form currently states that personal service on an attorney by leaving a copy at an attorney's office must be accomplished between the hours of 9:00 am and 5:00 pm. However, the requirement that service on an attorney at the attorney's office be accomplished between the hours of 9:00 am to 5:00 pm applies only if there is no receptionist or person in charge present.[2] The recommended amendments to form POS-050 would correct this error by accurately stating when the 9:00 a.m. to 5:00 p.m. limitation applies.

Comments, Alternatives Considered, and Policy Implications

External comments

The form as proposed to be revised was circulated for public comment from April 17 to June 17, 2015. Comments were received from nine different commentators. Of these, three, from the Superior Courts of Los Angeles, Riverside, and San Diego Counties, merely expressed agreement with the proposal.

The other commentators were mostly in favor of removing E-service from this form. One commentator did express a preference for a single proof of service form combining all manners of service, and another was concerned about the use of "multiple erroneous over-lapping forms

[1] Code Civ. Proc,, § 1010.6(a)(1)(A), Cal. Rules of Ct., Rule 2.251(e)(1).

[2] See Code Civ. Proc., § 1011(a).

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for proof of service." However, the committee believes that multiple forms are preferable to one lengthy form. One form that covers all manners of service results in an overly complex form that is difficult to use. The fact that different manners of service have different requirements requires that each section of the form include the requirements for that manner of service.

With regard to revising the language concerning personal service on an attorney, all comments on this point pointed out that the current language is not legally correct and should be revised. There were several suggestions for wording changes for Item 6a. There are three ways presented to personally serve an attorney:(1) serve the attorney directly; (2) give the papers to a receptionist or other person in charge; or (3) leave them in a conspicuous place during business hours. Letters (a), (b), and (c) were added to emphasize that there are three options. Some other minor revisions to the wording were made in response to these comments.

Several commentators noted that the form requires that personal service be by a nonparty, and that no statute or rule of court contains this limitation. The reference in the comment noted above to "erroneous" forms almost certainly refers to this problem. For the reasons discussed under Alternatives, below, the committee declined to recommend any revisions to form POS-040 to address this issue at this time.

Alternatives

The committee considered several alternative approaches to addressing the error with respect to who can effect electronic service.

- Adding the words "other than for electronic service" before "not a party to this action" in Item 1 and in the instructions. But the committee thought that removing electronic service from the form entirely was cleaner and simpler.

- Revoking POS-040 altogether. There are separate POS forms for personal service (POS-020), service by mail (POS-030), and electronic service (POS-050). However, revocation would mean that there would not be a Judicial Council form for proof of service by fax, overnight delivery, or messenger service. To maintain a form for these modes of service, the committee concluded it was preferable to revise, rather than revoke POS-040.

The committee also considered whether to a related issue presented in POS-040. Currently, the form requires that one effecting personal service be a nonparty. However, there is no express authority in the law, either statute or rule of court, that generally requires that the person effecting personal service be a nonparty.[3] The origin of this requirement would seem to be Code of Civil Procedure section 414.10, which requires that a summons be served by a nonparty.[4] But extension of this requirement to all personal service is not required by law. The committee

[3] Electronic service is the only manner of service that expressly authorizes service by a party.

[4] Statutes governing particular proceedings may expressly require that the personal service be by a nonparty. See, e.g., Pen. Code § 18755(b)(1), gun violence restraining orders.

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therefore considered whether the nonparty requirement could be removed from form POS-040 for personal service also. The committee concluded, however, that removing this requirement would impact many other forms, not just POS-040. It would be necessary to check all other proof-of-service forms, including proofs of service included as a section of another form, to see if nonparty status is required. This would entail a significant amount of work and would change a long-standing practice.In addition, the committee felt that it should not make this decision unilaterally. Other subject areas have proofs of service raising the same issue.[5] The committee's view was that the decision to revise personal service forms should be a joint project by all groups involved with forms development. For all these reasons, the committee decided not to recommend this change to form POS-040 at this time, but will consider this further as time and resources permit.

Implementation Requirements, Costs, and Operational Impacts

There should be no implementation requirements, costs, or impact on the courts from this proposal. The form is already in use by attorneys, and the revisions proposed will not have any significant impact on this use.

Attachments and Links

1. Judicial Council form POS-040 at pp. 5−7
2. Chart of comments on proposal SPR15-11 at pp. 8−13

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[5] See, e.g., FL-330, Proof of Personal Service (Family Law).

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 Revised 6/29/15 Not Approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	CASE NUMBER:
Plaintiff/Petitioner: Defendant/Respondent:	JUDICIAL OFFICER:
PROOF OF SERVICE—CIVIL **Check method of service *(only one):*** ☐ By Personal Service ☐ By Mail ☐ By Overnight Delivery ☐ By Messenger Service ☐ By Fax	DEPARTMENT:

Do not use this form to show service of a summons and complaint or for electronic service.
See USE OF THIS FORM on page 3.

1. At the time of service I was over 18 years of age **and not a party to this action**.
2. My residence or business address is:

3. ☐ The fax number from which I served the documents is *(complete if service was by fax):*

4. On *(date):* I served the following **documents** *(specify):*

   ☐ The documents are listed in the *Attachment to Proof of Service–Civil (Documents Served)* (form POS-040(D)).
5. I served the documents on the **person or persons** below, as follows:
   a. Name of person served:
   b. ☐ *(Complete if service was by personal service, mail, overnight delivery, or messenger service.)*
      Business or residential address where person was served:
   c. ☐ *(Complete if service was by fax.)*
      (1) Fax number where person was served:
      (2) Time of service:
      ☐ The names, addresses, and other applicable information about persons served is on the *Attachment to Proof of Service—Civil (Persons Served)* (form POS-040(P)).
6. The documents were served by the following means *(specify):*
   a. ☐ **By personal service.** I personally delivered the documents to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made (a) to the attorney personally; or (b) by leaving the documents at the attorney's office, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office; or (c) if there was no person in the office with whom the notice or papers could be left, by leaving them in a conspicuous place in the office between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

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CASE NAME:	CASE NUMBER:

6. b. ☐ **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 5 and *(specify one)*:

(1) ☐ deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

(2) ☐ placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at *(city and state):*

c. ☐ **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in item 5. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

d. ☐ **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in item 5 and providing them to a professional messenger service for service. *(A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.)*

e. ☐ **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in item 5. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is 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 OF DECLARANT) ▶ (SIGNATURE OF DECLARANT)

(If item 6d above is checked, the declaration below must be completed or a separate declaration from a messenger must be attached.)

DECLARATION OF MESSENGER

☐ **By personal service.** I personally delivered the envelope or package received from the declarant above to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made (a) to the attorney personally; or (b) by leaving the documents at the attorney's office, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office; or (c) if there was no person in the office with whom the notice or papers could be left, by leaving them in a conspicuous place in the office between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

At the time of service, I was over 18 years of age. I am not a party to the above-referenced legal proceeding.

I served the envelope or package, as stated above, on *(date):*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(NAME OF DECLARANT) ▶ (SIGNATURE OF DECLARANT)

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INFORMATION SHEET FOR PROOF OF SERVICE—CIVIL

(This information sheet is not part of the official proof of service form and does not need to be copied, served, or filed.)

USE OF THIS FORM

This form is designed to be used to show proof of service of documents by (1) personal service, (2) mail, (3) overnight delivery, (4) messenger service, or (5) fax.

This proof of service form should **not** be used to show proof of service of a summons and complaint. For that purpose, use *Proof of Service of Summons* (form POS-010).

Also, this proof of service form should **not** be used to show proof of electronic service. For that purpose, use *Proof of Electronic Service* (form POS-050).

Certain documents must be personally served. For example, an order to show cause and temporary restraining order generally must be served by personal delivery. You must determine whether a document must be personally delivered or can be served by mail or another method.

GENERAL INSTRUCTIONS

A person must be over 18 years of age to serve the documents. The person who served the documents must complete the Proof of Service. **A party to the action cannot serve the documents**.

The Proof of Service should be typed or printed. If you have Internet access, a fillable version of this proof of service form is available at *www.courts.ca.gov/forms.htm.*

Complete the top section of the proof of service form as follows:

First box, left side: In this box print the name, address, and telephone number of the person for whom you served the documents.

Second box, left side: Print the name of the county in which the legal action is filed and the court's address in this box. The address for the court should be the same as the address on the documents that you served.

Third box, left side: Print the names of the plaintiff/petitioner and defendant/respondent in this box. Use the same names as are on the documents that you served.

Fourth box, left side: Check the method of service that was used. You should check only one method of service and should show proof of only one method on the form. If you served a party by several methods, use a separate form to show each method of service.

First box, top of form, right side: Leave this box blank for the court's use.

Second box, right side: Print the case number in this box. The case number should be the same as the case number on the documents that you served.

Third box, right side: State the judge and department assigned to the case, if known.

Complete items 1–6:

1. You are stating that you are over the age of 18.
2. Print your home or business address.
3. If service was by fax service, print the fax number from which service was made.
4. List each document that you served. If you need more space, check the box in item 4, complete the *Attachment to Proof of Service—Civil (Documents Served)* (form POS-040(D)), and attach it to form POS-040.
5. Provide the names, addresses, and other applicable information about the persons served. If more than one person was served, check the box on item 5, complete the *Attachment to Proof of Service—Civil (Persons Served)* (form POS-040(P)), and attach it to form POS-040.
6. Check the box before the method of service that was used, and provide any additional information that is required. The law may require that documents be served in a particular manner (such as by personal delivery) for certain purposes. Service by fax generally requires the prior agreement of the parties.

You must sign and date the proof of service form. By signing, you are stating under penalty of perjury that the information that you have provided on form POS-040 is true and correct.

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SPR15-11
Civil Forms: Proof of Service (revise POS-040)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Samuel Beuderwell, Attorney at Law Salinas, CA	A	While I agree with the substance of the proposed changes, the exclusion of electronic service from POS-040, which may be used for all other methods of service, may lead inexperienced litigants to believe electronic service is not permitted. This is perhaps particularly confusing where proof of personal service and proof of service by mail may be filed either using POS-040 or forms specifically tailored to those methods of service.	The committee notes the commentator's support for the proposal. The comment does not request or suggest any proposed changes to the form. The commentator's concerns are perhaps valid, but as he himself appears to recognize by agreeing in substance with the proposed changes, do not compel any different course of action with regard to PS-040.
2.	California Judges Association by Joan P. Weber, President	A	The proposal to modify POS-040 to conform to law and clarify the ambiguity as to POS-050 (POS as to electronic service) makes sense as the least intrusive method of fixing the issue. The same holds true with regard to amending Item 6a of the POS-040 as to service at an attorney's office.	The committee notes the commentator's support for the proposal; no response is necessary.
3.	Azar Elihu, Attorney at Law Los Angeles	N	Proof of Service forms should be consolidated in a single form that includes electronic service. Digging through multiple forms to find the right one is time consuming and confusing.	The committee believes that multiple forms are preferable to one lengthy form. One form that covers all manners of service results in an overly complex form that is difficult to use. The fact that different manners of service have different requirements requires that each section of the form include the requirements for that manner of service. That E-service can be made by a party is an example.
4.	Julie Goren, Author Sherman Oaks	AM	I agree with deleting eService from this form and fixing the language of 6a.	The committee notes the commentator's support for the proposal; no response is necessary.
			1. Suggested change: At 6a, by leaving "between the hours of ..." at the end of the	The committee agreed that the text would be smoother if "by leaving them" is repeated after

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

	Commentator	Position	Comment	Committee Response
			sentence, it still could be construed as modifying all manner of service. I suggest changing the order of the last part so it reads like CCP Sec. 1011 -- after "could be left," add "by leaving them between the hours of 9:00 a.m. and 5:00 p.m. in a conspicuous place in the office." I also suggest stating the times as I have done - the time requirement stands out more clearly.	"could be left" and has made this change. The committee does not see any improvement by putting the time frame before "in a conspicuous place." Nor does the committee see any improvement in replacing "in the morning and "in the evening" with "a.m." and "p.m."
			2. Suggested change: On the information sheet, I don't see how someone could try to use this form for eService when there is no provision for it. Instead of the new proposed third paragraph, I would add at the end of the first paragraph: "For electronic service, use Proof of Electronic Service (form POS-050)."	The committee does not see any difference between the proposed change and the current approach of a separate paragraph that includes "do not use this form …."
5.	Orange County Bar Association By Ashleigh Aitken, President	N	The OCBA does not believe the proposal appropriately addresses its stated purposes because it ignores and continues the misstatement of law in the continuing forms by requiring personal service only by a "non-party"	The committee recognizes that statutes do not require that personal service be made by a nonparty. Nevertheless, it concluded that addressing that issue is beyond the scope of this proposal, which is only to address E-service. The committee may address personal service by a party in the future.
6.			The OCBA does not believe the proposal appropriately addresses its stated purposes because it continues in the "Declaration of Messenger" section the old incorrect statements about service between 9am and 5pm.	The committee agrees with the comment had has revised the Declaration of Messenger section accordingly.
7.			[T]he Judicial Council is using too many multiple erroneous over-lapping forms for	Other than the question of personal service by a party (addressed above), the committee knows of

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	Commentator	Position	Comment	Committee Response
			proofs of service: POS-010 (Proof of Service of Summons); POS-020 (Proof of Personal Service); POS-030 (Proof of Service by Mail – Civil); POS-040 (Proof of Service – Civil); and POS-050 (Proof of Electronic Service). … [N]o specific legislation is recommended to solve policy concerns about personal service by parties or to correct all of the mistaken forms here and in other areas.	no other erroneous forms, and the comment provides no specific alleged errors in any other forms. Therefore, no response is possible to the "erroneous" aspect of this comment. This proposal addresses the issue of overlapping forms to some extent by removing E-service from Form POS-040 and requiring Form POS-050 for E-service. The committee has given some consideration to recommending that the Judicial Council sponsor legislation to require that personal service by made by a nonparty. No final decision has yet been made whether to pursue a legislative solution.
8.	State Bar of California's Committee On Administration of Justice	AM	CAJ supports this proposal subject to the following comments. Proposed revision to accurately reflect law regarding service on attorneys where receptionist is not present The revised form POS-040 would separately describe the two alternatives available for personal service on an attorney: (1) service on a receptionist or an individual in charge of the office (without any restriction as to time of day); or (2) when no receptionist or other person is available, by leaving a copy in a conspicuous place between 9 am and 5 pm. This proposed revision to form POS-040 would	No response is necessary.

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	Commentator	Position	Comment	Committee Response
			correct the form so that it accurately reflects California law, and the CAJ supports the proposed revision.	
9.			<u>Proposed revision to eliminate electronic service from the form</u> POS-040 specifically provides that the party signing the form cannot be a party to the action, but California law authorizes parties to serve documents electronically and to sign a proof of that service. The proposed revision eliminates the conflict by removing electronic service from the form. CAJ supports this proposal as it solves the immediate conflict.	No response is necessary.
10.			[T]he proposed revision does not address the larger problem with form POS-040 and possibly other proof of service forms. CAJ suggests… that the Judicial Council also take up and address the issues arising from the fact that POS-040 does not accurately reflect California law. As noted in the Invitation to Comment, while electronic service is the only manner of service that expressly authorizes service by a party, California does not appear to prohibit a party from personally serving documents in a civil case (other than the summons and complaint).* Thus, form POS-040 is not accurate, to the extent it indicates that	See response above to comment of Orange County Bar Association.

* CAJ has not researched this issue extensively, but notes that Code of Civil Procedure sections 1013a(1) and (2) provide that proof of service by mail "may be made" by methods that include a showing that the person making the service is not a party to the action.

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	Commentator	Position	Comment	Committee Response
			service by a party is prohibited for all manner of service covered by form POS-040.	
11.			It seems clear that Form POS-040 is intended to serve as the "master" or "comprehensive" form for use in connection with service of documents in a civil case (other than for the summons and complaint), and CAJ believes that having a single proof of service form is preferable to having multiple forms. Rather than simplify and correct the larger problem in the master form, the proposed revision would solve it for electronic service only, requiring use of an additional form for that form of service only. While CAJ supports the proposal as a stopgap measure, CAJ suggests that form POS-040 should be revised to apply to all forms of service (including electronic service), with revisions as necessary to adhere to California law governing whether a party may or may not effect a particular method of service.	See response above to comment of attorney Azar Elihu.
12.			Alternatively, consideration could be given to clarifying California law to consistently allow (or disallow) service of documents by parties, with revisions to the proof of service form as necessary.	See response above to comment of Orange County Bar Association.
13.			CAJ suggests that the language used in the revision should be semantically consistent. The revision at page 1 of POS-040 (in the language beneath the caption) prohibits use of the form for electronic service (using the words "do	The committee sees no significant difference between "do not use" and "should not be used." The language on page 3 is consistent with the preceding paragraph advising that the form "should not be used to show proof of service of a

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	Commentator	Position	Comment	Committee Response
			not"), but the "Use of This Form" section on page 3 merely dissuades the use ("should not").	summons and complaint."
14.	Superior Court of Los Angeles County	A	Agree with proposed changes.	The committee notes the commentator's support for the proposal; no response is necessary.
15. 16.	Superior Court of Riverside County, by Marita Ford (position not given)	A	On behalf of the Riverside Superior Court, we agree with the proposed changes. Does the proposal appropriately address the stated purpose? Yes. Would the proposal provide cost savings? If so, please quantify. No. What would the implementation requirements be for courts? Informational training for Court Operation Clerks who add these filings. Would 2 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? No impact.	The committee notes the commentator's support for the proposal; no response is necessary.

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JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 27, 2015

Title
Small Claims: Extraordinary Writs under Code of Civil Procedure section 116.798

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 8.930 and 8.950; adopt rules 8.970–8.977; revise forms APP-150-INFO and APP-151; approve forms SC-300 and SC-300-INFO

Recommended by
Civil and Small Claims Advisory Committee
Hon. Patricia M. Lucas, Chair

Appellate Advisory Committee
Hon. Raymond J. Ikola, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2016

Date of Report
September 1, 2015

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Executive Summary

The Civil and Small Claims Advisory Committee and the Appellate Advisory Committee recommend new rules and forms to comply with a statutory mandate to develop procedural rules for certain writ proceedings on small claims rulings. The recommendation also provides clarifying amendments to current rules and forms that apply to writ proceedings in the appellate division, generally to the extent that those apply to small claims proceedings relating to postjudgment enforcement actions.

Recommendation

The Civil and Small Claims Advisory Committee (CSCAC) and the Appellate Advisory Committee (AAC) together recommend that the Judicial Council amend or adopt a set of proposed changes to the California Rules of Court designed to fulfill the statutory mandate to develop procedural rules for certain writ proceedings on small claims rulings, and revise or approve forms to help litigants participating in these proceedings. This recommendation has three main parts:

1. Adopt a new set of rules for writ proceedings relating to actions by small claims divisions other than postjudgment enforcement orders (Cal. Rules of Court, rules 8.970–8.977).

2. Approve two new forms for these writ proceedings:
   - A form for the petition—*Petition for Writ (Small Claims)* (form SC-300); and
   - An information sheet explaining these writ proceedings—*Information on Writ Proceedings in Small Claims Cases* (form SC-300-INFO).

3. Adopt changes to the existing rules and forms relating to writ proceedings in the superior court appellate division to reflect both the new procedures for writ proceedings relating to actions by small claims divisions other than postjudgment enforcement orders and to clarify jurisdiction in other small claims writ proceedings (Cal. Rules of Court, rules 8.930 and 8.950; *Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases* (form APP-150-INFO); and *Petition for Writ (Misdemeanor, Infraction, and Limited Civil Cases)* (form APP-151)).

The text of the new and amended rules is attached at pages 17–24. The new and revised forms are attached at pages 25–62.

Previous Council Action

The council has not previously taken action relating to procedures for extraordinary writs in small claims actions.

Rationale for Recommendation

Background

Legislation was enacted in 2013 to clarify the proper jurisdiction for writs in small claims actions given trial court unification (Code Civ. Proc., § 116.798). This legislation makes the jurisdiction dependant on the stage of the small claims case at which the act being challenged took place (1) in any small claims court action other than a postjudgment enforcement proceeding, (2) in a postjudgment enforcement proceeding, or (3) in a small claims appeal (which is essentially a trial de novo). This new statute provides that writs proceedings in the first set of matters—those challenging an action of the small claims court other than a postjudgment enforcement action—must be heard by a single judge who is assigned to the superior court appellate division. The

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statute also requires the Judicial Council to promulgate new rules for writ proceedings relating to these rulings.

The new statute was recommended by the California Law Revision Commission (CLRC), as part of its work in recommending statutory amendments to address provisions of the law that were obsolete as a result of trial court unification. As part of this work, the CLRC, with input from the CSCAC, developed recommended legislation to clarify small claims writ jurisdiction after unification, which was eventually enacted as Code of Civil Procedure section 116.798.[1]

The CLRC comments that accompanied its recommendation noted that the new law is solely to clarify which court has jurisdiction of a writ petition, not to in any way change the circumstances under which a party may seek a writ or a court grant one.[2] Relief through writs—particularly the common law writs of review, mandate, and prohibition encompassed by the new statute—is deemed extraordinary and is at the discretion of the reviewing court, not available as a matter of course. The finality of small claims judgments makes courts reluctant to consider writs as an alternative means of review, but does not preclude such writs. See *Bricker v. Superior Court*, (2005) 133 Cal.App.4th 634.

Proposed new rules

In developing the new rules and forms for writ proceedings in initial small claims actions, the advisory committees looked to the current rules applicable to writ proceedings in limited civil cases (Cal. Rules of Court, rules 8.930 et seq.) and used those as a model for the new rules. The new rules regarding small claims writ proceedings would be added to the division of the rules for the superior court appellate division that currently contains the rules regarding trial of small claims cases on appeal. The primary provisions of the proposed new rules are summarized below.

- **Rule 8.970. Application.** This rule describes which proceedings are governed by the rules, and which are not.

- **Rule 8.971. Definitions.** This rule provides definitions of the terms writ, petition, petitioner, respondent small claims court, and real party in interest. This parallels a rule setting out definitions in the rules regarding small claims appeals.

- **Rule 8.972. Petitions filed by persons not represented by an attorney.** This rule states the rules for petitions filed by self-represented parties, mandating at the start that the parties use a specific Judicial Council petition form unless a court finds good cause. The petitioner is to attach the court ruling objected to and any documents submitted to the small claims court that

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

[2] See California Law Revision Commission's *Recommendations on Trial Court Restructuring: Writ Jurisdiction in a Small Claims Case* (Aug. 2011) (CLRC 2011 Report) at p. 340. The report may be found at: *http://www.clrc.ca.gov/J1452.html*.

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support or oppose the petitioner's position, or are otherwise necessary for a complete understanding of the matter.

The rule differs from the parallel rule relating to appellate division writs generally with respect to providing a record of what was said at the court proceedings. Rather than requiring a reporter's transcript (which is not available in small claims proceedings), proposed subpart (a)(2) provides that if the petition raises any issue that would require the judge considering it to understand what was said in the small claims court, the petition must include a fair summary of the proceedings, including the parties' arguments and any statement by the small claims court supporting its ruling.[3]

The service requirements provided here are similar to those for other writ proceedings in the appellate division, except for the addition of a requirement that the petitioner serve a copy of the form information sheet along with the petition and supporting documents (Cal. Rules of Court, rule 8.972(d)).

- **Rule 8.973. Petitions filed by an attorney for a party.** This rule addresses petitions filed by attorneys. The advisory committees, recognizing the complexity of extraordinary writ proceedings, followed the example in the rules on writs to the appellate division generally (cf. Cal. Rules of Court, rule 8.932) and acknowledge that attorneys will be involved for at least some writ petitions.[4] Although the petition form must be used by self-represented parties, this rule permits counsel to file individualized pleadings should they choose to do so, so long as all the information required in the form petition is included.

- **Rule 8.974(a). Preliminary opposition.** Because parties are permitted by statute to file a preliminary opposition to a petition for writ (see § 1107), this rule provides a procedure for doing so, including a 10-day deadline for filing the opposition, parallel to the rules for appellate division writs generally. In an effort to simplify the procedures, this new rule includes a provision stating that the preliminary opposition is not required unless requested by the court. There is no provision in this rule for a reply brief, which is intended to keep the procedure as simple as possible.

[3] The advisory committees requested specific comments on this provision in the rule and the corresponding items in the form petition (see proposed *Petition for Writ (Small Claims)* (form SC-300) at items 10.a(4), 10.b(4), and 10.c(4)). The committees had some concerns over whether this item should be required by rule, possibly setting up a trap for unwary self-represented parties who do not understand when it may or may not be required. On the other hand, the committees were also concerned that including such a provision in the rule and form may lead to unnecessary paperwork, as parties may provide detailed summaries of the full proceedings even when unnecessary.

[4] Section 116.530(a) states that "Except as permitted by this section, no attorneys may take part *in the conduct or defense of a small claims action*." A writ proceeding is not itself a small claims action, but a new proceeding filed in the appellate division. A writ petition is similar to a complaint starting a new civil proceeding, formally against the lower court, which will be decided outside the small claims division. Hence the ban on attorneys in section 116.530(a) does not apply in writ proceedings challenging small claims actions, and some petitioners may well be represented by counsel.

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- **Rule 8.974(b). Return or opposition; reply.** This subpart sets out the procedure for filing a return if the court issues an alternative writ or order to show cause, or an opposition if the court provides notice that it is considering a peremptory writ without issuing anything further. The respondent has 30 days to respond if no other date is ordered by the court, and the petitioner then has 15 days to reply. This rule is almost identical to the corresponding rule for appellate division writs generally (cf. Cal. Rules of Court, rule 8.933(b)), with the exception that "return" is defined within the rule as a response. The committees concluded that since the provisions essentially echo the statute (see § 1089) there was no way to make it simpler for small claims parties**.**

- **Rule 8.976. Filing, finality, and modification of decisions; remittitur.** These provisions parallel the similar rule for appellate division writs but have been modified to reflect that the small claims writs will not be issued by the appellate division, but by a single judge in that division. They also differ in that there are no provisions or cross-references in this new rule regarding rehearings or requests to transfer a proceeding to the Court of Appeal. The committees decided that these were unnecessary for small claims cases, as the extraordinary writ proceeding is already providing a chance for a review not generally permitted in small claims, where speedy finality is the norm and a goal of the small claims procedures.

Proposed new forms

Two new forms are being proposed for small claims writ proceedings: *Petition for Writ (Small Claims)* (form SC-300) and *Information on Writ Proceedings in Small Claims Cases* (form SC-300-INFO). These forms parallel the petition and information sheet forms developed by the Appellate Advisory Committee (AAC) several years ago for writs in the appellate division generally.

***Petition for Writ (Small Claims)* (form SC-300)**

This form is based on current form APP-151, the petition for use for writs in limited civil cases, misdemeanors, and infractions. Like that form, it is geared to self-represented litigants and is essentially in the style of plain-language forms. It begins with a list of general instructions about when the form is applicable, when[5] and where it should be filed, and how it should be served.[6] The party is instructed to read the information sheet before completing the petition.

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[5] This form and the information sheet both note that while there is not a hard deadline for common law writs, the parties should file within 30 days. This is based on the recommended timeline the council approved being included on the general appellate division writ forms.

[6] Parties are referred to the appellate forms for information about service, form APP-109 and form APP-109-INFO. These are set up for self-represented litigants, so they seem reasonable for use in small claims cases going to be heard in the appellate division. There are somewhat similar small claims forms for proof of service (forms SC-104 and SC-104B), but they are set up for service of process, and for the service of the claims form and cross-claims form, so they are not as directly applicable.

The first several items request information about the parties and about the court action being challenged. (See items 1–7.) The next items ask whether any other writ petition or an appeal has been filed. (See items 8–9.)

The most important item is item 10, which seeks the reasons for the petition. This item, like the others, parallels a similar item in form APP-151. It is divided into four subparts, based on the type of action challenged and writ sought, described in simple language, and each of those subparts is divided into four further subparts.

- The party is first asked to describe what it believes the law requires the court to do that it did not do, or what the court did or said that the party is challenging. (See items 10a(1), 10b(1), and 10c(1).)

- Then the form asks the party to identify the legal basis for the claim. (See items 10a(2), 10b(2), and 10c(2).)

- Third (and this is where it differs from the APP-151 form), it asks the parties to identify any supporting documents that show the objected to action of the court, and to describe what the small claims court did that is being challenged. (See items 10a(3), 10b(3), and 10c(1) and (3).)

- Finally, because there is no formal record kept of the small claims proceedings, if the petition raises an issue that would require the appellate division judge to consider what was said in the small claims court, the party is asked to write a summary of what was said at the court, by the parties and the judge, that is relevant to the request for a writ.[7] This item implements the provisions in rule 8.972(a)(1), which requires a summary of the proceedings in certain circumstances. (See footnote 3 above.)

Information on Writ Proceedings in Small Claims Cases **(form SC-300-INFO)**
This proposed form is based on *Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases* (form APP-150-INFO); however, there have been changes made to the content of the form to reflect its application to writ proceedings in small claims cases. The committees considered how the limitations on review available in small claims cases should be reflected in information provided to the parties,[8] as well as making changes to reflect proposed

[7] In the petition used for writs to the appellate division generally, the last subpart in this item asks the parties to identify sections in the transcript or record of the oral proceeding. The supporting documents for those petitions are required to include a reporter's transcript of the oral proceedings or record of some kind. (See rules 8.486(b)(1)(D) and 8.931(b)(1)(D).) Because no record exists in small claims proceedings, on form SC-300 this item is used for the parties to provide a fair summary of the proceedings if needed.

[8] Under the small claims statutory scheme, a plaintiff does not have the right to appeal the small claims court judgment (§ 116.710). In selecting to proceed in small claims court, the plaintiff essentially trades off the right to an appeal for a quicker, less expensive dispute resolution process. Within the writ context, this means that the usual alternative of an appeal as an adequate remedy is not available. This does not mean, however, that courts readily grant writ petitions in these cases. The Courts of Appeal have historically been reluctant to review rulings in small

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rules 8.970 et seq. and proposed new form SC-300. The differences in the proposed small claims information form are summarized below:

- Item 1 reflects the limitations on appellate review of small claims judgments and the different jurisdiction and procedures applicable to writs challenging postjudgment actions and actions related to a trial de novo;

- Items 4, 6, and 12 also reflect the limitations on appellate review of small claims judgments, the goal of small claims court in terms of providing a quicker, lower cost resolution, and how that relates to whether a court is likely to grant a petition for a writ;

- Item 7 reflects the provisions of section 116.798 with respect to jurisdiction over writ proceedings relating to small claims cases;

- Item 13 reflects proposed rule 8.972 in that there is no reference to providing a reporter's transcript of the oral proceedings;

- References to trial court were changed to refer to small claims court and references to small claims advisors have been added; and

- References to action by the appellate division have been changed to refer to action by the appellate division judge.

Changes to current rules and forms

Minor changes to the current rules and forms for writ proceedings in the appellate division are also being proposed to reflect the clarification provided in section 116.798 as to where writs challenging small claims actions are to be heard.

- Rule 8.930 would be amended to clarify that writs relating to postjudgment enforcement orders by the small claims division are governed by the rules pertaining to writ proceedings in the appellate division generally. A provision would also be added to clarify that other acts by the small claims division are not governed by those rules, and an advisory committee comment added as to what rules govern such proceedings.

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claims matters because doing so would undermine the goal of providing a speedy and inexpensive resolution of cases falling within the jurisdiction of small claims court. (Code Civ. Proc., § 116.510.) But while disfavored, it has been held that review of small claims judgments may be available by extraordinary writ where there is "statewide importance of the general issues presented" (*Green v. Superior Court* (1974) 10 Cal.3d 616, 621 [111 Cal.Rptr. 704, 517 P.2d 1168]) and "in order to secure uniformity in the operations of the small claims courts and uniform interpretation of the statutes governing them" (*Davis v. Superior Court* (1980) 102 Cal.App.3d 164, 168 [162 Cal.Rptr.2d 167]). The committees tried to reflect this case law in the description of writ proceedings in the proposed information sheet for writ actions in small claims cases.

- *Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases* (form APP-150-INFO) would be revised to note that the procedures described in the information sheet DO apply to writs challenging acts by the small claims division relating to postjudgment enforcement orders, but DO NOT apply to other acts by the small claims division or acts relating to small claims appeals in the superior court. (See new material in items 1 and 7).[9]

- The instructions on the *Petition for Writ (Misdemeanor, Infraction, and Limited Civil Cases)* (form APP-151) would be revised to refer to those small claims writ proceedings covered by the petition, and a full paragraph about small claims writ proceedings would be added at the end. In addition, the current first paragraph would be divided in two, with a separate bullet point now including a stronger instruction not to use the form for appeals and other writs.

Comments, Alternatives Considered, and Policy Implications

Comments received

The proposed rules and forms were circulated for public comment in spring 2015. Six commentators responded, a few with detailed comments. The commentators are the California Judges Association (CJA), which supported the proposal as circulated, retired Commissioner Douglas G. Carnahan, the Orange County Bar Association, the Litigations Section of the State Bar, and the Superior Courts of Los Angeles and San Diego Counties, all of whom agreed with the proposal generally but sought some modification. The more significant modifications requested and the working group's actions on each are summarized here. The text of all the comments, and the committees' responses to them, may be viewed in the comment chart attached at pages 63–84.

Comments on rule 8.972—petitions for persons not represented by an attorney

Written Summary of Proceedings—Rule 8.972(a)(2)

This rule states the rules for petitions filed by self-represented parties, mandating at the start that they use a specific Judicial Council petition form unless a court finds good cause otherwise. The petitioner is to attach the ruling objected to, along with any document submitted to the small claims court that supports or opposes the petitioner's position or is otherwise necessary for a complete understanding of the matter.

The rule differs from the parallel rule relating to appellate division writs generally with respect to providing a record of what was said at the court proceedings. Rather than requiring a reporter's transcript (which is not available in small claims proceedings), proposed subpart (a)(2) provides that if the petition raises any issue that would require the judge considering it to understand what was said in the small claims court, the petition must include a fair summary of the proceedings,

[9] The form would also be revised to correct an error in item 14, changing the statement that petitions for writ should be filed within 60 days after the court makes the ruling that is being challenged, to within 30 days, as noted in the instructions to the petition on form APP-151.

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including the parties' arguments and any statement by the small claims court supporting its ruling.

The advisory committees requested specific comments on this provision in the rule and the corresponding items in the form petition. The committees had some concerns over whether this item should be required, because it placed a burden that might have to be met by some petitioners for a writ even to be considered. Some committee members were also concerned that including such a provision in the rule and form may lead to unnecessary paperwork, as parties may provide detailed summaries of the full proceedings even when unnecessary.

Four comments were received on this point. The CJA and Commissioner Carnahan (now retired but with extensive small claims experience) both opined that the rule should be left as proposed, because a written summary of the relevant statements below would be helpful to the reviewing court, and because the inclusion of an item for the summary in the petition form would provide a trigger for the party to provide it when appropriate. The State Bar Litigation Section suggested that the requirement for a written summary of what was said below should be made mandatory in *all* cases, leaving it up to the appellate division to determine if relevant rather than to the self-represented litigant. The Superior Court of San Diego County, on the other hand, proposed making the summary optional in all cases, both to avoid any trap for the unwary and to possibly lessen any expectation that the court must credit the party's summary.

The advisory committees concluded that the rule as proposed—requiring a summary of the statements below if such statements are pertinent to the issues on the petition for writ—is the most effective way of providing needed information to the appellate division judge without overburdening parties. The groups also concluded that including an item for the summary of what was said in the form petition (see form SC-300 at item 10(a)(3), 10(b)(3), and 10(c)(3)) provides a reminder for the parties to provide the summary, and so eliminates, or at least minimizes, any potential trap for the unwary. The groups also reworked the language about this summary on the information sheet, providing an express pointer to the item on the form in which it can be provided. See form SC-300-INFO at item 12.b, at the last two bullet points.

On a related point, the Orange County Bar Association did not respond to the question directly, but raised a different concern: how the appellate division will evaluate the "record" that consists of the parties' (sometimes) competing versions of what was said in the small claims court proceeding. The commenter notes that the proposal does not address the issue, which it considered unfair to the appellate division. The advisory committees decided against providing anything further on this point. The groups concluded that, with nothing in the rule, the appellate division judge will evaluate the verified petition, including the summary, just as it would evaluate any other verified statements.

Sanction for inadequate proof of service—rule 8.972(d)(3)

Commissioner Carnahan had two issues with this section, particularly with subpart (3) which requires a clerk to file the petition if the proof of service is defective, but also provides that if the

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parties fails to provide a corrected proof within five days after the clerk gives notice of the defect, the court may strike the petition or impose a lesser sanction.

First, he suggested that some reference should be included in the rules (to apply here and elsewhere) that when time frames are provided, it should be expressly stated that the extensions of time set out in Code of Civil Procedure, sections 1005 and 1013 apply. Commissioner Carnahan stated that this needed to be made clear because such provisions expressly do not apply in small claims actions. The committees disagreed with this proposal, noting that these provisions would not apply under the proposed rules in any event. Section 1005 addresses time frames for filings relating to notice of certain specified motions and other types of proceedings, but there are no such proceedings in the proposed rules. The petitioning party does not have to provide notice of a hearing to the other side—if anyone does that, it will be the court. Section 1013 provides an extension of time for action or duty following service by mail or other method. However, in the proposed rules, none of the time frames run from "service" of any documents but rather from provision of notice by the clerk, which could be in person or by phone as well as by serving a document of some kind (see , e.g., rule 8.972(c)(2) and (d)(3)), or from the time a paper is filed (see, e.g., rule 8.974(a)(2) and (b)(3)). These time frames track what the AAC developed in the rules for writs in limited civil cases and misdemeanors, which intentionally did not use service as a trigger for any time frames.

Second, the commenter questions the use of the phrase "impose a lesser sanction" as being ambiguous to court and parties. Would such sanctions include monetary sanctions, for example? The committees agreed with this comment and amended the proposed rule to provide that if a party fails to file a corrected proof of service within five days after notice of the defect, the court may strike the petition or allow additional time to file a corrected proof of service.

Need for verification

The Superior Court of Los Angeles County raised concerns regarding the required verification of the petition for writ, first as to what form it is to be in and second as to what to do if not included—asking whether the filing should be rejected on that ground. The committees decided no modification of the rule was required as to the format of the verification: it should be in the format required in the new Judicial Council petition for writ form or, if that form is not used, in any format that complies with statute. As to the fate of a nonverified petition, the committees concluded that it should not be rejected by the clerk on that ground, and added a new provision to the rule to that effect, while also providing that if the party fails to file a verification within five days after notice of the defect, the court may strike the petition. See rule 8.972(a)(3), and see also(c)(2) (failure to provided attachments in correct form), and (d)(3) (failure to provide proof of service).

Comments on rule 8.974—preliminary opposition

The State Bar's Litigation Section commented that rule 8.974(a) regarding what is to be in a preliminary opposition should be expanded, to more closely parallel what is in the rules relating to preliminary oppositions on petitions for writs in civil limited cases. The proposed

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modifications would also change "must' to "should" to avoid suggesting that arguments not stated in the preliminary opposition are not forfeited. The advisory committees agreed with this comment and modified the language of the rule to reflect that. See rule 8.974(a)(3).

Comment on rule 8.975(b)—notice to court by telephone

This rule requires the appellate division clerk to notify the clerk in the small claims court by telephone if the writ or order stays proceedings set to occur within seven days or requires action within seven days. Commissioner Carnahan proposed that there be a further requirement that the small claims court clerk make a written record of having received such a call, in the small claims file for the case. The advisory committees concluded that, while this may be a best practice, to include the provision as a rule of court would be micromanaging court operations to an extent that is not necessary.

Comment on *Petition for Writ (Small Claims)* (form SC-300)

The State Bar's Litigation Section raised the point raised that the verification on the proposed petition form, as circulated, was inappropriate because it covered *all* attachments, which could include copies of evidence submitted by either party and court orders. The goal of the committees is to ensure that the verification covers the information provided in attachments that contain responses to the questions in the petition; those responses that are too long to fit in the form and so are completed on attached sheets. The committees modified the verification language on the form so that it covered only such responsive information. See form SC-300 at page 7 of 7.

Comments on *Information on Writ Proceedings in Small Claims Cases* (form SC-300-INFO)

Item 6. "Can a writ be used to address any errors made by a small claims court?"

Commissioner Carnahan expressed concerns that the language in the first set of bullet points in this item, describing when a writ might be granted, was not sufficiently restrictive and would be used by plaintiffs in particular to make an "end run" around the rules prohibiting appeals in small claims actions. He commented that he feared that the attempt to "formalize what the law was (anyway) before CCP 116.798" will open cans of worms that will change the nature of the small claims courts and the "no appeal" rules. He proposed that the language describing when writs might be appropriate be strengthened,[10] and to tell the parties that the judge considering the writ petition must become convinced that "the error is so dramatic and unjust that it cannot be allowed to stand."

The advisory committees understand the commissioner's concerns but concluded that the inclusion of the proposed language could be viewed as an attempt to set legal standards that do not currently exist, and so is not an appropriate action for the Judicial Council. The committees

[10] He suggested, for example, that the form should provide that writs could only address "gross and unusual legal errors" where a court had a "clear" duty to act but "clearly and manifestly unjustly" refused to do so.

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did, however, modify the item in light of the comments. As circulated, the item sets forth the bases for seeking a writ before stating the reasons why a writ will generally not be granted in small claims actions. As modified, this order is reversed, placing the section titled "Writs are not generally granted" first, followed by the section titled "Writs can only address certain legal errors."

Item 18. "What happens after I file my petition?"

The State Bar's Litigation Section suggested that it would be helpful to inform the parties in this item that the small claims court must provide parties with notice and an opportunity to be heard before that court changes its order in response to an alternative writ from the appellate division, citing to *Brown, Winfield & Canzoneri, Inc. v. Superior Court* (2010) 47 Cal.4th 1233, at page 1250 and footnote 10.[11] While this comment may be based on a correct statement of the law—that the court cannot change its order in response to an alternative writ without first providing notice and opportunity to be heard—the advisory committees concluded that it would not be helpful to the parties to add the proposed language to the information sheet. [12] It is not directly relevant to what a *party* (rather than the small claims court) needs to do, and might only serve to make an already confusing process even more confusing for self-represented parties.

Items 18(d) and 19. Peremptory writs in the first instance

The State Bar's Litigation Section also commented on the information provided regarding peremptory writs in the first instance. It noted that, as circulated, item 18(d) states that an appellate division judge will not issue a peremptory writ in the first instance "without first notifying the parties and giving the respondent court and any real party in interest a chance to file an opposition," even though, the commenter noted, the appellate division judge need not provide notice before issuing a peremptory writ in the first instance if the petition expressly sought such relief. Seeking such relief in the petition is considered sufficient notice (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 180), although "an appellate court, absent exceptional circumstances, should not issue a peremptory writ in the first instance without having received, or solicited, opposition from the party or parties adversely affected." (*Ibid*.) The commenter proposed that the language in the form should be modified to avoid any suggestion to the contrary.

The committees agreed with the commenter on this point. While there is no specific place in the petition form to include a request for a peremptory writ in the first instance, such relief could be

[11] The commenter proposed the committees modify the penultimate paragraph in form SC-300-INFO, item 18(c), as follows:

> "If the appellate division issues an alternative writ and the small claims court, after notifying the parties that it is considering changing its order and providing an opportunity to be heard, does what the petitioner requested (or a modified form of what the petitioner requested as ordered by the appellate division), then no further action by the appellate division is needed and the appellate division may dismiss the petition."

[12] At least one member of the committees does not believe that this is a correct statement of the law in all instances, and so opposed adding the statement on that ground also.

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requested in the "other" section, in item 12(d) on form SC-300. Because of this possibility, or the possibility that an attorney may seek such relief on behalf of a client in an individually drafted petition, the proposed information sheet was modified to reflect this possibility. The lists at the beginning of items 18 and 19 have been expanded to reflect that a peremptory writ in the first instance could be issued either after the court provides notice of that possibility *or* if such relief were expressly requested in the petition. The language the commenter pointed to in item 18(d) has also been modified, along with similar language in item 19. The latter item was also further modified to include the information that a party may want to consider whether to file a preliminary opposition in such circumstances, along with a description of what would be in such an opposition.

Similar changes are recommended to *Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases* (form APP-150-INFO). See items 18 and 20 in that form.

Other Comments

The Superior Court of San Diego County has provided some other comments, not directly tied to items in the rules or forms.

Instructions for vexatious litigant

The commenter suggests that either the information sheet or the petition (in the instructions) should state that a vexatious litigant must obtain a prefiling order before he or she can file a petition for writ. The committees concluded that such information was not needed. Other forms do not include such an instruction (e.g., *Plaintiff's Claim and Order to Go to Small Claims Court* (form SC-100)) and the committees concluded that there was no reason why this form should differ from others in this respect. Parties who are not vexatious litigants do not need the information, and those that are have already received orders telling them what is needed if they wish to file an action.

Informal action by court

The commenter noted that there was no discussion of an informal response as a possible order from the court on a petition for writ, even though such a process was sometimes used to help resolve a writ without having to issue the more formal alternative writ or order to show cause. The commenter suggested that it might be beneficial to include reference to this type of order from the court in the rules or the information sheet.

The committees disagreed. They had considered the issue of providing for less formal procedures for small claims writs at the beginning of their work on this proposal, but concluded that such procedures were not authorized by statute. The group concluded that the statutory provisions for extraordinary writs in Code of Civil Procedure section 1067 et seq. were applicable to all writ proceedings and therefore decided that the new rules should reflect those provisions. Those mandated procedures do not provide for informal action by the parties or the court.

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Need for forms

The commenter from the Superior Court of San Diego County raised the point that the forms are problematic because they may result in the increase of petitions filed with the court, including frivolous ones, and they are not expressly required by the statute (only rules are required). The commenter also asserted that the proposal will impact larger courts disproportionately, because of the higher volume of small claims filings, and questioned the need for the adoption of the new forms because they will increase the need for court time and costs without the need for them having been established.[13]

When first working on this proposal, the advisory committees expressly considered the alternative of not developing a petition form, particularly in light of the fact that the existence of the form may lead to more petitions for extraordinary writs being filed in small claims actions. Almost every member of the two committees, however, concluded that without such forms the petitions that are filed would be more difficult for the court to handle as well as being extremely difficult for parties to prepare properly. The petitions would have to either be individually drafted—which, in light of the complex statutory requirements, would be very difficult for self-represented parties—or somehow shoehorned into the current *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151), which would also be difficult because it assumes the lodging of some version of a record of the proceedings; this record does not exist in small claims actions and is not required under the new rules. In light of the requirement that rules be developed in any event, the committees concluded that it would be less burdensome for both courts and the parties to have a specific form for initiating these proceedings.

Alternatives considered

Whether the general statutes relating to writs of mandate, prohibition, and review should apply to these small claims writ proceedings

Code of Civil Procedure sections 1068, 1085, and 1102 et seq. address extraordinary writs generally. The committees considered whether the proposed new rules, which the California Law Review Commission report indicates could be for "relatively quick, inexpensive, and informal" procedures, had to reflect the procedural requirements for writs established by these code sections, or whether they could provide for simpler procedures. Proceedings seeking extraordinary writs under the statutory provisions are complex and somewhat arcane. This will be especially problematic for small claims parties.

The committees concluded, however, that the existing statutory procedures for extraordinary writs were most likely applicable to these small claims writ proceedings. Although the mandate to develop new "procedural rules" was placed within the portion of the Code of Civil Procedure expressly dealing with small claims actions, rather than in the portion dealing with extraordinary writs generally, section 116.798(a) contains a cross-reference to the extraordinary writs section,

[13] Commenter CJA also queried why the development of the new rules was needed, since petitions for writs are so infrequent in small claims cases.

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providing that the small claims division is an inferior tribunal for purposes of Title 1 (commencing with section 1067) of Part 3. The committees therefore concluded that the new rules should comply with the statutory procedures for writs set out in that title of the Code of Civil Procedure.

Whether the new rules should apply only to the writ proceedings for which the statute mandated new rules or should also apply to those relating to postjudgment actions

As noted above, Code of Civil Procedure section 116.798 draws a distinction between writs on small claims division actions relating to postjudgment enforcement, and other actions by the small claims divisions (i.e., judgment at initial hearing and any motions relating to that). The statute only directs the Judicial Council to adopt rules for the latter type of proceeding. The committees considered, however, whether it might also be helpful to apply any new rules to writ proceedings relating to small claims postjudgment proceedings so that there would be a single set of procedures applicable to all writ proceedings challenging actions by the small claims court.

CSCAC had previously considered this issue in a related context. At the request of the California Law Revision Commission, it considered whether the new law should provide that writ petitions relating to postjudgment enforcement orders of the small claims division should be considered by a single superior court judge who is assigned to the appellate division rather than by the appellate division, so that all writ petitions relating to acts of the small claims division would be handled in the same way. At the time CSCAC recommended that the distinction be included in the statute, as provided by common law. See *General Electric Capital Auto Financial Service, Inc. v. Appellate Division of the Superior Court* (2001) 88 Cal.App.4th 136 (appellate division has writ jurisdiction regarding postjudgment enforcement orders in small claims cases). The Law Revision Commission noted that a "significant advantage to this approach [having postjudgment writs go to the appellate division] is that it treats all judgments in limited civil cases the same way for enforcement purposes." (CLRC Report (2011), p. 337.)

The committees concluded that, in light of this history, it would be preferable that postjudgment writ proceedings continue to be governed by the existing rules for writ proceedings in limited civil cases. The committees are recommending minor amendments to those rules and forms to clarify this situation.

How to provide a record of the oral proceedings for the reviewing court

The committees considered whether, in light of the lack of any official record of small claims proceedings and the fact that many parties will be self-represented even on these writ proceedings, the rules should not include any provision requiring a record of what was said at the small claims proceedings. Ultimately, the committees decided that, if the petitioner is raising an issue that can only be understood if there is a record of the oral proceeding, then the petitioner should provide a statement that fairly summarizes the proceedings, including the parties' arguments. Also, any statement by the small claims court supporting its ruling must be provided. As noted above, the committees sought specific comments on whether this provision was needed and has concluded that it is.

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Whether to recommend any forms

Although the statute requires the council to develop new *rules* regarding writs in small claims cases, it does not mandate the development of *forms*. The committees considered the alternative of not developing a petition form, particularly in light of the fact that the existence of the form may lead to more petitions for extraordinary writs being filed in small claims actions. As noted above, the committees[14] concluded, however, that without such standardized forms, petitions in small claims actions would be difficult for the court to handle and would be extremely difficult for parties to properly prepare. The committees concluded that it would be less burdensome for both courts and the parties to have a specific form for these proceedings.

Implementation Requirements, Costs, and Operational Impacts

This proposal will require training of judicial officers and court staff as to the new rules and forms for certain writs in small claims cases. The number of petitions for writs in small claims cases may be increased due to the existence of the new forms. The rules will clarify what is required of the parties in such cases, which should make it easier in the long run for courts to adjudicate the petitions. Because the new rules are mandated by statute, the council must adopt rules in this area whether or not they place a further burden on the courts.

Attachments

1. Cal. Rules of Court, rules 8.930, 8.950, and 8.970—8.977, at pages 17–24
2. Revised Judicial Council forms APP-150-INFO and APP-151, at pages 25–44
3. New Judicial Council forms SC-300 and SC-300-INFO, at pages 45–62
4. Chart of comments, at pages 63–84

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[14] One member of the Civil and Small Claims Advisory Committee disagreed with this conclusion, preferring that only rules be developed at this point, with no forms.

Rules 8.930 and 8.950 of the California Rules of Court are amended and rules 8.970–8.977 are adopted, effective January 1, 2016, to read:

Division 2. Rules Relating to the Superior Court Appellate Division

Chapter 6. Writ Proceedings

Rule 8.930. Application

(a) Writ proceedings governed

Except as provided in (b), the rules in this chapter govern proceedings in the appellate division for writs of mandate, certiorari, or prohibition, or other writs within the original jurisdiction of the appellate division, including writs relating to a postjudgment enforcement order of the small claims division. In all respects not provided for in this chapter, rule 8.883, regarding the form and content of briefs, applies.

(b) Writ proceedings not governed

The rules in this chapter do not apply to:

(1) Petitions for writs of supersedeas under rule 8.824;

(2) Petitions for writs relating to acts of the small claims division other than a postjudgment enforcement order; or

(3) Petitions for writs not within the original jurisdiction of the appellate division.

Advisory Committee Comment

Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases (form APP-150-INFO) provides additional information about proceedings for writs in the appellate division of the superior court. This form is available at any courthouse or county law library or online at *www.courts.ca.gov/forms*.

Subdivision (b)(1). The superior courts, not the appellate divisions, have original jurisdiction in habeas corpus proceedings (see Cal. Const., art. VI, § 10). Habeas corpus proceedings in the superior courts are governed by rules 4.550 et. seq.

Subdivision (b)(2). A petition that seeks a writ relating to an act of the small claims division other than a postjudgment enforcement order is heard by a single judge of the appellate division (see Code Civ. Proc. § 116.798(a)) and is governed by rules 8.970 et seq.

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Rules 8.931–8.936 * * *

Division 3. ~~Trial of Small Claims Cases on Appeal~~ Rules Relating to Appeals and Writs in Small Claims Cases

Chapter 1. Trial of Small Claims Cases on Appeal

Rule 8.950. Application

The rules in this ~~division~~ chapter supplement article 7 of the Small Claims Act, Code of Civil Procedure sections 116.710 et seq., providing for new trials of small claims cases on appeal, and must be read in conjunction with those statutes.

Rule 8.952–8.966 * * *

Chapter 2. Writ Petitions

Rule 8.970. Application

(a) Writ proceedings governed

Except as provided in (b), the rules in this chapter govern proceedings under Code of Civil Procedure section 116.798(a) for writs of mandate, certiorari, or prohibition, relating to an act of the small claims division, other that a postjudgment enforcement order. In all respects not provided for in this chapter, rule 8.883, regarding the form and content of briefs, applies.

(b) Writ proceedings not governed

The rules in this chapter do not apply to:

(1) Proceedings under Code of Civil Procedure section 116.798(c) for writs relating to a postjudgment enforcement order of the small claims division, which are governed by rules 8.930–8.936.

(2) Proceedings under Code of Civil Procedure section 116.798(b) for writs relating to an act of a superior court in a small claims appeal, which are governed by rules 8.485–8.493.

Advisory Committee Comment

Code of Civil Procedure section 116.798 provides where writs in small claims actions may be heard.

The Judicial Council form *Information on Writ Proceedings in Small Claims Actions* (form SC-300-INFO) provides additional information about proceedings for writs in small claims actions in the appellate division of the superior court. This form is available at any courthouse or county law library or online at *www.courts.ca.gov/forms*.

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Rule 8.971. Definitions

The definitions in rule 1.6 apply to these rules unless the context or subject matter requires otherwise. In addition, the following definitions apply to these rules:

(1) "Writ" means an order telling the small claims court to do something that the law says it must do, or not do something the law says it must not do. The various types of writs covered by this chapter are described in statutes beginning at section 1067 of the Code of Civil Procedure.

(2) "Petition" means a request for a writ.

(3) "Petitioner" means the person asking for the writ.

(4) "Respondent" and "small claims court" mean the court against which the writ is sought.

(5) "Real party in interest" means any other party in the small claims court case who would be affected by a ruling regarding the request for a writ.

Rule 8.972. Petitions filed by persons not represented by an attorney

(a) Petitions

(1) A person who is not represented by an attorney and who requests a writ under this chapter must file the petition on a *Petition for Writ (Small Claims)* (form SC-300). For good cause the court may permit an unrepresented party to file a petition that is not on that form.

(2) If the petition raises any issue that would require the appellate division judge considering it to understand what was said in the small claims court, it must include a statement that fairly summarizes the proceedings, including the parties' arguments and any statement by the small claims court supporting its ruling.

(3) The clerk must file the petition even if it is not verified but if the party asking for the writ fails to file a verification within five days after the clerk gives notice of the defect, the court may strike the petition.

(b) Contents of supporting documents

(1) The petition must be accompanied by copies of the following:

(A) The small claims court ruling from which the petition seeks relief;

(B) All documents and exhibits submitted to the small claims court supporting and opposing the petitioner's position; and

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(C) Any other documents or portions of documents submitted to the small claims court that are necessary for a complete understanding of the case and the ruling under review.

(2) If the petition does not include the required documents or does not present facts sufficient to excuse the failure to submit them, the appellate division judge may summarily deny a stay request, the petition, or both.

(c) Form of supporting documents

(1) Documents submitted under (b) must comply with the following requirements:

(A) They must be attached to the petition. The pages must be consecutively numbered.

(B) They must each be given a number or letter.

(2) The clerk must file any supporting documents not complying with (1), but the court may notify the petitioner that it may strike or summarily deny the petition if the documents are not brought into compliance within a stated reasonable time of not less than five days.

(d) Service

(1) The petition and all its attachments, and a copy of *Information on Writ Proceedings in Small Claims Cases* (form SC-300-INFO) must be served personally or by mail on all the parties in the case, and the petition must be served on the small claims court.

(2) The petitioner must file a proof of service at the same time the petition is filed.

(3) The clerk must file the petition even if its proof of service is defective but if the party asking for the writ fails to file a corrected proof of service within five days after the clerk gives notice of the defect, the court may strike the petition or allow additional time to file a corrected proof of service.

(4) The court may allow the petition to be filed without proof of service.

Advisory Committee Comment

Subdivision (a). *Petition for Writ (Small Claims)* (form SC-300) and *Information on Writ Proceedings in Small Claims Cases* (form SC-300-INFO) are available at any courthouse or county law library or online at *www.courts.ca.gov/forms.*

Rule 8.973. Petitions filed by an attorney for a party

(a) General application of rule 8.972

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Except as provided in this rule, rule 8.972 applies to any petition for an extraordinary writ filed by an attorney under this chapter.

(b) Form and content of petition

(1) A petition for an extraordinary writ filed by an attorney may, but is not required to be, filed on *Petition for Writ (Small Claims)* (form SC-300). It must contain all the information requested in that form.

(2) The petition must disclose the name of any real party in interest.

(3) If the petition seeks review of small claims court proceedings that are also the subject of a pending appeal, the notice "Related Appeal Pending" must appear on the cover of the petition, and the first paragraph of the petition must state the appeal's title and any appellate division docket number.

(4) The petition must be verified.

(5) The petition must be accompanied by a memorandum, which need not repeat facts alleged in the petition.

(6) Rule 8.883(b) governs the length of the petition and memorandum, but the verification and any supporting documents are excluded from the limits stated in rule 8.883(b)(1) and (2).

(7) If the petition requests a temporary stay, it must explain the urgency.

Rule 8.974. Opposition

(a) Preliminary opposition

(1) The respondent and real party in interest are not required to file any opposition to the petition unless asked to do so by the appellate division judge.

(2) Within 10 days after the petition is filed, the respondent or any real party in interest may serve and file a preliminary opposition.

(3) A preliminary opposition should contain any legal arguments the party wants to make as to why the appellate division judge should not issue a writ and a statement of any material facts not included in the petition.

(4) Without requesting opposition, the appellate division judge may grant or deny a request for temporary stay, deny the petition, issue an alternative writ or order to show cause, or notify the parties that the judge is considering issuing a peremptory writ in the first instance.

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(b) Return or opposition; reply

(1) If the appellate division judge issues an alternative writ or order to show cause, the respondent or any real party in interest, individually or jointly, may serve and file a return (which is a response to the petition) by demurrer, verified answer, or both. If the appellate division judge notifies the parties that he or she is considering issuing a peremptory writ in the first instance, the respondent or any real party in interest may serve and file an opposition.

(2) Unless the appellate division judge orders otherwise, the return or opposition must be served and filed within 30 days after the appellate division judge issues the alternative writ or order to show cause or notifies the parties that it is considering issuing a peremptory writ in the first instance.

(3) Unless the appellate division judge orders otherwise, the petitioner may serve and file a reply within 15 days after the return or opposition is filed.

(4) If the return is by demurrer alone and the demurrer is not sustained, the appellate division judge may issue the peremptory writ without granting leave to answer.

(c) Form of preliminary opposition, return, or opposition

Any preliminary opposition, return, or opposition must comply with rule 8.931(c). If it is filed by an attorney, it must also comply with rule 8.932(b)(3)–(7).

Rule 8. 975. Notice to small claims court

(a) Notice if writ issues

If a writ or order issues directed to any judge, court, or other officer, the appellate division clerk must promptly send a certified copy of the writ or order to the person or entity to whom it is directed.

(b) Notice by telephone

(1) If the writ or order stays or prohibits proceedings set to occur within seven days or requires action within seven days—or in any other urgent situation—the appellate division clerk must make a reasonable effort to notify the clerk of the respondent small claims court by telephone. The clerk of the respondent small claims court must then notify the judge or officer most directly concerned.

(2) The appellate division clerk need not give notice by telephone of the summary denial of a writ, whether or not a stay was previously issued.

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Rule 8.976. Filing, finality, and modification of decisions; remittitur

(a) Filing of decision

The appellate division clerk must promptly file all opinions and orders in proceedings under this chapter and promptly send copies showing the filing date to the parties and, when relevant, to the small claims court.

(b) Finality of decision

(1) Except as otherwise ordered by the appellate division judge, the following decisions regarding petitions for writs under this chapter are final in the issuing court when filed:

(A) An order denying or dismissing such a petition without issuance of an alternative writ, order to show cause, or writ of review; and

(B) An order denying or dismissing such a petition as moot after issuance of an alternative writ, order to show cause, or writ of review.

(2) Except as otherwise provided in (3), all other decisions in a writ proceeding under this chapter are final 30 days after the decision is filed.

(3) If necessary to prevent mootness or frustration of the relief granted or to otherwise promote the interests of justice, a judge in the appellate division may order early finality of a decision granting a petition for a writ under this chapter or denying such a petition after issuing an alternative writ, order to show cause, or writ of review. The decision may provide for finality on filing or within a stated period of less than 30 days.

(c) Modification of decisions

Rule 8.888(b) governs the modification of decisions in writ proceedings under this chapter.

(d) Remittitur

The appellate division must issue a remittitur after the judge issues a decision in a writ proceeding under this chapter except when the judge issues one of the orders listed in (b)(1). The remittitur is deemed issued when the clerk enters it in the record. The clerk must immediately send the parties notice of issuance of the remittitur, showing the date of entry.

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Advisory Committee Comment

Subdivision (b)(1). Examples of situations in which the appellate division judge may issue an order dismissing a writ petition include when the petitioner fails to comply with an order, when the judge recalls the alternative writ, order to show cause, or writ of review as improvidently granted, or when the petition becomes moot.

Rule 8.977. Costs

(a) Entitlement to costs

The prevailing party in an original proceeding is entitled to costs if the appellate division judge resolves the proceeding after issuing an alternative writ, an order to show cause, or a peremptory writ in the first instance.

(b) Award of costs

(1) In the interests of justice, the appellate division judge may award or deny costs as the court deems proper.

(2) The opinion or order resolving the proceeding must specify the award or denial of costs.

(3) Rule 8.891(b)–(d) governs the procedure for recovering costs under this rule.

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APP-150-INFO Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases

GENERAL INFORMATION

1 What does this information sheet cover?

This information sheet tells you about **writ proceedings**—proceedings in which a person is asking for a writ of mandate, prohibition, or review—in misdemeanor, infraction, and limited civil cases, and in certain small claims cases. Please read this information sheet before you fill out *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151). This information sheet does not cover everything you may need to know about writ proceedings. It is only meant to give you a general idea of the writ process. To learn more, you should read rules 8.930–8.936 of the California Rules of Court, which set out the procedures for writ proceedings in the appellate division. You can get these rules at any courthouse or county law library or online at *www.courts.ca.gov/rules.*

This information sheet does NOT provide information about appeals or proceedings for writs of supersedeas or habeas corpus, or for writs in certain small claims cases.

- For information about appeals, please see the box on the right side of this page.
- For information about writs of habeas corpus, please see rules 4.550–4.552 of the California Rules of Court and *Petition for Writ of Habeas Corpus* (form MC-275).
- For information about writs of supersedeas, please see rule 8.824 of the California Rules of Court.
- This information sheet applies to writs relating to *postjudgment enforcement actions* of the small claims division. For information about writs relating to other actions by the small claims division, see rules 8.930–8.936 of the California Rules of Court and *Petition for Writ (Small Claims)* (form SC-300).
- For information about writs relating to actions of the superior court on small claims appeals, see rules 8.485–8.493 of the California Rules of Court.

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

2 What is a writ?

A writ is an order from a higher court telling a lower court to do something the law says the lower court must do or not to do something the law says the lower court does not have the power to do. In writ proceedings in the appellate division, the lower court is the superior court that took the action or issued the order being challenged.

For information about appeal procedures, see:

- *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO)
- *Information on Appeal Procedures for Infractions* (form CR-141-INFO)
- *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO)

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

In this information sheet, we call the lower court the "trial court."

3 Are there different kinds of writs?

Yes. There are three main kinds of writs:

- Writs of mandate (sometimes called "mandamus"), which are orders telling the trial court to do something.
- Writs of prohibition, which are orders telling the trial court not to do something.
- Writs of review (sometimes called "certiorari"), which are orders telling the trial court that the appellate division will review certain kinds of actions already taken by the trial court.

There are laws (statutes) that you should read concerning each type of writ: see California Code of Civil Procedure sections 1084–1097 about writs of mandate, sections 1102–1105 about writs of prohibition, and sections 1067–1077 about writs of review. You can get copies of

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these statutes at any county law library or online at *leginfo.legislature.ca.gov/faces/codes.xhtml.*

4 Is a writ proceeding the same as an appeal?

No. In an **appeal,** the appellate division *must* consider the parties' arguments and decide whether the trial court made the legal error claimed by the appealing party and whether the trial court's decision should be overturned based on that error (this is called a "decision on the merits"). In a **writ proceeding,** the appellate division is *not* required to make a decision on the merits; even if the trial court made a legal error, the appellate division can decide not to consider that error now, but to wait and consider the error as part of any appeal from the final judgment. Most requests for writs are denied without a decision on the merits (this is called a "summary denial"). Because of this, appeals are the ordinary way that decisions made by a trial court are reviewed and writ proceedings are often called proceedings for "extraordinary" relief.

Appeals and writ proceedings are also used to review different kinds of decisions by the trial court. Appeals can be used only to review a trial court's final judgment and a few kinds of orders. Most rulings made by a trial court before it issues its final judgment cannot be appealed right away; they can only be appealed after the trial court case is over, as part of an appeal of the final judgment. Unlike appeals, writ proceedings can be used to ask for review of certain kinds of important rulings made by a trial court before it issues its final judgment.

5 Is a writ proceeding a new trial?

No. **A writ proceeding is NOT a new trial**. The appellate division will not consider new evidence, such as the testimony of new witnesses. Instead, if it does not summarily deny the request for a writ, the appellate division reviews a record of what happened in the trial court and the trial court's ruling to see if the trial court made the legal error claimed by the person asking for the writ. When it conducts its review, the appellate division presumes that the trial court's ruling is correct; the person who requests the writ must show the appellate division that the trial court made the legal error the person is claiming.

6 Can a writ be used to address *any* errors made by a trial court?

No.

Writs can only address certain legal errors. Writs can only address the following types of legal errors made by a trial court:

- The trial court has a legal duty to act but:
  - Refuses to act
  - Has not done what the law says it must do
  - Has acted in a way the law says it does not have the power to act
- The trial court has performed or says it is going to perform a judicial function (like deciding a person's rights under law in a particular case) in a way that the court does not have the legal power to do.

There must be no other adequate remedy. The trial court's error must also be something that can be fixed only with a writ. The person asking for the writ must show the appellate division that there is no adequate way to address the trial court's error other than with the writ (this is called having "no adequate remedy at law"). As mentioned above, appeals are the ordinary way that trial court decisions are reviewed. If the trial court's ruling can be appealed, the appellate division will generally consider an appeal to be good enough (an "adequate remedy") unless the person asking for the writ can show the appellate division that he or she will be harmed in a way that cannot be fixed by the appeal if the appellate division does not issue the writ (this is called "irreparable" injury or harm).

Statutory writs: There are laws (statutes) that provide that certain kinds of rulings can or must be challenged using a writ proceeding. These are called "statutory writs." Here is a list of some of the most common rulings that a statute says can or must be challenged using a writ:

- A ruling on a motion to disqualify a judge (see California Code of Civil Procedure section 170.3(d))
- Denial of a motion for summary judgment (see California Code of Civil Procedure section 437c(m)(l))

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- A ruling on a motion for summary adjudication of issues (see California Code of Civil Procedure section 437c(m)(l))

- Denial of a stay in an unlawful detainer matter (see California Code of Civil Procedure section 1176)

- An order disqualifying the prosecuting attorney (see California Penal Code section 1424)

You can get copies of these statutes at any county law library or online at *leginfo.legislature.ca.gov/faces /codes.xhtml.* You will need to check whether there is a statute providing that the specific ruling you want to challenge can or must be reviewed using a writ proceeding. (Note that just because there is a statute requiring or allowing you to ask for a writ to challenge a ruling does not mean that the court must grant your request; the appellate division can still deny a request for a statutory writ.)

Common law writs: Even if there is not a statute specifically providing for a writ proceeding to challenge a particular ruling, most trial court rulings other than the final judgment can potentially be challenged using a writ proceeding if the trial court made the type of legal error described above and the petitioner has no other adequate remedy at law. These writs are called "common law" writs.

7 Can the appellate division consider a request for a writ in *any* case?

No. Different courts have the power (called "jurisdiction") to consider requests for writs in different types of cases. The appellate division can only consider requests for writs in limited civil, misdemeanor, and infraction cases, and certain small claims cases. A limited civil case is a civil case in which the amount claimed is $25,000 or less (see California Code of Civil Procedure sections 85 and 88). Misdemeanor cases are cases in which a person has been charged with or convicted of a crime for which the punishment can include jail time of up to one year but not time in state prison (see California Penal Code sections 17 and 19.2). (If the person was also charged with or convicted of a felony in the same case, it is considered a felony case, not a misdemeanor case.) Infraction cases are cases in which a person has been charged with or convicted of a crime for which the punishment can be a fine, traffic school, or some form of community service but cannot include any time in jail or prison (see California Penal Code sections 17 and 19.8). Examples of infractions include traffic tickets or citations for violations of some city or county ordinances. (If a person was also charged with or convicted of a misdemeanor in the same case, it is considered a misdemeanor case, not an infraction case.) You can get copies of these statutes at any county law library or online at *leginfo.legislature.ca.gov/faces /codes.xhtml.* The appellate division can consider requests for writs in small claims actions relating to postjudgment enforcement orders.

The appellate division does NOT have jurisdiction to consider requests for writs in either unlimited civil cases (civil cases in which the amount claimed is more than $25,000) or felony cases (cases in which a person has been charged with or convicted of a crime for which the punishment can include time in state prison). Requests for writs in these cases can be made in the Court of Appeal. The appellate division also does NOT have jurisdiction to consider requests for writs of habeas corpus; requests for these writs can be made in the superior court.

Requests for writs relating to actions of the small claims division *other* than postjudgment enforcement orders are considered by a single judge in the appellate division. (See form SC-300-INFO.) Requests for writs relating to superior court actions in small claims cases on appeal may be made to the Court of Appeal.

8 Who are the parties in a writ proceeding?

If you are asking for the writ, you are called the PETITIONER. You should read "Information for the Petitioner," beginning on page 4.

The court the petitioner is asking to be ordered to do or not to do something is called the RESPONDENT. In appellate division writ proceedings, the trial court is the respondent.

Any other party in the trial court case who would be affected by a ruling regarding the request for a writ is a REAL PARTY IN INTEREST. If you are a real party in interest, you should read "Information for a Real Party in Interest," beginning on page 10.

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9 Do I need a lawyer to represent me in a writ proceeding?

You do not *have* to have a lawyer; you are allowed to represent yourself in a writ proceeding in the appellate division. But writ proceedings can be very complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about the writ procedures, you should talk to a lawyer. In limited civil cases and infraction cases, you must hire a lawyer at your own expense if you want one (the court cannot provide 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.*

INFORMATION FOR THE PETITIONER

This part of the information sheet is written for the petitioner—the party asking for the writ. It explains some of the rules and procedures relating to asking for a writ. The information may also be helpful to a real party in interest. There is more information for a real party in interest starting on page 10 of this information sheet.

10 Who can ask for a writ?

Only a party in the trial court proceeding—the plaintiff or defendant in a civil case or the defendant or prosecuting agency in a misdemeanor or infraction case—can ask for a writ challenging a ruling on a motion to disqualify a judge (see California Code of Civil Procedure section 170.3(d)). Parties are also usually the only ones that ask for writs challenging other kinds of trial court rulings. However, in most cases, a person who was not a party does have the legal right to ask for a writ if that person has a "beneficial interest" in the trial court's ruling. A "beneficial interest" means that the person has a specific right or interest affected by the ruling that goes beyond the general rights or interests the public may have in the ruling.

11 How do I ask for a writ?

To ask for a writ you must serve and file a petition for a writ (see below for an explanation of how to "serve and file" a petition). A petition is a formal request that the appellate division issue a writ. A petition for a writ explains to the appellate division what happened in the trial court, what legal error you (the petitioner) believe the trial court made, why you have no other adequate remedy at law, and what order you are requesting the appellate division to make.

12 How do I prepare a writ petition?

If you are represented by a lawyer, your lawyer will prepare your petition for a writ. If you are not represented by a lawyer, you must use *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151) to prepare your petition. You can get form APP-151 at any courthouse or county law library or online at *www.courts.ca.gov/forms.* This form asks you to fill in the information that needs to be in a writ petition.

a. Description of your interest in the trial court's ruling

Your petition needs to tell the appellate division why you have a right to ask for a writ in the case. As discussed above, usually only a person who was a party in the trial court case—the plaintiff or defendant in a civil case or the defendant or prosecuting agency in a misdemeanor or infraction case—asks for a writ challenging a ruling in that case. If you were a party in the trial court case, say that in your petition. If you were not a party, you will need to describe what "beneficial interest" you have in the trial court's ruling. A "beneficial interest" means that you have a specific right or interest affected by the ruling that goes beyond the general rights or interests the public may have in the ruling. To show the appellate division that you have a beneficial interest in the ruling you want to challenge, you must describe how the ruling will affect you in a direct and negative way.

b. Description of the legal error you believe the trial court made

Your petition will need to tell the appellate division what legal error you believe the trial court made. Not every mistake a trial court might make can be addressed by a writ. You must show that the trial court made one of the following types of legal errors:

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- The trial court has a legal duty to act but:
  - Refuses to act
  - Has not done what the law says it must do
  - Has acted in a way the law says it does not have the power to act

- The trial court has performed or says it is going to perform a judicial function (like deciding a person's rights under law in a particular case) in a way that the court does not have the legal power to do.

To show the appellate division that the trial court made one of these legal errors, you will need to:

- Show that the trial court has the legal duty or the power to act or not act in a particular way. You will need to tell the appellate division what legal authority—what constitutional provision, statute, rule, or published court decision—establishes the trial court's legal duty or power to act or not act in that way.

- Show the appellate division that the trial court has not acted in the way that this legal authority says the court is required to act. You will need to tell the appellate division exactly where in the record of what happened in the trial court it shows that the trial court did not act in the way it was required to.

c. Description of why you need the writ

One of the most important parts of your petition is explaining to the appellate division why you need the writ you have requested. Remember, the appellate division does not have to grant your petition just because the trial court made an error. You must convince the appellate division that it is important for it to issue the writ.

Your petition needs to show that a writ is the only way to fix the trial court's error. To convince the court you need the writ, you will need to show the appellate division that you have no way to fix the trial court's error other than through a writ (this is called having "no adequate remedy at law").

This will be hard if the trial court's ruling can be appealed. If the ruling you are challenging can be appealed, either immediately or as part of an appeal of the final judgment in your case, the appellate division will generally consider this appeal to be a good enough way to fix the trial court's ruling (an "adequate remedy"). To be able to explain to the appellate division why you do not have an adequate remedy at law, you will need to find out if the ruling you want to challenge can be appealed, either immediately or as part of an appeal of the final judgment.

Here are some trial court rulings that can be appealed. There are laws (statutes) that say that certain kinds of trial court rulings ("orders") can be appealed immediately. In limited civil cases, California Code of Civil Procedure section 904.2 lists orders that can be appealed immediately, including orders:

- Changing or refusing to change the place of trial (venue)

- Granting a motion to quash service of summons

- Granting a motion to stay or dismiss the action on the ground of inconvenient forum

- Granting a new trial

- Denying a motion for judgment notwithstanding the verdict

- Granting or dissolving an injunction or refusing to grant or dissolve an injunction

- Appointing a receiver

- Made after final judgment in the case

In misdemeanor and infraction cases, orders made after the final judgment that affect the substantial rights of the defendant can be appealed immediately (California Penal Code section 1466).

In misdemeanor cases, orders granting or denying a motion to suppress evidence can also be appealed immediately (California Penal Code section 1538.5(j)).

You can get copies of these statutes at any county law library or online at *leginfo.legislature.ca.gov/faces /codes.xhtml.* You should also check to see if there are published court decisions that indicate whether you can

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or must use an appeal or a writ petition to challenge the type of ruling you want to challenge in your case.

If the ruling can be appealed, you will need to show that an appeal will not fix the trial court's error. If the trial court ruling you want to challenge can be appealed, you will need to show the appellate division why that appeal is not good enough to fix the trial court's error. To do that, you will need to show the appellate division how you will be harmed by the trial court's error in a way that cannot be fixed by the appeal if the appellate division does not issue the writ (this is called "irreparable" injury or harm). For example, because of the time it takes for an appeal, the harm you want to prevent may happen before an appeal can be finished.

d. Description of the order you want the appellate division to make

Your petition needs to describe what you are asking the appellate division to order the trial court to do or not do. Writ petitions usually ask that the trial court be ordered to cancel ("vacate") its ruling, issue a new ruling, or not take any steps to enforce its ruling.

If you want the appellate division to order the trial court not to do anything more until the appellate division decides whether to grant the writ you are requesting, you must ask for a "stay." If you want a stay, you should first ask the trial court for a stay. You should tell the appellate division whether you asked the trial court for a stay. If you did not ask the trial court for a stay, you should tell the appellate division why you did not do this.

If you ask the appellate division for a stay, make sure you also fill out the "Stay requested" box on the first page of the *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151).

e. Verifying the petition

Petitions for writs must be "verified." This means that either the petitioner or the petitioner's attorney must declare under penalty of perjury that the facts stated in the petition are true and correct, must sign the petition, and must indicate the date that the petition was signed. On the last page of the *Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)* (form APP-151), there is a place for you to verify your petition.

13 Is there anything else that I need to serve and file with my petition?

Yes. Along with the petition, you must serve and file a record of what happened in the trial court (see below for an explanation of how to serve and file the petition). Since the appellate division judges were not there in the trial court, a record of what happened must be sent to the appellate division for its review. The materials that make up this record are called "supporting documents."

What needs to be in the supporting documents. The supporting documents must include:

- A record of what was said in the trial court about the ruling that you are challenging (this is called the "oral proceedings") and
- Copies of certain important documents from the trial court.

Read below for more information about these two parts of the supporting documents.

Record of the oral proceedings. There are several ways a record of what was said in the trial court may be provided to the appellate division:

- **A transcript**—A transcript is a written record (often called the "verbatim" record) of the oral proceedings in the trial court. If a court reporter was in the trial court and made a record of the oral proceedings, you can have the court reporter prepare a transcript of those oral proceedings, called a "reporter's transcript," for the appellate division. If a reporter was not there, but the oral proceedings were officially recorded on approved electronic recording equipment, you can have a transcript prepared for the appellate division from the official electronic recording of these proceedings. You (the petitioner) must pay for preparing a transcript, unless the court orders otherwise.
- **A copy of an electronic recording**—If the oral proceedings were officially recorded on approved electronic recording equipment, the court has a local rule for the appellate division permitting this

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recording to be used as the record of the oral proceedings, and all the parties agree ("stipulate"), a copy of the official electronic recording itself can be used as the record of the oral proceedings instead of a transcript. You (the petitioner) must pay for preparing a copy of the official electronic recording, unless the court orders otherwise.

- **A summary**—If a transcript or official electronic recording of what was said in the trial court is not available, your petition must include a declaration (a statement signed by the petitioner under penalty of perjury) either:
  - Explaining why the transcript or official electronic recording is not available and providing a fair summary of the proceedings, including the petitioner's arguments and any statement by the court supporting its ruling or
  - Stating that the transcript or electronic recording has been ordered, the date it was ordered, and the date it is expected to be filed.

Copies of documents from the trial court. Copies of the following documents from the trial court must also be included in the supporting documents:

- The trial court ruling being challenged in the petition
- All documents and exhibits submitted to the trial court supporting and opposing the petitioner's position
- Any other documents or portions of documents submitted to the trial court that are necessary for a complete understanding of the case and of the ruling being challenged

What if I cannot get copies of the documents from the trial court because of an emergency? Rule 8.931 of the California Rules of Court provides that in extraordinary circumstances the petition may be filed without copies of the documents from the trial court. If the petition is filed without these documents, you must explain in your petition the urgency and the circumstances making the documents available.

Format of the supporting documents. Supporting documents must be put in the format required by rule 8.931 of the California Rules of Court. Among other things, there must be a tab for each document and an index listing the documents that are included. You should carefully read rule 8.931. You can get a copy of rule 8.931 at any courthouse or county law library or online at *www.courts.ca.gov/rules.*

(14) Is there a deadline to ask for a writ?

Yes. For statutory writs, the statute usually sets the deadline for serving and filing the petition. Here is a list of the deadlines for filing petitions for some of the most common statutory writs (you can get copies of these statutes at any county law library or online at *leginfo.legislature.ca.gov/faces/codes.xhtml*).

Statutory Writ	Filing Deadline
Writ challenging a ruling on a motion to disqualify a judge (see California Code of Civil Procedure section 170.3(d))	10 days after notice to the parties of the decision
Writ challenging the denial of a motion for summary judgment (see California Code of Civil Procedure section 437c(m)(l))	20 days after service of written notice of entry of the order
Writ challenging a ruling on a motion for summary adjudication of issues (see California Code of Civil Procedure section 437c(m)(l))	20 days after service of written notice of entry of the order

For common law writs or statutory writs where the statute does not set a deadline, you should file the petition as soon as possible and not later than 30 days after the court makes the ruling that you are challenging in the petition. While there is no absolute deadline for filing these petitions, writ petitions are usually used when it is urgent that the trial court's error be fixed. Remember, the court is not required to grant your petition even if the trial court made an error. If you delay in filing your petition, it may make the appellate division think that it is not really urgent that the trial court's error be fixed and the appellate division may deny your petition. If there are extraordinary circumstances that

delayed the filing of your petition, you should explain these circumstances to the appellate division in your petition.

15 How do I "serve" my petition?

Rule 8.931(d) requires that the petition and one set of supporting documents be served on any named real party in interest and that just the petition be served on the respondent trial court. "Serving" a petition on a party means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the petition to the real party in interest and the respondent court in the way required by law.
- Make a record that the petition has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the petition, who was served with the petition, how the petition was served (by mail or in person), and the date the petition was served.

You can get more information about how to serve court documents 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.*

16 How do I file my petition?

To file a petition for a writ in the appellate division, you must bring or mail the original petition, including the supporting documents, and the proof of service to the clerk for the appellate division of the superior court that made the ruling you are challenging. If the superior court has more than one courthouse location, you should call the clerk at the courthouse where the ruling you are challenging was made to ask where to file your petition. You should make a copy of all the documents 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 petition to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

17 Do I have to pay to file a petition?

There is no fee to file a petition for a writ in a misdemeanor or infraction case, but there is a fee to file a petition for a writ in a limited civil case. You should ask the clerk for the appellate division where you are filing the petition what this fee is. If you cannot afford to pay this filing fee, you can ask the court to waive this fee. To do this, you must fill out 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 petition or with your petition. The court will review this application and decide whether to waive the filing fee.

18 What happens after I file my petition?

Within 10 days after you serve and file your petition, the respondent or any real party in interest can serve and file preliminary opposition to the petition. Within 10 days after an opposition is filed, you may serve and file a reply to that opposition.

The appellate division does not have to wait for an opposition or reply before it can act on a petition for a writ, however. Without waiting, the appellate division can:

a. Issue a stay

b. Summarily deny the petition

c. Issue an alternative writ or order to show cause

d. Notify the parties that it is considering issuing a preemptory writ in the first instance

e. Issue a peremptory writ in the first instance if such relief was expressly requested in the petition.

Read below for more information about these options.

a. Stay of trial court proceedings

A stay is an order from the appellate division telling the trial court not to do anything more until the appellate division decides whether to grant your petition. A stay puts the trial court proceedings on temporary hold.

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b. Summary denial

A "summary denial" means that the appellate division denies the petition without deciding whether the trial court made the legal error claimed by the petitioner or whether the writ requested by the petitioner should be issued based on that error. Remember, even if the trial court made a legal error, the appellate division can decide not to consider that error now but to wait and consider the error as part of any appeal from the final judgment. No reasons need to be given for a summary denial. Most petitions for writs are denied in this way.

c. Alternative writ or order to show cause

An "alternative writ" is an order telling the trial court either to do what the petitioner has requested in the petition (or some modified form of what the petitioner requested) or to show the appellate division why the trial court should not be ordered to do what the petitioner requested. An "order to show cause" is similar; it is an order telling the trial court to show the appellate division why the trial court should not be ordered to do what the petitioner requested in the petition (or some modified form of what the petitioner requested). The appellate division will issue an alternative writ or an order to show cause only if the petitioner has shown that he or she has no adequate remedy at law and the appellate division has decided that the petitioner may have shown that the trial court made a legal error that needs to be fixed.

If the appellate division issues an alternative writ and the trial court does what the petitioner requested (or a modified form of what the petitioner requested as ordered by the appellate division), then no further action by the appellate division is needed and the appellate division may dismiss the petition.

If the trial court does not comply with an alternative writ, however, or if the appellate division issues an order to show cause, then the respondent court or a real party in interest can file a response to the appellate division's order (called a "return") that explains why the trial court should not be ordered to do what the petitioner requested. The return must be served and filed within the time specified by the appellate division or, if no time is specified, within 30 days from the date the alternative writ or order to show cause was issued. The petitioner will then have an opportunity to serve and file a reply within 15 days after the return is filed. The appellate division may set the matter for oral argument. When all the papers have been served and filed (or the time to serve and file them has passed) and oral argument is completed, the appellate division will decide the case.

d. Peremptory writ in the first instance

A "peremptory writ in the first instance" is an order telling the trial court to do what the petitioner has requested (or some modified form of what the petitioner requested) that is issued without the appellate division first issuing an alternative writ or order to show cause. It is very rare for the appellate division to issue a peremptory writ in the first instance, and it will not do so unless the respondent and real parties in interest have received notice that the court might do so, either through the petitioner expressly asking for such relief in the petition, or by the court first notifying the parties and giving the respondent court and any real party in interest a chance to file an opposition.

The respondent court or a real party in interest can file a response to the appellate division's notice (called an "opposition") that explains why the trial court should not be ordered to do what the petitioner has requested. The opposition must be served and filed within the time specified by the appellate division or, if no time is specified, within 30 days from the date the notice was issued. The petitioner will then have a chance to serve and file a reply within 15 days after the opposition is filed. The appellate division may then set the matter for oral argument. When all the papers have been served and filed (or the time to serve and file them has passed) and oral argument is completed, the appellate division will decide the case.

(19) What should I do if the court denies my petition?

If the court denies your petition, it may be helpful to talk to a lawyer. In a limited civil or infraction case, you must hire a lawyer at your own expense if you want one (the court cannot provide 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.*

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INFORMATION FOR A REAL PARTY IN INTEREST

This part of the information sheet is written for a real party in interest—a party from the trial court case other than the petitioner who will be affected by a ruling on a petition for a writ. It explains some of the rules and procedures relating to responding to a petition for a writ. The information may also be helpful to the petitioner.

(20) I have received a copy of a petition for a writ in a case in which I am a party. Do I need to do anything?

You do not *have* to do anything. The California Rules of Court give you the right to file a preliminary opposition to a petition for a writ within 10 days after the petition is served and filed, but you are not required to do this. The appellate division can take certain actions without waiting for any opposition, including:

- Summarily denying the petition
- Issuing an alternative writ or order to show cause
- Notifying the parties that it is considering issuing a peremptory writ in the first instance
- Issuing a peremptory writ in the first instance if such relief was expressly requested in the petition.

Read the response to question (18) for more information about these options.

Most petitions for writs are summarily denied, often within a few days after they are filed. If you have not already received something from the appellate division saying what action it is taking on the petition, it is a good idea to call the appellate division to see if the petition has been denied before you decide whether and how to respond.

This would be a good time to talk to a lawyer. You do not *have* to have a lawyer; you are allowed to represent yourself in a writ proceeding in the appellate division. But writ proceedings can be very complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about writ proceedings or about whether and how you should respond to a writ petition, you should talk to a lawyer. In a limited civil case or infraction case, you must hire a lawyer at your own expense if you want one (the court cannot provide 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.*

If the petition has not already been summarily denied, you may, but are not required to, serve and file a preliminary opposition to the petition within 10 days after the petition was served and filed. In general, it is a good idea to consider filing a preliminary opposition if the petition misstates the facts or if you think the petition shows that the trial court made a legal error that may need to be fixed. However, the appellate division will seldom grant a writ without first issuing an alternative writ, an order to show cause, or a notice that it is considering issuing a peremptory writ. In all these circumstances, you will get notice from the court and have a chance to file a response. Note that the appellate division may issue a peremptory writ without notice if the petitioner expressly asked the court, in the petition, to issue a peremptory writ in the first instance. If the petitioner did that, you may want to consider whether to file a preliminary opposition, to explain why you believe the small claims court made no legal error and why the petitioner is not entitled to a writ.

If you decide to file a preliminary opposition, you must serve that preliminary opposition on all the other parties to the writ proceeding. "Serving and filing" an opposition means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the preliminary opposition to the other parties in the way required by law.
- Make a record that the preliminary opposition has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the preliminary opposition, who was served with the preliminary opposition, how the preliminary opposition was served (by mail or in person), and the date the preliminary opposition was served.
- File the original preliminary opposition and the proof of service with the appellate division. You

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should make a copy of the preliminary opposition 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 preliminary opposition 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 documents 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.*

21 I have received a copy of an alternative writ or an order to show cause issued by the appellate division. Do I need to do anything?

Yes. Unless the trial court has already done what the alternative writ told it to do, you should serve and file a response called a "return."

As explained above, the appellate division will issue an alternative writ or an order to show cause if the appellate division has decided that the petitioner may have shown that the trial court made a legal error that needs to be fixed. An "alternative writ" is an order telling the trial court either to do what the petitioner has requested in the petition (or some modified form of what the petitioner requested) or to show the appellate division why the trial court should not be ordered to do what the petitioner requested. An "order to show cause" is similar; it is an order telling the trial court to show the appellate division why the trial court should not be ordered to do what the petitioner requested in the petition (or some modified form of what the petitioner requested).

If the appellate division issues an alternative writ and the trial court does what the petitioner requested (or a modified form of what the petitioner requested as ordered by the appellate division), then no further action by the appellate division is needed and the appellate division may dismiss the petition. If the trial court does not comply with an alternative writ, however, or if the appellate division issues an order to show cause, then the respondent court or the real party in interest may serve and file a response to the appellate division's order, called a "return."

A return is your argument to the appellate division about why the trial court should not be ordered to do what the petitioner has requested. If you are represented by a lawyer in the writ proceeding, your lawyer will prepare your return. If you are not represented by a lawyer, you will need to prepare your own return. A return is usually a legal response called an "answer." An answer is used to admit or deny the facts alleged in the petition, to add to or correct the facts, and to explain any legal defenses to the legal arguments made by the petitioner. You should read California Code of Civil Procedure sections 430.10–430.80 for more information about answers. You can get copies of these statutes at any county law library or online at *leginfo.legislature.ca.gov/faces/codes.xhtml*. A return can also include additional supporting documents not already filed by the petitioner.

If you do not file a return when the appellate division issues an alternative writ or order to show cause, it does not mean that the appellate division is required to issue the writ requested by the petitioner. However, the appellate division will treat the facts stated by the petitioner in the petition as true, which makes it more likely the appellate division will issue the requested writ. Unless the appellate division sets a different filing deadline in its alternative writ or order to show cause, you must serve and file your return within 30 days after the appellate division issues the alternative writ or order to show cause. The return must be served on all the other parties to the writ proceeding. "Serving and filing" the return means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the return to the other parties in the way required by law.

- Make a record that the return has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the return, who was served with the return, how the return was served (by mail or in person), and the date the return was served.

- File the original return and the proof of service with the appellate division. You should make a copy of the return you are planning to file for your own records before you file it with the court. It is a good

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- idea to bring or mail an extra copy of the return 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 documents 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.*

(22) I have received a copy of a notice from the appellate division indicating it is considering issuing a peremptory writ in the first instance. Do I need to do anything?

Yes. You should serve and file a response called an "opposition."

As explained in the answer to question (18), a "peremptory writ in the first instance" is an order telling the trial court to do what the petitioner has requested (or some form of what the petitioner requested as ordered by the appellate division) that is issued without the appellate division first issuing an alternative writ or order to show cause. The appellate division will not issue a peremptory writ in the first instance without first giving the parties notice and a chance to file an opposition. However, when the appellate division issues such a notice, it means that the appellate division is strongly considering granting the writ requested by the petitioner.

An opposition is your argument to the appellate division about why the trial court should not be ordered to do what the petitioner has requested. If you are represented by a lawyer in the writ proceeding, your lawyer will prepare your opposition. If you are not represented by a lawyer, you will need to prepare your own opposition. Like a return discussed above, an opposition is usually a legal response called an "answer." An answer is used to admit or deny the facts alleged in the petition, to add to or correct the facts, and to explain any legal defenses to the legal arguments made by the petitioner. You should read California Code of Civil Procedure sections 430.10–430.80 for more information about answers. You can get copies of these statutes at any county law library or online at *leginfo.legislature.ca.gov/faces/codes.xhtml.*

Unless the appellate division sets a different deadline in its notice that it is considering issuing a peremptory writ, you must serve and file your opposition within 30 days after the appellate division issues the notice. The opposition must be served on all the other parties to the writ proceeding. "Serving and filing" the opposition means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the opposition to the other parties in the way required by law.
- Make a record that the opposition has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the opposition, who was served, how the opposition was served (by mail or in person), and the date the opposition was served.
- File the original opposition and the proof of service with the appellate division. You should make a copy of the opposition 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 opposition 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 documents 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.*

(23) What happens after I serve and file my return or opposition?

After you file a return or opposition, the petitioner has 15 days to serve and file a reply. The appellate division may also set the matter for oral argument. When all the papers have been filed (or the time to file them has passed) and oral argument is completed, the appellate division will decide the case.

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APP-151 Petition for Writ (Misdemeanor, Infraction, or Limited Civil Case)

Clerk stamps date here when form is filed.

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08.28.15
NOT APPROVED BY THE JUDICIAL COUNCIL

Clerk will fill in the number below:

Appellate Division Case Number:

_____

Petitioner
(fill in the name of the person asking for the writ)

v.

Superior Court of California, County of _____

_____

Respondent
(fill in the name of the court whose action or ruling you are challenging)

_____

Real Party in Interest
(fill in the name of any other parties in the trial court case)

☐ **Stay requested**
(see item (12) c. on page 6)

Instructions

- This form is only for requesting a **writ** in a misdemeanor, infraction, or limited civil case, or a writ challenging a postjudgment enforcement order in a small claims case (see below*).
- Do *not* use this form for other writs and for appeals. You can get forms to use for those at any courthouse or county law library or online at *www.courts.ca.gov/forms.*
- Before you fill out this form, read *Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases* (form APP-150-INFO) to know your rights and responsibilities. You can get form APP-150-INFO at any courthouse or county law library or online at *www.courts.ca.gov/forms*.
- Unless a special statute sets an earlier deadline, you should file this form no later than **30 days** after the date the trial court took the action or issued the ruling you are challenging in this petition (see form APP-150-INFO, page 7, for more information about the deadline for filing a writ petition). It is your responsibility to find out if a special statute sets an earlier deadline. If your petition is filed late, the appellate division may deny it.
- Fill out this form and make a copy of the completed form for your records and for the respondent (the trial court whose action or ruling you are challenging) and each of the real parties in interest (the other party or parties in the trial court case).
- Serve a copy of the completed form on the respondent and on each real party in interest and keep proof of this service. *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. You can get 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*.
- Take or mail the completed form and your proof of service on the respondent and each real party in interest to the clerk's office for the appellate division of the superior court that took the action or issued the ruling you are challenging.

* Small Claims cases. If you are a party in a small claims case, this form is only to be used for requesting a writ relating to a postjudgment enforcement order of a small claims division. For writs relating to other acts of a small claims division, the form to use is the *Petition for Writ (Small Claims)* (form SC-300). See also Cal. Rules of Court, rules 8.970–8.977. For writs relating to acts of a superior court in a small claims appeal, see Cal. Rules of Court, rules 8.485–8.493.

1 Your Information

a. Petitioner (the party who is asking for the writ):

Name: _____

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

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

Phone: _____ E-mail *(if available)*: _____

b. Petitioner's lawyer *(skip this if the petitioner does not have a lawyer for this petition)*:

Name: _____ State Bar number: _____

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

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

Phone: _____ E-mail *(if available)*: _____

Fax *(if available)*: _____

The Trial Court Action or Ruling You Are Challenging

2 I am/My client is filing this petition to challenge an action taken or ruling made by the trial court in the following case:

a. Case name *(fill in the trial court case name)*: _____

b. Case number *(fill in the trial court case number)*: _____

3 The trial court action or ruling I am/my client is challenging is *(describe the action taken or ruling made by the trial court)*: _____

4 The trial court took this action or made this ruling on the following date *(fill in the date)*: _____

5 *If you are filing this petition more than 30 days after the date that you listed in 4, explain the extraordinary circumstances that caused the delay in filing this petition:* _____

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The Parties in the Trial Court Case

(6) I/My client *(check and fill in a or b):*

a. ☐ was a party in the case identified in (2).

b. ☐ was not a party in the case identified in (2) but will be directly and negatively affected in the following way by the action taken or ruling made by the trial court *(describe how you/your client will be directly and negatively affected by the trial court's action or ruling):*

_____

_____

_____

_____

(7) The other party or parties in the case identified in (2) was/were *(fill in the names of the parties):*

_____

_____

Appeals or Other Petitions for Writs in This Case

(8) Did you or anyone else file an appeal about the same trial court action or ruling you are challenging in this petition? *(Check and fill in a or b):*

a. ☐ No

b. ☐ Yes *(fill in the appellate division case number of the appeal):* _____

(9) Have you filed a previous petition for a writ challenging this trial court action or ruling? *(Check and fill in a or b):*

a. ☐ No

b. ☐ Yes *(Please provide the following information about this previous petition).*

(1) Petition title *(fill in the title of the petition):* _____

(2) Date petition filed *(fill in the date you filed this petition):* _____

(3) Case number *(fill in the case number of the petition):* _____

If you/your client filed more than one previous petition, attach another page providing this information for each additional petition. At the top of each page, write "APP-151, item 9.")

Reasons for This Petition

(10) The trial court made the following legal error or errors when it took the action or made the ruling described in (3) *(check and fill in at least one):*

a. ☐ The trial court has not done or has refused to do something that the law says it *must* do.

(1) *Describe what you believe the law says the trial court must do:* _____

_____

_____

_____

(2) *Identify the law (the section of the Constitution or statute, published court decision, or other legal authority) that says the trial court must do this:* _____

_____

_____

_____

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10 (continued)

(3) *Identify where in the supporting documents (the record of what was said in the trial court and the documents from the trial court) it shows that the court did not do or refused to do this:*

_____

_____

_____

_____

☐ *Check here if you need more space to describe the reason for your petition and attach a separate page or pages describing it. At the top of each page, write "APP-151, item 10a."*

b. ☐ The trial court has done something that the law says the court *cannot or must not* do.

(1) *Describe what the trial court did:* _____

_____

_____

_____

(2) *Identify where in the supporting documents (the record of what was said in the trial court and the documents from the trial court) it shows that the court did this:* _____

_____

_____

_____

(3) *Identify the law (the section of the Constitution or statute, published court decision, or other legal authority) that says the trial court cannot or must not do this:* _____

_____

_____

_____

☐ *Check here if you need more space to describe the reason for your petition and attach a separate page or pages describing it. At the top of each page, write "APP-151, item 10b."*

c. ☐ The trial court has performed or said it is going to perform a judicial function (like deciding a person's rights under law in a particular situation) in a way the court does not have the legal power to do.

(1) *Describe what the trial court did or said it is going to do:* _____

_____

_____

_____

(2) *Identify where in the supporting documents (the record of what was said in the trial court and the documents from the trial court) it shows that the court did or said it was going to do this:*

_____

_____

_____

_____

DRAFT

10 (continued)

(3) *Identify the law (the section of the Constitution or statute, published court decision, or other legal authority) that says the trial court does not have the power to do this:*

_____

_____

_____

_____

☐ *Check here if you need more space to describe this reason for your petition and attach a separate page or pages describing it. At the top of each page, write "APP-151, item 10c."*

☐ *Check here if there are more reasons for this petition and attach an additional page or pages describing these reasons. At the top of each page, write "APP-151, item 10d."*

11 This petition will be granted only if there is no other adequate way to address the trial court's action or ruling other than by issuing the requested writ.

a. *Explain why there is no way other than through this petition for a writ—through an appeal, for example—for your arguments to be adequately presented to the appellate division:*

_____

_____

_____

_____

b. *Explain how you/your client will be irreparably harmed if the appellate division does not issue the writ you are requesting:* _____

_____

_____

_____

_____

_____

Order You Are Asking the Appellate Division to Make

12 I request that this court *(check and fill in all that apply):*

a. ☐ order the trial court to do the following *(describe what, if anything, you want the trial court to be ordered to do):* _____

_____

_____

_____

_____

b. ☐ order the trial court not to do the following *(describe what, if anything, you want the trial court to be ordered NOT to do)*: _____

_____

_____

_____

_____

DRAFT

12 (continued)

c. ☐ issue a stay ordering the trial court not to take any further action in this case until this court decides whether to grant or deny this petition *(describe below why it is urgent that the trial court not take any further action and check the Stay requested box on page 1 of this form):*

_____
_____
_____
_____

I/My client:

(1) ☐ asked the trial court to stay these proceedings, but the trial court denied this request *(include in your supporting documents a copy of the trial court's order denying your request for a stay).*

(2) ☐ did not ask the trial court to stay these proceedings for the following reasons *(describe below why you did not ask the trial court to stay these proceedings):*

_____
_____
_____
_____

d. ☐ take other action *(describe):* _____
_____
_____
_____
_____
_____

e. ☐ grant any additional relief that the appellate division decides is fair and appropriate.

Supporting Documents

13 Is a record of what was said in the trial court about the action or ruling you are challenging attached as required by rule 8.931(b)(1)(D) of the California Rules of Court?

a. ☐ Yes, a transcript or an official electronic recording of what was said in the trial court is attached.

b. ☐ No, a transcript or official electronic recording is not attached, but I have attached a declaration (a statement signed under penalty of perjury) *(Check (1) or (2):*

(1) ☐ stating the transcript or electronic recording has been ordered, the date it was ordered, and the date it is expected to be filed.

(2) ☐ explaining why the transcript or official electronic recording is not available and providing a fair summary of what was said in the trial court, including the petitioner's arguments and any statement by the trial court supporting its ruling.

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14 Are the following documents attached as required by rule 8.931(b)(1)(A)–(C):

- The trial court ruling being challenged in this petition
- All documents and exhibits submitted to the trial court supporting and opposing the petitioner's position
- Any other documents or portions of documents submitted to the trial court that are necessary for a complete understanding of the case and the ruling being challenged? *(Check a or b):*

a. ☐ Yes, these documents are attached.

b. ☐ No, these documents are not attached for the following reasons *(explain why these documents are not attached and give a fair summary of the substance of these documents. Note that rule 8.931 provides that, in extraordinary circumstances, the petition may be filed without these documents, but the petitioner must explain the urgency and the circumstances making the documents unavailable):*

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

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Verification

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 *Signature of petitioner or attorney*

SC-300 Petition for Writ (Small Claims)

Clerk stamps date here when form is filed.

DRAFT
08/28/15
Not approved
by the Judicial Council

Petitioner
(fill in the name of the person asking for the writ)

v.

Superior Court of California, County of _____

Respondent
(fill in the name of the court whose action or ruling you are challenging)

Real Party in Interest
(fill in the name of any other parties in the trial court case)

Clerk will fill in the number below:

Appellate Division Case Number:

☐ **Stay requested**
(see item 12 c. on page 6)

Instructions

- This form is only for requesting a **writ** in a small claims case which does *not* relate to an action enforcing the small claims judgment.
- Do not use this form for the appeal or trial de novo of a small claims matter or for writs on the appeal of a small claims matter. Other forms or pleadings should be used for those those kinds of actions.
- For requesting a writ relating to a court action regarding *enforcement* of a small claims judgment, you should use form APP-151, *Petition for Writ (Misdemeannor, Infraction, or Limited Civil Case)*. You can get that form and other forms for other writs and for appeals at any courthouse or county law library or online at *www.courts.ca.gov/forms.*
- Before you fill out this form, read *Information on Writ Proceedings in Small Claims Cases* (form SC-300-INFO) to know your rights and responsibilities. You can get form SC-300-INFO at any courthouse or county law library or online at *www.courts.ca.gov/forms.*
- Generally, you should file this form no later than **30 days** after the date the small claims court took the action or issued the ruling you are challenging in this petition (see form SC-300-INFO for more information about the deadline for filing a writ petition). It is your responsibility to find out if a special statute sets an earlier deadline. If your petition is filed late, the appellate division may deny it.
- Fill out this form and make a copy of the completed form for your records and for the small claims court whose action or ruling you are challenging (called the respondent) and each of the other party or parties in the small claims case (called real party in interest).
- Serve a copy of the completed form on the small claims court and serve a copy of the form and a copy of form SC-300-INFO on each real party in interest and keep proof of this service. *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. You can get 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.*
- Take or mail the completed form and your proof of service to the clerk's office for the appellate division of the court that took the action or issued the ruling you are challenging.

1 Your Information

a. Petitioner (the party who is asking for the writ):

Name: _____

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

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

Phone: _____ E-mail *(if available):* _____

b. Petitioner's lawyer *(skip this if the petitioner does not have a lawyer for this petition):*

Name: _____ State Bar number: _____

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

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

Phone: _____ E-mail *(if available):* _____

Fax *(if available)*: _____

The Small Claims Court Action or Ruling You Are Challenging

2 I am/My client is filing this petition to challenge an action taken or ruling made by the small claims court in the following case:

a. Case name *(fill in the small claims court case name):* _____

b. Case number *(fill in the small claims court case number):* _____

3 The small claims court action or ruling I am/my client is challenging is *(describe the action taken or ruling made by the small claims court):* _____

4 The small claims court took this action or made this ruling on the following date *(fill in the date):* _____

5 *If you are filing this petition more than 30 days after the date that you listed in* 4 *, explain the extraordinary circumstances that caused the delay in filing this petition:* _____

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The Parties in the Small Claims Court Case

6 I/My client *(check and fill in a or b):*

a. ☐ was a party in the case identified in 2.

b. ☐ was not a party in the case identified in 2 but will be directly and negatively affected in the following way by the action taken or ruling made by the small claims court *(describe how you/your client will be directly and negatively affected by the small claims court's action or ruling):*

_____

_____

_____

_____

7 The other party or parties in the case identified in 2 was/were *(fill in the names of the parties):*

_____

_____

Appeals or Other Petitions for Writs in This Case

8 Did you or anyone else file an appeal about the same small claims court action or ruling you are challenging in this petition? *(Check and fill in a or b):*

a. ☐ No

b. ☐ Yes *(fill in the date the appeal/new trial is set for):* _____

9 Have you filed a previous petition for a writ challenging this action or ruling? *(Check and fill in a or b):*

a. ☐ No

b. ☐ Yes *(Please provide the following information about this previous petition).*

(1) Petition title *(fill in the title of the petition):* _____

(2) Date petition filed *(fill in the date you filed this petition):* _____

(3) Case number *(fill in the case number of the petition):* _____

If you/your client filed more than one previous petition, attach another page providing this information for each additional petition. At the top of each page, write "SC-300, item 9.")

Reasons for This Petition

10 The small claims court made the following legal error or errors when it took the action or made the ruling described in 3 *(check and fill in at least one):*

a. ☐ The small claims court has not done or has refused to do something that the law says it *must* do.

(1) *Describe what you believe the law says the small claims court must do:* _____

_____

_____

_____

(2) *Identify the law (the section of the Constitution or statute, published court decision, or other legal authority) that says the small claims court must do this:* _____

_____

_____

_____

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10 (continued)

(3) *Identify the supporting documents (the documents from the small claims case) and describe what the judge said or did that shows that the court did not do or refused to do this:*

_____
_____
_____
_____

(4) *If something was said at the small claims court that is relevant to your request for a writ, provide a fair summary of what was said by you and others, including the court (other than what you described above), that is relevant to your request for writ.* _____
_____
_____
_____

☐ *Check here if you need more space to describe the reason for your petition and attach a separate page or pages describing it. At the top of each page, write "SC-300, item 10a."*

b. ☐ The small claims court has done something that the law says the court *cannot or must not* do.

(1) *Describe what the small claims court did:* _____
_____
_____
_____

(2) *Identify the law (the section of the Constitution or statute, published court decision, or other legal authority) that says the small claims court cannot or must not do this:* _____
_____
_____
_____

(3) *Identify the supporting documents (the documents from the small claims case) and describe what the judge said or did that shows that the court did this:* _____
_____
_____
_____

(4) *If something was said at the small claims court that is relevant to your request for a writ, provide a fair summary of what was said by you and others, including the court (other than what you described above), that is relevant to your request for writ.* _____
_____
_____
_____

☐ *Check here if you need more space to describe the reason for your petition and attach a separate page or pages describing it. At the top of each page, write "SC-300, item 10b."*

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10 (continued)

c. ☐ The small claims court has performed or said it is going to perform a judicial function (like deciding a person's rights under law in a particular situation) in a way the court does not have the legal power to do.

(1) *Describe what the small claims court did or said it is going to do:* _____

(2) *Identify the law (the section of the Constitution or statute, published court decision, or other legal authority) that says the small claims court does not have the power to do this:*

(3) *Identify the supporting documents (the documents from the small claims case) that shows that the court did or said it was going to do this:* _____

(4) *If something was said at the small claims court that is relevant to your request for a writ, provide a fair summary of what was said by you and others, including the court (other than what you described above), that is relevant to your request for writ.* _____

☐ *Check here if you need more space to describe this reason for your petition and attach a separate page or pages describing it. At the top of each page, write "SC-300, item 10c."*

d. ☐ *Check here if there are more reasons for this petition and attach an additional page or pages describing these reasons. At the top of each page, write "SC-300, item 10d."*

11 This petition will be granted only if there is no other adequate way to address the small claims court's action or ruling other than by issuing the requested writ.

a. *Explain why there is no way other than through this petition for a writ—through an appeal, for example—for your arguments to be adequately presented to the appellate division:*

b. *Explain how you/your client will be irreparably harmed if the appellate division does not issue the writ you are requesting:* _____

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Order You Are Asking the Appellate Division to Make

12 I request that this court *(check and fill in all that apply):*

a. ☐ order the small claims court to do the following *(describe what, if anything, you want the court to be ordered to do):*

b. ☐ order the small claims court not to do the following *(describe what, if anything, you want the court to be ordered NOT to do)*:

c. ☐ issue a stay ordering the small claims court not to take any further action in this case until this court decides whether to grant or deny this petition *(describe below why it is urgent that the small claims court not take any further action and check the Stay requested box on page 1 of this form):*

I/My client:

(1) ☐ asked the small claims court to stay these proceedings, but the small claims court denied this request *(include in your supporting documents a copy of the small claims court's order denying your request for a stay).*

(2) ☐ did not ask the small claims court to stay these proceedings for the following reasons *(describe below why you did not ask the small claims court to stay these proceedings):*

d. ☐ take other action *(describe):*

e. ☐ grant any additional relief that the appellate division decides is fair and appropriate.

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Supporting Documents

13 Are the following documents attached as required by rule 8.972(b)(1) *(Check a or b):*

- The small claims court ruling being challenged in this petition
- All documents and exhibits submitted to the small claims court supporting and opposing you/your client's position
- Any other documents or portions of documents submitted to the small claims court that are necessary for a complete understanding of the case and the ruling being challenged?

a. ☐ Yes, these documents are attached.

b. ☐ No, these documents are not attached for the following reasons *(explain why these documents are not attached and give a fair summary of what is in these documents. Note that rule 8.972 provides that, in extraordinary circumstances, the petition may be filed without these documents, but the petitioner must explain the urgency and the circumstances making the documents unavailable):*

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

14 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 any attached pages providing further responses to the questions above is true and correct.

Date: _____

_____ ▶ _____
Type or print petitioner's name *Petitioner's signature*

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SC-300-INFO Information on Writ Proceedings in Small Claims Cases

GENERAL INFORMATION

1 What does this information sheet cover?

This information sheet tells you about **writ proceedings**—proceedings in which a person is asking for a writ of mandate, prohibition, or review—in small claims cases. Please read this information sheet before you fill out *Petition for Writ (Small Claims)* (form SC-300). This information sheet does not cover everything you may need to know about writ proceedings. It is only meant to give you a general idea of the writ process. To learn more, you should read the California Rules of Court identified below, which set out the procedures for writ proceedings in the different courts that consider request for writs in small claims cases.

This information sheet does NOT provide information about motions to vacate a judgment or appeals in small claims cases, or about requests for writs on all types of rulings in a small claims case.

- For information about making a motion to cancel or correct a judgment in small claims court, please see Code of Civil Procedure sections 116.720–116.745 and *Notice of Motion to Vacate Judgment and Declaration* (form SC-135).

- For information about appealing a small claims judgment, which you can only do if you disagree with a judgment ordering you to pay money, please see Code of Civil Procedure sections 116.710, 116.750–116.795, rules 8.950–8.966 of the California Rules of Court and *What to Do After the Court Decides Your Small Claims Case* (form SC-200-INFO).

While this information sheet provides general information about writs and writ procedures, the procedures it describes do NOT apply to writs in all small claims cases. These procedures only apply to requests for writs relating to actions of the small claims court *other* than postjudgment enforcement actions. These requests will be considered by a single judge from the appellate division of the superior court. The procedures are set out in more detail in rules 8.970–8.977 of the California Rules of Court.

- For information about requests for writs relating to postjudgment enforcement actions, see rules 8.930–8.936 of the California Rules of Court and *Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases* (form APP-150-INFO). Matters relating to enforcement of small claims judgments are treated in the same manner as enforcement of judgments in limited (smaller) civil cases.

- For information about requests for writs relating to actions of the superior court on small claims appeals, see rules 8.485–8.493 of the California Rules of Court. Those requests should be made to the Court of Appeal.

You can get these rules and forms at any courthouse or county law library or online at *www.courts.ca.gov/rules* for the rules or *www.courts.ca.gov/forms* for the forms. You can get copies of statutes at any county law library or online *leginfo.legislature.ca.gov/faces/codes.xhtml*.

2 What is a writ?

A writ is an order from a higher court telling a lower court to do something the law says the lower court must do, or not to do something the law says the lower court does not have the power to do. In writ proceedings in the appellate division, the lower court is the small claims court that took the action or issued the order being challenged.

In this information sheet, we call the lower court the "small claims court."

3 Are there different kinds of writs?

Yes. There are three main kinds of writs:

- Writs of mandate (sometimes called "mandamus"), which are orders telling the small claims court to do something.

- Writs of prohibition, which are orders telling the small claims court *not* to do something.

- Writs of review (sometimes called "certiorari"), which are orders telling the small claims court that a judge in the appellate division will review certain

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kinds of actions already taken by the small claims court.

There are laws (statutes) that you should read concerning each type of writ: see California Code of Civil Procedure sections 1084–1097 about writs of mandate, sections 1102–1105 about writs of prohibition, and sections 1067–1077 about writs of review.

4 Is a writ proceeding the same as an appeal?

No. Generally, in an **appeal,** the higher court *must* consider the parties' arguments and decide whether the trial court made the legal error claimed by the appealing party and whether the trial court's decision should be overturned based on that error (this is called a "decision on the merits"). In choosing to go to small claims court, the party filing a claim agreed to give up the right to an appeal in exchange for a less formal and less expensive way of proceeding. The defendant in a small claim case does have the right to an appeal, in the form of a new trial, and if the defendant asks for one, the higher court *must* allow a new trial on all the claims in the case, with each side presenting evidence.

In a **writ proceeding,** the appellate division judge is *not* required to make a decision on the merits or hold a new trial. Even if the small claims court made a legal error, the appellate division judge can decide not to consider that error, and usually will not. Most requests for writs are denied without a decision on the merits (this is called a "summary denial"). Because of this, a writ proceeding is often called a proceeding for "*extraordinary*" relief, while a judgment by the small claims court, or possibly a new trial at superior court for the defendant, is the *ordinary* way that small claims court cases end.

5 Is a writ proceeding a new trial?

No. **A writ proceeding is NOT a new trial.** The appellate division judge will not consider new evidence, such as the testimony of new witnesses. Instead, if he or she does not summarily deny the request for a writ, the appellate division judge reviews what happened in the small claims court and the small claims court's ruling to see if the small claims court made the legal error claimed by the person asking for the writ. In conducting this review, the appellate division judge presumes that the small claims court's ruling is correct; the person who requests the writ must show the appellate division judge that the small claims court made the legal error the person is claiming.

6 Can a writ be used to address *any* errors made by a small claims court?

No.

Writs are not generally granted regarding small claims cases. The small claims courts exists to provide a speedy and inexpensive way for a party to obtain a judgment. This works in part by limiting what a party can do after the small claims court makes its rulings.

When a person or business chooses to make a claim in small claims court, rather than filing in a different level of the superior court, that party—the plaintiff—gives up the right to ask for an appeal of the small claims court's rulings. This is a trade-off for the faster, less formal, and less expensive court proceedings. As a result, appellate courts have been reluctant to consider requests for writs in small claims cases.

A defendant in a small claims case does have the right to appeal the initial small claims court decisions and get a new trial in the superior court. Because the defendant already has this right to have the case heard again, including putting on the evidence and being represented by an attorney if defendant wants to hire one, appellate courts are unlikely to see any need for a writ instead.

However, the appellate division judge does have the discretion to consider a request for an extraordinary writ challenging a ruling in a small claims case. For example, the judge may do so if he or she considers the issue raised to be of statewide importance, or in order to make sure that the small claims division is generally being consistent in how it is acting under the law. Not every legal or factual error made by a small claims judge will form a ground for the granting of a writ.

Writs can only address certain legal errors. Writs can only address the following types of legal errors made by a small claims court:

- The small claims court has a legal duty to act but:
  - Refuses to act
  - Has not done what the law says it must do

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- Has acted in a way the law says it does not have the power to act

- The small claims court has performed or says it is going to perform a judicial function (like deciding a person's rights under law in a particular case) in a way that the court does not have the legal power to do.

7 Can the appellate division consider a request for a writ in *any* small claims case?

No. Different courts have the power (called "jurisdiction") to consider requests for writs in different types of cases. Requests for writs in small claims cases may be considered in one of three different ways, depending on the stage of the case:

- Requests for writs relating to actions of the small claims division *other* than postjudgment enforcement orders are considered by a single judge in the appellate division. This covers requests for writs on any rulings relating to the initial small claims trial, including the judgment.

- Requests for writs relating to superior court actions in small claims cases on appeal are not considered by the appellate division, but by the Court of Appeal.

- Requests for writs relating to the enforcement of a judgment in a small claims case, whether the judgment was issued at the small claims hearing or at a new trial in the superior court, are considered by the appellate division.

8 Who are the parties in a writ proceeding?

If you are asking for the writ, you are called the PETITIONER. You should read "Information for the Petitioner," beginning on the right side of this page.

The court the petitioner is asking to be ordered to do or not to do something is called the RESPONDENT. In writ proceedings challenging rulings in small claims cases, the small claims court is the respondent.
Any other party in the small claims court case who would be affected by a ruling regarding the request for a writ is a REAL PARTY IN INTEREST. If you are a real party in interest, you should read "Information for a Real Party in Interest," beginning on page 8.

9 Do I need a lawyer to represent me in a writ proceeding?

You do not *have* to have a lawyer; you are allowed to represent yourself in a writ proceeding in the appellate division. But writ proceedings can be very complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about the writ procedures, you should talk to a lawyer. In limited civil cases and infraction cases, you must hire a lawyer at your own expense if you want one (the court cannot provide 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.* You may also get help from the small claims advisors in your county if available. Ask the court how to contact them or look for contact information at *www.courts.ca.gov /selfhelp-advisors.htm.*

INFORMATION FOR THE PETITIONER

This part of the information sheet is written for the petitioner—the party asking for the writ. It explains some of the rules and procedures relating to asking for a writ. The information may also be helpful to a real party in interest. There is more information for a real party in interest starting on page 8 of this information sheet.

10 Who can ask for a writ?

Parties—the plaintiff or defendant— are usually the only ones that ask for writs challenging small claims court rulings. However, in most cases, a person who was not a party does have the legal right to ask for a writ if that person has a "beneficial interest" in the small claims court's ruling. A "beneficial interest" means that the person has a specific right or interest affected by the ruling that goes beyond the general rights or interests the public may have in the ruling.

11 How do I ask for a writ?

To ask for a writ you must serve and file a petition for a writ (see below for an explanation of how to "serve and file" a petition). A petition is a formal request that the

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appellate division issue a writ. A petition for a writ explains to the appellate division what happened in the small claims court, what legal error you (the petitioner) believe the small claims court made, why you have no other adequate remedy at law, and what order you are requesting the appellate division to make.

(12) How do I prepare a writ petition?

If you are represented by a lawyer, your lawyer will prepare your petition for a writ. If you are not represented by a lawyer, you must use *Petition for Writ (Small Claims)* (form SC-300) to prepare your petition. You can get it at any courthouse or county law library or online at *www.courts.ca.gov/forms.* This form asks you to fill in the information that needs to be in a writ petition.

a. Description of your interest in the small claims court's ruling

Your petition needs to tell the appellate division judge why you have a right to ask for a writ in the case. As discussed above, usually only a person who was a party in the small claims court case asks for a writ challenging a ruling in that case. If you were a party in the small claims court case, say that in your petition. If you were not a party, you will need to describe what "beneficial interest" you have in the small claims court's ruling. A "beneficial interest" means that you have a specific right or interest affected by the ruling that goes beyond the general rights or interests the public may have in the ruling. To show the appellate division judge that you have a beneficial interest in the ruling you want to challenge, you must describe how the ruling will affect you in a direct and negative way.

b. Description of the legal error you believe the small claims court made

Your petition will need to tell the appellate division judge what legal error you believe the small claims court made. Not every mistake a small claims court might make can be addressed by a writ. You must show that the small claims court made one of the following types of legal errors:

- The small claims court has a legal duty to act but:
  - Refuses to act
  - Has not done what the law says it must do
  - Has acted in a way the law says it does not have the power to act
- The small claims court has performed or says it is going to perform a judicial function (like deciding a person's rights under law in a particular case) in a way that the court does not have the legal power to do.

To show the appellate division judge that the small claims court made one of these legal errors, you will need to:

- Show that the small claims court has the legal duty or the power to act or not act in a particular way. You will need to tell the appellate division judge what legal authority—what constitutional provision, statute, rule, or published court decision—establishes the small claims court's legal duty or power to act or not act in that way.
- Show the appellate division judge that the small claims court has not acted in the way that this legal authority says the court is required to act. You will need to tell the appellate division judge what happened in the small claims court that shows that the small claims court did not act in the way it was required to. If the petition raises an issue that would require the appellate division judge to consider what was said in the small claims court, you will need to write a complete and accurate summary of what was said by you and others, including the court, that is relevant to your request for a writ.
- You can provide this information and the summary of what was said at item 10 of the petition and, as instructed there, you can add additional pages if more room is needed. Note that you will be providing this information, and everything in the petition, under penalty of perjury.

c. Description of why you need the writ

One of the most important parts of your petition is explaining to the appellate division why you need the writ you have requested. Remember, the appellate division judge does not have to grant your petition just because the small claims court made an error. You must convince the appellate division that it is important for it to issue the writ.

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Your petition needs to show that a writ is the only way to fix the small claims court's error. To convince the court you need the writ, you will need to show the appellate division judge that you have no way to fix the small claims court's error other than through a writ (this is called having "no adequate remedy at law").

This will be hard to show if the small claims court's ruling can be appealed and a new trial held. If you are a defendant and the ruling you are challenging can be appealed, the appellate division will generally consider this new trial to be a good enough way to fix the small claims court's ruling (an "adequate remedy"). You will need to show the appellate division judge how you will be harmed by the small claims court's error in a way that cannot be fixed by the new trial if the appellate division judge does not issue the writ (this is called "irreparable" injury or harm). For example, the harm you want to prevent may happen before the new trial can be held.

Even if you cannot appeal the ruling you are objecting to, the appellate division judge still does not have to grant the petition. As described above, small claims decisions are meant to be speedy and inexpensive, so appellate review is generally not granted in these cases. You will need to explain why your case should be treated differently.

d. Description of the order you want the appellate division to make

Your petition needs to describe what you are asking the appellate division judge to order the small claims court to do or not do. Writ petitions usually ask that the small claims court be ordered to cancel ("vacate") its ruling, issue a new ruling, or not take any steps to enforce its ruling.

If you want the appellate division judge to order the small claims court not to do anything more until the appellate division judge decides whether to grant the writ you are requesting, you must ask for a "stay." If you want a stay, you should first ask the small claims court for a stay. You should tell the appellate division judge whether you asked the small claims court for a stay. If you did not ask the small claims court for a stay, you should tell the appellate division judge why you did not do this. This information is requested in the petition form.

If you ask the appellate division judge for a stay, make sure you also check the "Stay requested" box on the first page of the *Petition for Writ (Small Claims)* (form SC-300) and complete item 12c on that form.

e. Verifying the petition

Petitions for writs must be "verified." This means that the petitioner (or in certain circumstances the petitioner's attorney) must declare under penalty of perjury that the facts stated in the petition are true and correct, must sign the petition, and must indicate the date that the petition was signed. On the last page of the *Petition for Writ (Small Claims)* (form SC-300), there is a place for you to verify your petition.

13 Is there anything else that I need to serve and file with my petition?

Yes. Along with the petition, you must serve and file documents showing what happened in the small claims court (see below for an explanation of how to serve and file the petition and other documents). Because the appellate division judge was not there in the small claims court, copies of certain documents from that court that show what happened must be sent to the appellate division judge. These are called "supporting documents." You must also serve any other party in this case, the real party in interest, with a copy of this form *Information on Writ Proceedings in Small Claims Cases* (form SC-300-INFO).

Copies of documents from the small claims court. Copies of the following documents from the small claims court must also be included in the supporting documents:

- The small claims court ruling or judgment being challenged in the petition
- All documents and exhibits submitted to the small claims court supporting and opposing your position
- Any other documents or portions of documents submitted to the small claims court that are necessary for a complete understanding of the case and of the ruling being challenged

What if I cannot get copies of the documents from the small claims court because of an emergency? Rule 8.972 of the California Rules of Court provides that in

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extraordinary circumstances the petition may be filed without copies of the documents from the small claims court. If the petition is filed without these documents, you must explain in your petition the urgency and the circumstances making the documents unavailable.

Format of the supporting documents. Supporting documents must be put in the format required by rule 8.972 of the California Rules of Court. You should carefully read rule 8.972. You can get a copy of rule 8.972 at any courthouse or county law library or online at *www.courts.ca.gov/rules.*

(14) Is there a deadline to ask for a writ?

Yes. There are laws (statutes) that require that certain kind of rulings may only be challenged using a writ proceeding. These are called "statutory writs" and the statute usually sets the deadline for serving and filing the petition. For example, a writ challenging a ruling on a motion to disqualify a judge (see California Code of Civil Procedure section 170.3(d)) must be filed within 10 days after notice to the parties of the decision. You will need to check whether there is a statute providing a deadline for filing a challenge to the specific ruling you are challenging. (You can find copies of statutes at any county law library or online at *leginfo.legislature.ca.gov /faces/codes.xhtml*).

If there is not a statute specifically providing for a writ proceeding to challenge a particular ruling, or if the statute does not set a deadline, you should file the petition as soon as possible and not later than 30 days after the court makes the ruling that you are challenging in the petition. While there is no absolute deadline for filing these petitions, writ petitions are usually used when it is urgent that the small claims court's error be fixed. Remember, the appellate division judge is not required to grant your petition even if the small claims court made an error. If you delay in filing your petition, it may make the appellate division judge think that it is not really urgent that the small claims court's error be fixed and the appellate division judge may deny your petition. If there are extraordinary circumstances that delayed the filing of your petition, you should explain these circumstances to the appellate division judge in your petition.

(15) How do I "serve" my petition?

Rule 8.972(d) requires that the petition with the attached supporting documents, along with a copy of this form, be served on any named real party in interest and that the petition be served on the respondent small claims court. "Serving" a petition on a party means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the petition to the real party in interest and the respondent court in the way required by law.
- Make a record that the petition has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the petition, who was served with the petition, how the petition was served (by mail or in person), and the date the petition was served.

You can get more information about how to serve court documents 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.*

(16) How do I file my petition?

To file a petition for a writ, you must bring or mail the original petition, including the supporting documents and the proof of service, to the clerk for the appellate division of the superior court that made the ruling you are challenging. If the superior court has more than one courthouse location, you should call the clerk at the courthouse where the ruling you are challenging was made to ask where to file your petition.

You should make a copy of all the documents 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 petition to the clerk when you file your original and ask the clerk to stamp this copy to show that the original has been filed.

(17) Do I have to pay to file a petition?

Yes. You should ask the clerk for the appellate division where you are filing the petition what this fee is. If you cannot afford to pay this filing fee, you can ask the court to waive this fee. To do this, you must fill out a *Request*

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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 petition or with your petition. The court will review this application and decide whether to waive the filing fee.

(18) What happens after I file my petition?

Within 10 days after you serve and file your petition, the respondent or any real party in interest can serve and file a preliminary opposition to the petition.

The appellate division judge does not have to wait for an opposition before acting on a petition for a writ, however. Without waiting, the appellate division judge can:

a. Issue a stay.

b. Summarily deny the petition.

c. Issue an alternative writ or order to show cause.

d. Notify the parties that he or she is considering issuing a peremptory writ in the first instance.

e. Issue a peremptory writ in the first instance if such relief was expressly requested in the petition.

Read below for more information about these options.

a. Stay of small claims court proceedings

A stay is an order from the appellate division judge telling the small claims court not to do anything more until the appellate division judge decides whether to grant your petition. A stay puts the small claims court proceedings on temporary hold.

b. Summary denial

A "summary denial" means that the appellate division judge denies the petition without deciding whether the small claims court made the legal error claimed by the petitioner or whether the writ requested by the petitioner should be issued based on that error. No reasons need to be given for a summary denial. Most petitions for writs are denied in this way.

c. Alternative writ or order to show cause

An "alternative writ" is an order telling the small claims court either to do what the petitioner has requested in the petition (or some modified form of what the petitioner requested) or to show the appellate division judge why the small claims court should not be ordered to do what the petitioner requested. An "order to show cause" is similar; it is an order telling the small claims court to show the appellate division judge why the small claims court should not be ordered to do what the petitioner requested in the petition (or some modified form of what the petitioner requested). The appellate division judge will issue an alternative writ or an order to show cause only if the petitioner has shown that he or she has no adequate remedy at law and the appellate division judge has decided that the petitioner may have shown that the small claims court made a legal error that needs to be fixed.

If the appellate division judge issues an alternative writ and the small claims court does what the petitioner requested (or a modified form of what the petitioner requested as ordered by the appellate division judge), then no further action by the appellate division judge is needed and the appellate division may dismiss the petition.

If the small claims court does not comply with an alternative writ, however, or if the appellate division judge issues an order to show cause, then the respondent court or a real party in interest can file a response to the appellate division judge's order (called a "return") that explains why the small claims court should not be ordered to do what the petitioner requested. The return must be served and filed within the time specified by the appellate division judge or, if no time is specified, within 30 days from the date the alternative writ or order to show cause was issued. The petitioner will then have an opportunity to serve and file a reply within 15 days after the return is filed. The appellate division judge may set the matter for oral argument. When all the papers have been served and filed (or the time to serve and file them has passed) and any oral argument is completed, the appellate division will decide the case.

d. Peremptory writ in the first instance

A "peremptory writ in the first instance" is an order telling the small claims court to do what the petitioner

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has requested (or some modified form of what the petitioner requested) that is issued without the appellate division judge first issuing an alternative writ or order to show cause. It is very rare for the appellate division judge to issue a peremptory writ in the first instance, and this will not be done unless the respondent and real parties in interest have received notice that the judge might do so, either through the petitioner expressly asking for such relief in the petition or by the judge giving the respondent court and any real party in interest notice and a chance to file an opposition.

The respondent court or a real party in interest can file a response to the appellate division judge's notice (called an "opposition") that explains why the small claims court should not be ordered to do what the petitioner has requested. The opposition must be served and filed within the time specified by the appellate division judge or, if no time is specified, within 30 days from the date the notice was issued. The petitioner will then have a chance to serve and file a reply within 15 days after the opposition is filed. The appellate division judge may then set the matter for oral argument. When all the papers have been served and filed (or the time to serve and file them has passed) and any oral argument is completed, the appellate division judge will decide the case.

INFORMATION FOR A REAL PARTY IN INTEREST

This part of the information sheet is written for a real party in interest—a party from the small claims court case other than the petitioner who will be affected by a ruling on a petition for a writ. It explains some of the rules and procedures relating to responding to a petition for a writ. The information may also be helpful to the petitioner.

(19) I have received a copy of a petition for a writ in a case in which I am a party. Do I need to do anything?

You do not *have* to do anything. The Code of Civil Procedure and California Rules of Court give you the right to file a preliminary opposition to a petition for a writ within 10 days after the petition is served and filed, but you are not required to do this. The appellate division judge can take certain actions without waiting for any opposition, including:

- Summarily denying the petition
- Issuing an alternative writ or order to show cause
- Notifying the parties that the judge is considering issuing a peremptory writ in the first instance
- Issuing a peremptory writ in the first instance if such relief was expressly requested in the petition.

Read the response in section (18) for more information about these options.

Most petitions for writs are summarily denied, often within a few days after they are filed. If you have not already received something from the appellate division judge saying what action the judge is taking on the petition, it is a good idea to call the appellate division to see if the petition has been denied before you decide whether and how to respond.

This would also be a good time to talk to a lawyer. You do not *have* to have a lawyer; you are allowed to represent yourself in a writ proceeding in the appellate division. But writ proceedings can be very complicated and you will have to follow the same rules that lawyers have to follow. If you have any questions about writ proceedings or about whether and how you should respond to a writ petition, you should talk to a lawyer. You must hire a lawyer at your own expense if you want one (the court cannot provide 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.* You may also get help from the small claims advisors in your county if available. Ask the court how to contact them or look for contact information at *www.courts.ca.gov/selfhelp-advisors.htm*.

If the petition has not already been summarily denied, you may, but are not required to, serve and file a preliminary opposition to the petition within 10 days after the petition was served and filed. The appellate division judge will seldom grant a writ without first issuing an alternative writ, an order to show cause, or a notice that the judge is considering issuing a peremptory writ. In all these circumstances, you will get notice from the court and have a chance to file a response. Note that

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the appellate division judge may issue a peremptory writ without notice if the petitioner expressly asked the court to do so in the petition, that is, asked the court to issue a peremptory writ in the first instance. If the petitioner did that, you may want to consider whether to file a preliminary opposition, to explain why you believe the small claims court made no legal error and why the petitioner is not entitled to a writ.

If you decide to file a preliminary opposition, you must serve that preliminary opposition on all the other parties to the writ proceeding. "Serving and filing" an opposition means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the preliminary opposition to the other parties in the way required by law.
- Make a record that the preliminary opposition has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the preliminary opposition, who was served with the preliminary opposition, how the preliminary opposition was served (by mail or in person), and the date the preliminary opposition was served.
- File the original preliminary opposition and the proof of service with the appellate division. You should make a copy of the preliminary opposition 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 preliminary opposition 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 documents 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.*

(20) I have received a copy of an alternative writ or an order to show cause issued by the appellate division judge. Do I need to do anything?

Yes. Unless the small claims court has already done what the alternative writ told it to do, you should serve and file a response called a "return."

As explained above, the appellate division judge will issue an alternative writ or an order to show cause only if the appellate division judge has decided that the petitioner may have shown that the small claims court made a legal error that needs to be fixed. An "alternative writ" is an order telling the small claims court either to do what the petitioner has requested in the petition (or some modified form of what the petitioner requested) or to show the appellate division judge why the small claims court should not be ordered to do what the petitioner requested. An "order to show cause" is similar; it is an order telling the small claims court to show the appellate division judge why the small claims court should not be ordered to do what the petitioner requested in the petition (or some modified form of what the petitioner requested).

If the appellate division judge issues an alternative writ and the small claims court does what the petitioner requested (or a modified form of what the petitioner requested as ordered by the appellate division judge), then no further action by the appellate division judge is needed and the appellate division judge may dismiss the petition. If the small claims court does not comply with an alternative writ, however, or if the appellate division judge issues an order to show cause, then the small claims court or the real party in interest may serve and file a response to the appellate division judge's order, called a "return."

A return is your argument to the appellate division judge about why the small claims court should not be ordered to do what the petitioner has requested. If you are represented by a lawyer in the writ proceeding, your lawyer will prepare your return. If you are not represented by a lawyer, you will need to prepare your own return. A return is a legal response, either your argument about why the writ is legally inadequate or an "answer." An answer is used to admit or deny the facts alleged in the petition, to add to or correct the facts, and

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to explain any legal defenses to the legal arguments made by the petitioner. You should read California Code of Civil Procedure sections 430.10–431.30 for more information about responses and answers. You can get copies of these statutes at any county law library or online at *leginfo.legislature.ca.gov/faces/codes.xhtml*. A return can also include additional supporting documents not already filed by the petitioner.

If you do not file a return when the appellate division judge issues an alternative writ or order to show cause, it does not mean that the appellate division judge is required to issue the writ requested by the petitioner. However, the appellate division judge will treat the facts stated by the petitioner in the petition as true, which makes it more likely the appellate division judge will issue the requested writ.

Unless the appellate division judge sets a different filing deadline in the alternative writ or order to show cause, you must serve and file your return within 30 days after the appellate division judge issues the alternative writ or order to show cause. The return must be served on all the other parties to the writ proceeding. "Serving and filing" the return means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the return to the other parties in the way required by law.
- Make a record that the return has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) can be used to make this record. The proof of service must show who served the return, who was served with the return, how the return was served (by mail or in person), and the date the return was served.
- File the original return and the proof of service with the appellate division. You should make a copy of the return 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 return 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 documents 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.*

(21) I have received a copy of a notice from the appellate division judge indicating it is considering issuing a peremptory writ in the first instance. Do I need to do anything?

Yes. You should serve and file a response called an "opposition."

As explained in the answer to question (18) , a "peremptory writ in the first instance" is an order telling the small claims court to do what the petitioner has requested (or some modified form of what the petitioner requested as ordered by the appellate division judge) that is issued without the appellate division judge first issuing an alternative writ or order to show cause. The appellate division judge will seldom issue a peremptory writ in the first instance without first giving the parties notice and a chance to file an opposition. However, when the appellate division judge issues such a notice, it means that the appellate division judge is strongly considering granting the writ requested by the petitioner.

An opposition is your argument to the appellate division judge about why the small claims court should not be ordered to do what the petitioner has requested. If you are represented by a lawyer in the writ proceeding, your lawyer will prepare your opposition. If you are not represented by a lawyer, you will need to prepare your own opposition. An opposition is a response to the legal arguments made by the petitioner. Unless the appellate division judge sets a different deadline in the notice that the judge is considering issuing a peremptory writ, you must serve and file your opposition within 30 days after the appellate division issues the notice. The opposition must be served on all the other parties to the writ proceeding. "Serving and filing" the opposition means that you must:

- Have somebody over 18 years old who is not a party to the case—so not you—mail or deliver ("serve") the opposition to the other parties in the way required by law.
- Make a record that the opposition has been served. This record is called a "proof of service." *Proof of Service (Appellate Division)* (form APP-109) can be

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used to make this record. The proof of service must show who served the opposition, who was served with the opposition, how the opposition was served (by mail or in person), and the date the opposition was served.

- File the original opposition and the proof of service with the appellate division. You should make a copy of the opposition 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 opposition 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 documents 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.*

(22) What happens after I serve and file my return or opposition?

After you file a return or opposition, the petitioner has 15 days to serve and file a reply. The appellate division judge may also set the matter for oral argument. When all the papers have been filed (or the time to file them has passed) and any oral argument is completed, the appellate division judge will decide the case.

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SPR15-08
Small Claims Writs: New Procedures to Implement Code of Civil Procedure section 116.798 (amend rule 8.930; adopt rules 8.970-8.977; revise forms APP-150 INFO and APP-151 and adopt forms SC-300 and 300 INFO)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	California Judges Association Civil Law & Procedures Committee by Joan P. Weber, President	A	This proposal for rule changes is set forth by both the Civil and Small Claims Advisory Committee (CSCAC) and the Appellate Advisory Committee (AAD) to clarify which court has jurisdiction of writs and to propose form changes to help litigants participating in these proceedings. This proposal has three parts: 1. A set of proposed new rules for writ proceedings in small claims divisions other than post judgment enforcement orders. 2. A set of two new forms for these writ proceedings. 3. A set of proposed changes to the existing rules and forms relating to writ proceedings in the superior court appellate divisions to reflect both the new procedures for writ proceedings relating to actions by small claims divisions other than post judgment enforcement orders and to clarify jurisdiction in other small claims writ proceedings. *COMMENTS/ANALYSIS* I spoke at length with our Appellate Department Supervising Judge, Deborah Chuang about these proposed changes. At the outset, she commented that writs in both the small claims	The committees appreciate the comment and note that the commentator concludes the comment by supporting the proposal. The committee addresses the specific points raised below.

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	Commentator	Position	Comment	Committee Response
			and limited civil arena are extremely rare. She has seen only two in Orange County in the last two years. In my tenure as a limited civil judge and an open trial court hearing small claims matters (consisting of about 3-4 years before my current assignment as a general civil judge), I do not recall seeing a writ in either the small claims court or in my prior limited civil assignment. The most significant proposed change is to require self-represented litigants seeking a writ in small claims court must, unless there is a finding of good cause, use a specific Judicial Council petition. (Rule 8.972.) Subpart (a)(2) of the form requires the self-represented litigant to include a fair summary of the proceedings, including the parties' arguments and any statement by the small claims court supporting its ruling. Footnote 3 of the Invitation to Comment states specifically: "The advisory committees request specific comments on this provision in the rule and the corresponding items in the form petition (parens omitted.) the committee has some concerns over whether this item should be required by rule, possibly setting up a trap for the unwary self-represented parties who do not understand when it may or may not be required. On the other hand, the committees are also concerned that including such a provision in the rule and form	

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			may lead to unnecessary paperwork, as parties may provide detailed summaries of the full proceedings even when unnecessary." Judge Chuang believes that the requirement should not be implemented by rule because of the "trap" argument. I differ, and believe that the requirement of setting forth in detail the arguments, a summary of the proceedings and the court's statement would be of great benefit to a reviewing court and should be required by a self-represented litigant. If it is clearly stated on the form (which it is) I do not see how a self-represented litigant could reasonably miss this requirement. The only possible problem is whether the litigant will be properly directed to the form by court personnel. This is where proper training of staff is important. This proposal will require staff training, otherwise, it will not work and indeed the proposal will become a "trap." The self-represented litigant will not know of the requirement to use a judicial form and submit a defective writ application at the outset. Staff training will require time and outlay of some funds. It may be argued that clear rules regarding what is required for self-represented litigants to obtain a small claims writ may	The committees agree with the commentator that, where the summary of the proceedings and statements below are pertinent for the issue before the reviewing court, the summary should be required. The committees also agree that including an item for the summary in the form petition provides a reminder for the parties to include the summary, and so avoids any potential trap for a party. The committees agree that there will need to be some training for court clerks regarding the required use of the new form The committees agree that petitions for writs occur infrequently in small claims cases. However, the council was mandated to develop new procedural rules for such writs by the

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	Commentator	Position	Comment	Committee Response
			provide some efficiencies in the long run. However, the infrequency of these petitions renders these arguments weak. *FINAL THOUGHTS* My final thought on this proposal is whether we are addressing a problem that does not exist. Is there generally a thought that litigants (particularly self-represented litigants) are not obtaining writ relief when there was an abuse of discretion in the small claims court (or limited civil court?) Perhaps clarifying the lines of jurisdiction between small claims writs and limited civil writs in a good thing, but beyond that, the proposal will require staff training to ensure that it works. In these times of financial stress, I believe that such scarce and valuable resources could be used more effectively elsewhere. Based on this thorough analysis and research, California Judges Association supports the proposal.	Legislature. See Code Civ. Proc. § 116.798(a)(5). The committees recognize that there will be some implementation costs in the courts. However, as noted above, the council was mandated by statute to develop procedures for small claims writ petitions. The committees note the commenter's support for the proposal.
2.	Douglas G. Carnahan, Attorney at Law Retired Commissioner of Superior Court of Los Angeles County (former Chairperson, Small Claims Subcommittee, Civil and Small Claims Advisory Committee)	AM	I am pleased to offer a couple of observations in response to the captioned Invitation to Comment. **1. Re proposed Rule 8.972(a)(2): "If the petition raises any issue that would require the appellate division judge considering it to**	The committees note the commenter's general agreement with the proposal, and appreciate the detailed comments, which are responded to below.

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	Commentator	Position	Comment	Committee Response
			understand what was said in the small claims court, it must include a statement that fairly summarizes the proceedings, including the parties' arguments and any statement by the small claims court supporting its ruling." The Invitation to Comment makes the specific request, "The advisory committees request specific comments on this provision in the rule and the corresponding items in the form petition....The committee has some concerns over whether this item should be required by rule, possibly setting up a trap for the unwary self-represented parties who do not understand when it may or may not be required. On the other hand, the committees are also concerned that including such a provision in the rule and form may lead to unnecessary paperwork, as parties may provide detailed summaries of the full proceedings even when unnecessary." The committees' concerns are well taken, but on balance I think the decision should be to go ahead and include the requirement in the rule and form, as written. My reasons are: a. If we assume that the majority of writ petitions under 116.798 are from dissatisfied plaintiffs, emphasizing a requirement that the plaintiff provide as much detail as possible about what legal errors caused him or her not to prevail is a good thing.	The committees agree with this conclusion and will leave the rule and form as proposed. The committees determined that, where the summary of the proceedings and statements below are pertinent for the issue before the reviewing court, the summary should be required. The committees concluded that including an item for the summary in the form petition provides a reminder for the parties to provide the summary.

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			b. In more general terms, the appellate division judge reviewing the paper petition will be presented, if you will, with a "gestalt," or overall view of what happened in the small claims division, and the more detail the petitioner can provide about this the better informed the writ judge will be. c. Since we can assume that the majority of these petitions will be denied, a more detailed "record" facing the writ judge and then supporting the denial, will be more informative and more protective of the processes of the appellate division. **2. Proposed Rule 8.972(d)(3): "The clerk [of the appellate division] must file the petition even if its proof of service is defective, but if the party asking for the writ fails to file a corrected proof of service within five days after the clerk gives notice of the defect the court may strike the petition or impose a lesser sanction."** I have two comments about this, one general and one specific. a. Generally, I have picked this section as an example of the use in the proposed rules of a time deadline, here "five" days. I think it should be made clear, in these rules, when time deadlines are given, that CCP 1013 and 1005 were intended to apply to the giving of notice.	The committees disagree with this proposal, noting that the provisions would not apply under the proposed rules in any event. • Section 1005 provides the time for notice of certain specified motions and for notice of other types of proceedings for which

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			This is related to the fact that in the Small Claims Act itself, at CCP 116.140, the legislative statement is made that, "The following do not apply in small claims actions: (a) Subdivision (a) of section 1013 and subdivision (b) of Section 1005, on the extension of time for taking action when notice is given by mail." In other words, it should be made clear that the extensions of time provided by 1013 and 1005, which do not normally apply to notices in the underlying small claims cases, do apply to these writ petitions. Perhaps a statement in proposed Rules 8.970 or 8.971 to this effect would be a good idea. b. More specifically, I am concerned about the use of the phrase "impose a lesser sanction" in the quoted proposed rule. The language as drafted opens questions both of definition and process. It strikes me that the intent was to allow the court to give the petitioner additional time to file a corrected proof of service, on pain of dismissal, but if that was the idea, then that should be spelled out in the rule. Use of "sanction language," standing alone, as here, leaves both litigants and the court uncertain as to what might be done (for instance, does the language allow the court to impose a monetary sanction for filing a late proof of service?). I would simply strike the words "or impose a lesser sanction" and add the words "**or allow**	express time limits are provided, and also extends the time for such notice based on type of service. But there are not such proceedings in these rules. The petitioning party does not have to provide notice of a hearing to the other side—if anyone does that it will be the court. • Section 1013 provides an extension of time for action or duty following service by mail or other method—but there is no such provision in these rules. None of the time frames run from "service" of any documents (See , e.g., rule 8.972(c)(2) and (d)(3), or rule 8.974(a)(2) and (b)(3)). The committees have modified the proposed rule to reflect the concerns raised in this comment.

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			additional time to file a corrected proof of service, upon pain of dismissal of the petition." Or perhaps strike the language regarding a "lesser sanction" totally. **3. Proposed Rule 8.975(b)(1): "If the writ or order stays or prohibits proceedings set to occur within seven days or requires action with seven days - or in any other urgent situation - the appellate division clerk must make a reasonable effort to notify the clerk of the respondent small claims court by telephone. The clerk of the respondent small claims court must then notify the judge or other officer most directly concerned."** This requirement is reasonable on its face, but I would append to it additional language stating, "A record of the telephone call from the appellate division to the respondent small claims court shall be made by the clerk of the respondent small claims court and placed in the small claims court file." In addition to this being good file management, it is quite possible that the small claims clerk's notifying "the judge or other officer most directly concerned" might not eliminate the possibility that a different clerk or bench officer would later have to deal with the results of the writ petition, so a record in the file of the telephonic transmission from the appellate division would be a good idea. Best practice would be for the receiving clerk to do this without being told, but incorporating the	The committees appreciate the concern that best practices be applied, but have concluded that this proposal goes too far in micromanaging court clerk procedures.

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			idea in the rule would establish the policy. **4. SC-300-INFO: Information on Writ Proceedings in Small Claims Cases, Item #6: "Can a writ be used to address any errors made by a small claims court?"** I am concerned about the textual discussion of this question, for the following reasons: a. The basic answer, of course, is NO, and that answer is given. However, the discussion then veers into the immediate comment, "Writs can only address the following types of legal errors made by a small claims court: The small claims court has a legal duty to act but:...Has not done what the law says it must do...." This comment will open a huge door - especially to losing plaintiffs - to drive through their "truck of belief" that they were done wrong, and that the writ petition is the way to gain justice. b. An attempt is made, in the paragraph beginning, "When a person or business chooses to make a claim in small claims court..." to explain why extraordinary writs in small claims do not have a good chance of success. The info sheet explains the historical trade-off between deciding to sue in small claims and the relinquishment by the plaintiff of the right to appeal. This explanation will be completely ignored by most potential writ petitioners - instead they will focus on the introductory	The committees appreciate the concerns raised, that rules for petitions for writ in small claims actions may change expectations regarding the review of small claims decisions, but note that a statutory mandate led to the adoption of the new rules. As to the additional language proposed in the comment, the committees concluded that the suggested additions might be viewed as setting a new standard for review, which the committees do not believe is within the purview of the council. However, in light of this comment, the committees have reordered the provisions in this item, to emphasize that the petitions will seldom be granted.

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			language in the bullet points at the top of Item 6. c. I propose that the language in the bullet points be elaborated on. It seems to me that the bullet points, as written, provide an end run around the historical "no appeal to the losing plaintiff" aspect of small claims. I would propose new language in the bullet points along the following lines: "*Writs can only address certain legal errors:* Writs can only address the following types of gross and unusual legal errors made by a small claims court. - The small claims court has a clear legal duty to act but: • Clearly and manifestly unjustly refuses to act. • Has explicitly not done what the law clearly says it must do. • Has acted in a way the law says it clearly does not have the power to act. - The small claims court has performed or says it is going to perform a judicial function (like deciding a person's rights under the law in a particular case) in a way that the court clearly does not have the legal power to do. In other words, every legal or factual error made by a small claims judge will not form a ground	

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	Commentator	Position	Comment	Committee Response
			for the granting of a writ. The judge considering the writ petition must become convinced that the error is so dramatic and unjust that it cannot be allowed to stand." Then I would go on with the language as is continued in the rule, explaining the basis for the unlikelihood of writ petitions being granted. The larding of the information sheet with adverbial qualifications, as I have just proposed, is normally not good legal writing, but in this case it would serve the purpose of trying to "explain the inexplicable" - that the whole concept of an extraordinary writ focuses on the extraordinary nature of the relief granted, and that this concept conflicts with the "no appeal" rule in small claims. My fear is that in an attempt to formalize what the law was (anyway) before CCP 116.798, various cans of worms have been opened that will dramatically change the nature of small claims courts. Anything that the rule drafters can do to minimize this effect would be a good thing.	
3.	Orange County Bar Association by Ashleigh Aitken, President	AM	The proposed effective date should be changed to January 1, 2016 as we are beyond the stated effective date of January 1, 2015. The proposal appropriately addresses the stated purpose. As to the provision that in the absence of court reports in Small Claims Court proceedings, the	The committees are recommending that the forms and rules be effective January 1, 2016 and will assure that all dates in the recommendation reflect that. The statements will be made under penalty of perjury and will be evaluated by the appellate

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			parties must provide a written summary of the court proceedings including the arguments of the parties and the statements made by the court, one concern is how the Appellate Division will evaluate the "record" that consists of the parties' (sometimes) competing versions of what was said in the Small Claims Court proceeding. The proposal does not address the issue, which seems unfair to the Appellate Division.	division in the same way it evaluates other verified statements.
4.	State Bar of California Litigation Section Rules and Legislation Committee by Reuben A. Ginsburg, Chair	AM	The Committee believes that rule 8.972(a)(2) should not rely on a self-represented petitioner to determine whether a fair summary of the proceedings is needed. Instead, the rule should provide that the petition must include a statement that fairly summarizes the proceedings, including the parties' arguments and any statement by the small claims court supporting its ruling. This would allow the appellate division judge, rather than the petitioner, to determine whether such information is relevant. We would modify the language in rule 8.974(a)(3) to state more clearly that a preliminary opposition should include both legal arguments and any material facts not included in the petition, as in rule 8.933(a)(2), governing writs in the appellate division in misdemeanor, infraction, and limited civil cases, and rule 8.487(a)(2), governing writs in the Court of Appeal and the Supreme Court. The latter rules both state, "A preliminary opposition must	The committees have considered this and other comments on this issue, and have concluded that the rule as proposed is the most effective way of providing needed information to the appellate division judge without over-burdening parties. The committee also concluded that including an item for the summary in the form petition provides a reminder for the parties to provide the summary.

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			contain a memorandum and a statement of any material fact not included in the petition." We would also change "must" to "should" so as to avoid suggesting that arguments not stated in the preliminary opposition are forfeited. Accordingly, we would modify the proposal as follows: "A preliminary opposition ~~must~~ should contain any legal arguments the party wants to make as to why the appellate division judge should not issue a writ and a statement of any material fact not included in the petition." The verification language on page 7 of form SC-300 ("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") differs from the standard verification language (see Code Civ. Proc., § 2015.5). The attachments may include the ruling by the small claims court, exhibits submitted to the small claims court by both sides, and other documents, as stated in item 13 of the form. The petitioner should not verify the contents of those documents. We would modify this language as follows: "I declare under penalty of perjury under the laws of the State of California that the ~~information above and on all attachments~~ foregoing is true and correct."	The committees agree with the concerns raised and have modified the text recommended for this rule. The committees note that there may be attached pages that include additional information in response to questions on the petition form, which could not all fit on the form itself. For that reason, the verification must include some information beyond that on the form. The verification has been modified to clarify this point.

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			We believe that it would be helpful to inform the parties that the small claims court must provide notice and an opportunity to be heard before changing its order in response to an alternative writ. (*Brown, Winfield & Canzoneri, Inc. v. Superior Court* (2010) 47 Cal.4th 1233, 1250, fn. 10.) Accordingly, we would modify the penultimate paragraph in form SC-300-INFO, item 18(c), as follows: "If the appellate division issues an alternative writ and the small claims court, after notifying the parties that it is considering changing its order and providing an opportunity to be heard, does what the petitioner requested (or a modified form of what the petitioner requested as ordered by the appellate division), then no further action by the appellate division is needed and the appellate division may dismiss the petition."	The committees considered this comment but concluded that the proposed modification is unnecessary. While it may be a correct statement of the law, it provides information that is important to the court, but not the party. The committees concluded the suggested addition could be confusing to a party, and so have not added it, believing the item is more appropriately addressed by education of judicial officers.
			Form SC-300-INFO states on page 7, item 18(d), first paragraph that an appellate division judge will not issue a peremptory writ in the first instance "without first notifying the parties and giving the respondent court and any real party in interest a chance to file an opposition." Similar language appears on page 8, item 19, fifth paragraph, and issuing a peremptory writ in the first instance without prior notice by the appellate division judge is not listed as an option in the bullet points following the first paragraph in item 19 on page 8. But the	The committees agree with the comment and have modified items 18 and 19 to reflect the possibility of a court issuing a peremptory writ in the first instance without further notification to the party. While the committees think such action would be extremely rare in small claims cases, it is legally possible and will be included in the information sheet.

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			appellate division judge need not provide notice before issuing a peremptory writ in the first instance if the petition sought a peremptory writ in the first instance. Seeking such relief in the petition is considered sufficient notice (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 180), although "an appellate court, absent exceptional circumstances, should not issue a peremptory writ in the first instance without having received, or solicited, opposition from the party or parties adversely affected." (*Ibid.*) We believe that the cited language should be modified to avoid any suggestion to the contrary. We note that there is no language in form SC-300-INFO stating what a preliminary opposition should state. APP-150-INFO, in contrast, states on page 28, item 20, fifth paragraph that a preliminary opposition is "typically used to explain to the appellate division why you believe it should not grant an alternative writ or order to show cause." We believe that it would be helpful to clearly state that a preliminary opposition should both state why writ relief is not appropriate and address the merits. We therefore would add the following to form SC-300-INFO, item 19, at the end of the first paragraph: "A preliminary opposition should explain why you believe the small claims court made no legal error and why the petitioner is not entitled	The committees have modified item 19 in light of this comment to include more information regarding a preliminary opposition.

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SPR15-08
Small Claims Writs: New Procedures to Implement Code of Civil Procedure section 116.798 (amend rule 8.930; adopt rules 8.970-8.977; revise forms APP-150 INFO and APP-151 and adopt forms SC-300 and 300 INFO)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			to a writ."	
5.	Superior Court of Los Angeles County (no name indicated)	AM	The date at the bottom of the Form APP-150-INFO needs to be corrected. Clarification is needed regarding the form (sworn statement, affidavit, witnessed, etc.) of verification required. Additionally, clarification is need as to whether a petition must be rejected if it is not verified.	The form will be amended to have the correct 2016 effective date. The committees determined that further clarification on this point need not be added to the rule. Self represented parties are required to use the verification included in the new Judicial Council form. Others may use the form or, for individually drafted petitions, any verification format permitted by statute. In light of this comment, the committees have added rule 8.972(a)(3) to clarify that a clerk may not reject a petition on the grounds that it is not verified, but the court strike such a petition later if a verification is not provided after notice to the party.
6.	Superior Court of San Diego County By Mike Roddy, Executive Officer	AM	• Does the proposal appropriately address the stated purpose? If the judicial council is only required to promulgate rules, and not also forms, even though the CSCAC's reasoning for also including forms is sound, perhaps it would be prudent to delay the release of forms to gauge whether the volume of small claims writs actually filed warrants a form. The availability/existence of a form could encourage frivolous filings and therefore cause an increase in the number of petitions filed with the courts, most lacking in merit. There have been about three small claims writs filed in the San Diego	The committees expressly considered the alternative of not developing a petition form, particularly in light of the fact that the existence of the form may lead to more petitions for extraordinary writs being filed in small claims actions. The committees concluded, however, that without such forms petitions that are filed would be difficult for the court to handle because they would be extremely difficult for parties to properly prepare. The petitions would have to either be individually drafted—which would be extremely difficult for self-represented parties—or somehow shoehorned into the current form APP-

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			County Superior Court Appellate Division since 2011.	151 (which assumes the lodging of some version of a record of the proceedings, which record does not exist in small claims actions and is not required under the new rules). The committee concluded that it would be less burdensome for both courts and the parties to have a specific form for these proceedings.
			• *Should the new rules require that if the petition raises any issue that would require the judge considering it to understand what was said in the small claims court, the petition must include a fair summary of the proceedings, including the parties' arguments and any statement by the small claims court supporting its ruling? (See discussion at footnote 3.)* No. If adopted, the rules should make the summary optional ("petition *may* include a brief statement" – please see additional comments on this issue below).	The committees have reviewed this and other comments on this issue, and have concluded that the rule as proposed is the most effective way of providing needed information to the appellate division judge without over-burdening parties. The committee also concluded that including an item for the summary in the form petition provides a reminder for the parties to provide the summary.
			• *Would the proposal provide cost savings? If so please quantify.* No. If the inclusion of forms causes an increase in the number of small claims writs filed, then there would be an associated *increase* in employee time and court resources related to the processing and handling	The committees appreciate the response from the commentator regarding costs resulting from the use of the newly developed forms. As noted above, the committees have concluded that in light of the mandate to make new procedural rules regarding small claims writs, and the recent

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			of those writs.	legislative recognition that the appellate division is the appropriate jurisdiction for small claims writ, the committees have concluded that the form petition will make it easier for courts as well as for the parties to be able to deal with such extraordinary petitions.
			• *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 of small claims clerks and appellate clerks.	The committees appreciate the response from the commentator regarding training costs
			• *How well would this proposal work in courts of different sizes?* As a result of the higher volume of small claims matters heard in larger courts, this proposal would disproportionately impact larger courts. The San Diego Superior Court questions the need for the implementation of these rule changes and adoption of new forms as they will increase time and costs without the need being clearly established.	The recent legislation mandates that the council adopt procedural rules for writs in small claims actions, so the committee had no choice in that area. The committee concluded, as described above, that in light of that requirement, it made sense to develop a petition form for the parties to use, rather than leave it up to non-represented parties to draft petitions that would comply with what is, at best, an arcane area of civil procedure.
			Advisory Committee Comment on page 12, line 43 reads: "Code of Civil Procedure section 116.798 provides where writs in small claims actions may be **filed**." Possibly replace "filed" with "heard" to mirror the language of section 116.798.	The note has been modified in light of this comment to reflect the statutory language.

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

SPR15-08
Small Claims Writs: New Procedures to Implement Code of Civil Procedure section 116.798 (amend rule 8.930; adopt rules 8.970-8.977; revise forms APP-150 INFO and APP-151 and adopt forms SC-300 and 300 INFO)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			Proposed Rule 8.972(a)(1) and (2), for Petitions filed by persons not represented by an attorney: *(a) Petitions* *(1) A person who is not represented by an attorney and who **asks** the **appellate division** for a writ under this chapter must file the petition on Petition for Writ (Small Claims) (formSC-300). For good cause the* *court may permit an unrepresented party to file a petition that is not on that form.* **Comment:** Change "asks" to "petitions." This change recognizes that as defined in the Chapter, "petition" means a request for a writ. Omit "the appellate division" because the petition will only be considered by a single judge, not the appellate division. So, the sentence would read: "A person who…petitions for a writ under this chapter…." *(2) If the petition raises any issue that would require the appellate division judge considering it to understand what was said in the small claims court, **it must include a statement** that fairly summarizes the proceedings, including the parties' arguments and any **statement by the small claims court supporting its ruling**.* **Comment**: Rather than eliminate this provision,	Rule 8.972(a)(1) has been modified in light of this comment. The committees have considered this and other

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	Commentator	Position	Comment	Committee Response
			to address the committee's concerns, "it must include a statement" should be revised to read "petition *may* include a **brief** statement." Making the inclusion of the summary optional could alleviate the concern while alerting self-represented litigants that any such summary should be brief. It is also noted that if the summary is optional, this might mitigate an expectation in the self-represented litigant, unschooled in the law, that the reviewing court will or must credit his/her summary. Also, change "statement by the small claims court supporting its ruling" to "statement made by the small claims court in support of its ruling" to provide greater clarity as to what is being asked of the litigant.	comments on this issue, and have concluded that the rule as proposed is the most effective way of providing needed information to the appellate division judge without over-burdening parties. The committee also concluded that including an item for the summary in the form petition provides a reminder for the parties to provide the summary.
			FORM SC-300-INFO **Comments** • Perhaps the form or the petition should include a statement that a vexatious litigant must obtain a pre-filing order from the Appellate Division Presiding Judge before she or he can file a petition for writ and/or that a proposed writ petition by a vexatious litigant should be submitted at the same time as the request for a prefiling order. • There is no discussion of an informal	The committees declined to include anything on the proposed form or information sheet regarding procedures for vexatious litigants. Such information is not included on the small claims claim form or other pleading forms, is irrelevant to parties who are not vexatious litigants, and is already known to those who are. To the extent it might be of assistance to clerks, proper training on this issue would be a more effective method of assuring compliance with the law. The committees considered developing different,

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	Commentator	Position	Comment	Committee Response
			response as a possible order from the court on a petition for writ. This is a common response from the court which can help resolve a writ without taking the more formal alternative writ or OSC approach. It may be beneficial to include reference to this type of order from the court on a writ. **SC-300-INFO, Page 41, Item 12(b), last bullet item provides:** *Because there is no formal record kept of the small claims proceedings, if the petition raises an issue that would **requires** the appellate division judge to consider what was said in the small claims court, you will need to write a complete and accurate summary of what was said by you and others, including the court, that is relevant to your request for a writ. You may add extra pages if you need more space.* **Comment:** "Requires" should be revised to read "require." Also, because this is a rule the CSCAC is not certain it wants to include, any ultimate decision on how or if the rule is included should be captured in the form and the petition at item 10c(4). **SC-300-INFO, Page 42, Item 13, first paragraph provides in part:**	less formal procedures for petitions for extraordinary writs in small claims actions, but concluded that the statutory procedures for extraordinary writs were most likely applicable to all writ proceedings, including those in small claims cases. The committee therefore concluded that the new rules should reflect the statutory procedures for writs set out in the Code of Civil Procedure, and they do. The typo has been corrected. The item has also been modified to clarify that the summary is to be provided in the petition form.

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SPR15-08

Small Claims Writs: New Procedures to Implement Code of Civil Procedure section 116.798 (amend rule 8.930; adopt rules 8.970-8.977; revise forms APP-150 INFO and APP-151 and adopt forms SC-300 and 300 INFO)

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

	Commentator	Position	Comment	Committee Response
			*Yes. Along with the petition, you must serve and file **a documents** showing what happened in the small claims court… (see below for an explanation of how to serve and file the petition). **Since** the appellate division judge was not there in the small claims court, copies of certain documents from that court that show what happened must be sent to the appellate division.* **Comment:** Change "a documents" to "documents." Change "Since" to "Because."	The suggested modifications have been made.

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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: October 26, 2015

Title
Telephone Appearances: Time for Notice and Notice Form

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 3.670; revise form CIV-020

Recommended by
Civil and Small Claims Advisory Committee
Hon. Patricia M. Lucas, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2016

Date of Report
August 14, 2015

Contact
Debora Morrison, 415-865-8713
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Executive Summary

The Civil and Small Claims Advisory Committee recommends amending rule 3.670(h) of the California Rules of Court to clarify requirements for serving notice of intent to appear in court by telephone. The recommended amendments would resolve an internal inconsistency in one provision and address an ambiguity in another. The committee also recommends revising the *Notice of Intent to Appear by Telephone* (form CIV–020), to update rule references and clarify the included instructions.

Recommendation

The Civil and Small Claims Advisory Committee recommends that, effective January 1, 2016, the Judicial Council:

1. Amend rule 3.670(h) of the California Rules of Court to clarify requirements for serving notice of intent to appear in court by telephone; and

2. Revise the *Notice of Intent to Appear by Telephone* (form CIV–020) to update references to the rule and expand and update the included instructions.

The text of the proposed amendment to the rule is attached at pages 9–10. Form CIV–020, reflecting the proposed revision, is attached at page 11.

Previous Council Action

The Judicial Council most recently amended rule 3.670 of the California Rules of Court, effective January 1, 2014.[1] Among other things, those amendments shortened the notice requirement for telephone appearances in regularly noticed hearings from three to two court days and added ex parte applications to the types of matters at which a party generally may appear by telephone if proper notice is provided.[2]

Rationale for Recommendation

Rule 3.670(h)(1)(B)

Two years ago, the Judicial Council amended rule 3.670(h)(1)(B), shortening the notice period for parties intending to appear by telephone at regularly noticed hearings, conferences, or proceedings.[3] As amended, the provision now requires that a party planning to appear by telephone must notify the court and all other parties at least two court days before the hearing (rather than three court days, as previously required). The amendments left unchanged the requirement in the same provision that the notice, if in writing, must be served in a manner intended to ensure delivery by the close of the next business day. Under rule 3.670(h)(1)(B), therefore, a written notice of intent to appear by telephone now may be delivered as late as *the close of the business day before the appearance.*

If notice is provided in writing, rather than orally,[4] this creates a potential Catch-22 for a party receiving the notice who decides also to appear by telephone. Under rule 3.670(h)(2), which was not affected by the recent amendment, that receiving party must notify the court and all other parties "*no later than noon on the day before the appearance*."[5] Essentially, the deadlines set by the two provisions—subsections (h)(1)(B) and (h)(2)—now overlap in a way that could make it impossible for some receiving parties to themselves provide written notice of an intent to appear by telephone within the period required under rule 3.670(h)(2). If, for example, at the close of the business day before a hearing, a party were to receive written notice of another's intent to appear by telephone and then also decide to appear by telephone, that receiving party, if desiring to provide written notice, would have to do so before noon on the day just ended, i.e., before having

[1] All references to rules in this report are to the California Rules of Court, unless otherwise noted.

[2] Judicial Council of Cal., Civ. & Small Claims Advisory Com. Rep., *Civil Practice and Procedure: Telephonic Appearances* (Aug. 2, 2013), *id.*, mins. (Oct. 25, 2013), pp. 23–24. See also Judicial Council of Cal., Civ. & Small Claims Advisory Com. Rep., *Telephonic Appearances in Civil Cases* (Oct. 9, 2007), pp. 5–9 (statutory and rule history related to telephone appearances).

[3] Rule 3.670(h)(1)(B) only applies if the party planning to appear by telephone for the hearing did not provide notice of that intent on the moving, opposing, or reply papers. (See rule 3.670(h)(1)(A).)

[4] Rule 3.670(h)(1)(B) allows parties to provide oral or written notice of the intent to appear by telephone. "If the notice is oral, it must be given either in person or by telephone." (Rule 3.670(h)(1)(B).)

[5] Italics added.

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received the notice. Effectively, this forecloses the option of providing written notice in such instances.

To correct this overlap, the proposal would amend rule 3.670(h)(1)(B), changing the time for service of the original written notice. The amendment would require that the party originally advising of an intent to appear by telephone serve the written notice using a means authorized by law and reasonably calculated to ensure delivery to the other parties at least two court days before the appearance.[6] This would mean the party could serve written notice on the last day permitted under the rule only by using electronic means (fax transmission or e-mail) if properly authorized[7] or hand delivery. Alternatively, a party could provide oral notice two court days before the appearance.[8]

Rule 3.670(h)(4)

Although clear on the requirements for the applicant who first announces an intent to appear by telephone at an ex parte hearing,[9] the rule's description of the requirements for *any other party* who thereafter may elect to do so as well contains an ambiguity that may create confusion. In its first sentence, rule 3.670(h)(4) instructs that the other party seeking to make an ex parte appearance by telephone must "notify" the court and all other parties "no later than 2:00 p.m. on the court day before the appearance." If providing the notice in writing, that other party must file it with the court and "serve" it on all parties in a manner intended to ensure delivery "no later than the close of business" on the same day (i.e., on the court day before the appearance).[10]

The statement that *service* need not be effected until close of business the court day before the appearance seems to contradict the earlier statement requiring the other party to *notify* everyone by 2:00 p.m. the same day. The inclusion of a different (later) time for "service" of written notice in this context appears to have been an oversight. The proposed amendment would change the sentences describing the notice and service requirements to use the same language in both, establishing the same time requirements. Specifically, the proposal is to amend rule 3.670(h)(4) to state that "any other party" planning to appear by telephone for an ex parte hearing must provide notice, and must accomplish service of the notice if it is in writing, by "2:00 p.m. or the 'close of business' (as that term is defined in rule 2.250(b)(10)), whichever is earlier."[11]

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[6] By including a specific timeframe for delivery in the rule, the rule would come within the exception to the various extensions of time that the Code of Civil Procedure otherwise provides for different types of service. (See Code Civ. Proc., §§ 1013(a), (c), (e), 1010.6(a)(4).)

[7] See Code Civ. Proc., §§ 1010.6(a), 1013(e) (specifying circumstances in which electronic service is permitted); Cal. Rules of Court, rule 2.251 (same).

[8] Rule 3.670(h)(1)(B).

[9] Rule 3.670(h)(3).

[10] Rule 3.670(h)(4).

[11] See rule 2.250(b)(10) (" 'Close of business' is 5 p.m. or any other time on a court day at which the court stops accepting documents for filing at its filing counter, whichever is earlier").

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Form CIV–020

The information included in the instructions box at the bottom of the *Notice of Intent to Appear by Telephone* (form CIV–020) is outdated in light of the 2014 rule changes discussed above. The attached proposed form would include revisions updating references to rule 3.670, and also expanding and updating the included instructions. The following are the proposed changes:

- In the second paragraph in the instruction box, the reference to the subsection of the rule describing notice requirements would be updated to reflect current numbering required by the previous rule amendments.

- In the third paragraph in the instruction box, the description of the different notice requirements would be updated to reflect the previous rule amendments and also would be expanded to provide more information. Specifically, the paragraph would be amended to reflect the shorter two-day notice requirement for appearances by telephone for regularly noticed hearings, would add a brief statement of notice requirements for parties other than the applicant in that context, and would add a brief statement of notice requirements for applicants and other parties choosing to use the telephone for ex parte appearances. The paragraph also would refer parties to the rule for related information about service requirements, rather than providing partial information as it currently does.

Comments, Alternatives Considered, and Policy Implications

Comments received

As originally circulated for public comment, from April 18 to June 18, 2014, this proposal only included recommended amendments to rule 3.670(h)(4) (appearance by telephone for ex parte hearings) and revisions to the *Notice of Intent to Appear by Telephone* (form CIV–020). In the comments received, however, a commentator also noted an inconsistency in rule 3.670(h)(1)(B), caused by the earlier amendments reducing the period of required notice for appearances by telephone at regularly scheduled hearings. The committee revised the proposal, adding amendments that would address this further issue and making various additional wording changes responding to other input from commentators. The revised proposal was circulated for public comment from April 17 to June 17, 2015. The significant comments received in both instances are discussed below.

Original proposal (2014). The original proposal, circulated for public comment in 2014, proposed amending rule 3.670(h)(4) to clarify that a party other than the applicant who seeks to appear by telephone for an ex parte hearing must notify the court, the applicant, and any other parties of that intent in a way that is intended to ensure all receive it no later than 2:00 p.m. on the day before the hearing. It also proposed revising the *Notice of Intent to Appear by Telephone* (form CIV–020) to update the rule reference and notice period following the previous amendments to rule 3.670, modestly expanding the instructions as well.

Eight comments were received, all generally favoring the proposal. The commentators included three superior courts (Los Angeles, Riverside, and San Diego), the Joint Rules Working Group

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(now a subcommittee) of the Judicial Council's Trial Court Presiding Judges and Court Executives Advisory Committees, the State Bar's Committee on the Administration of Justice, the Orange County Bar Association, the manager of Self-Help Services for the Superior Court of Orange County, and a small legal publisher. (The text of all comments received and committee responses are included in the comment chart for the original proposal, attached at pages 12–19.)

Two commentators approved the proposal but sought modifications.

Timing of service of Notice of Intent to Appear by Telephone (rule 3.670(h)(1)(B)). The Orange County Bar Association agreed with the original proposal but noted another inconsistency in rule 3.670(h)(1)(B) that the original proposal did not address. The inconsistency was between the recently shortened notice period for intent to appear by telephone at regularly scheduled hearings (now two court days), the unchanged deadline for delivering that notice (close of the next business day), and the deadline by which any receiving party must provide notice of a similar intent (noon on the court day before the appearance).

As noted above, the committee revised the proposal, adding amendments to resolve the issue and circulated the revised proposal for public comments. As circulated the second time, the proposed amendments directed that written notice of intent to appear by telephone at a regularly scheduled hearing must be served in a manner calculated to ensure delivery no later than 5:00 p.m. the same day that it is filed with the court.

Other suggested text changes to rule and form. Lawdable Press, a small legal publisher, also suggested several wording changes for rule 3.670(h)(1)(B) and (h)(2) to clarify requirements and raised a question about whether the *Notice of Intent to Appear by Telephone* (form CIV–020) is an optional form. The committee agreed with all but one of the wording suggestions and included them in the revised proposal, which it circulated for public comment. The question about the nature of the form arose from wording in the original proposal, which was clarified in the revised proposal. As the form itself states (in the bottom left corner), it is approved for optional use. Any suggestion to the contrary in the original proposal was unintended.

Second proposal (2015). The current (revised) proposal, circulated for public comment in 2015, received 11 comments. The commentators included four superior courts (Los Angeles, Orange, Riverside, and San Diego), the California Judges Association (CJA), three committees of the State Bar (Administration of Justice, Rules and Legislation, and Delivery of Legal Services), the Orange County Bar Association, an author and small legal publisher, and an attorney. Nine commentators agreed with the revised proposal, one agreed if modifications were made, and one suggested two points for clarification without indicating a position. (The text of all comments received and committee responses are included in the comment chart for the revised proposal, attached at pages 20–26.)

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The following issues received the most significant comments (with details on each topic following):

- Bifurcated notice
- Close of business
- Revised instructions on form CIV-020
- Language access and family law hearings

Bifurcated notice (rule 3.670(h)(1)(B). The State Bar of California's Committee on Administration of Justice (CAJ) agreed with the proposal but observed that it may be difficult to serve written notice by 5:00 p.m. on the day it is filed, if the parties have not consented to service by fax or e-mail and personal delivery is impracticable.[12] The commentator suggested that the rule could be read as allowing a bifurcated method of providing notice, under which a party might file a written notice with the court but not serve it on the parties, providing notice to them orally instead. The commentator suggested amending the rule to expressly state this option.

The committee has considered this suggestion and does not agree. It does not read rule 3.670(h)(1)(B) as allowing a bifurcated approach. The provision states that, if notice is in writing, it must be "given by filing [a notice] with the court . . . *and by serving the notice*" on the other parties.[13] The committee also concluded that amending the rule to provide a bifurcated notice procedure would make it unduly complicated and is unnecessary because the rule already allows the option of providing oral notice to both the court and all other parties. Written notice is not required.

The committee observed, however, that the proposed language would have the unintended consequence of unnecessarily advancing the deadline to serve notice of an intent to appear by telephone for a regularly scheduled hearing for some parties. As circulated the second time, the proposed amendment would have required that all parties filing such notice serve it in a manner intended to ensure delivery *the same day,* even if they were filing the notice with the court well in advance of the deadline (i.e., more than two court days before the hearing). The committee has revised the proposal to simply require that filing and service both occur at least two court days before the hearing.

Close of business (rule 3.670(h)(4)). Two commentators—an author and small legal publisher and CAJ—suggested that using the phrase "close of business" in the proposed amendment to rule 3.670(h)(4) introduces potential uncertainty regarding the deadline by which parties other than the applicant must provide notice of an intent to appear by telephone for an ex parte hearing. The revised proposal had suggested amending rule 3.670(h)(4) to clarify that such other parties

[12] See, e.g., Code Civ. Proc., §§ 1010.6(a)(2), 1013(e) (limiting service by fax or e-mail).

[13] Rule 3.670(h)(1)(B), italics added.

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must provide notice "no later than 2:00 p.m. or *the close of business* on the court day before the appearance, whichever is earlier."[14]

The first commentator suggested revising the proposal to omit the phrase, "close of business," leaving 2:00 p.m. on the day before the appearance as the deadline to provide notice. The committee did not accept this suggestion, however, concluding that doing so could introduce new uncertainty as a court clerks' office could close on some days before 2:00 p.m. The second commentator suggested including a reference to the definition of "close of business" provided in rule 2.250(b)(10).[15] The committee has accepted this suggestion and revised its proposal to reflect it.

Notice of Intent to Appear by Telephone (form CIV–020). The author/small legal publisher commentator also observed that, as proposed, the introductory sentence to the third paragraph of amended instructions on the *Notice of Intent to Appear by Telephone* (form CIV–020) mistakenly suggested ex parte applicants "must" use that notice form. To avoid this suggestion, the commentator recommended removing the instruction that followed on notice requirements for ex parte applicants. The committee agrees that an ex parte applicant must include notice of the intent to appear by telephone on the application papers themselves, rather than filing a separate notice (the form CIV–020). Because the commentator's recommended change would eliminate helpful instructions on providing notice for ex parte applicants, however, the committee instead modified the introductory sentence to the paragraph to correct the point, removing the suggestion that ex parte applicants must use form CIV-020.

Language access and family law hearings. Two commentators—the State Bar's Standing Committee on the Delivery of Legal Services and the Superior Court of Orange County—noted an issue regarding language accessibility for telephone appearances. The court commentator suggested adding an interpreter line item to the *Notice of Intent to Appear by Telephone* (form CIV–020). The committee will refer this issue and the suggestion to the Judicial Council's Language Access Plan Implementation Task Force and Court Interpreters Advisory Panel for future action, as they are currently developing proposed procedures and forms directly related to interpreters.

Finally, the Superior Court of Orange County also suggested clarifying whether rule 3.670 applies to telephone appearances subject to Family Centered Case Resolution matters covered by rule 5.83(d)(2) or adoption proceedings described in Family Code section 8613.5(a)(1)(B). The committee concludes that the rules are sufficiently clear on this point. Rule 3.670(b) expressly confirms that the rule only applies to general civil cases and specified other non–family law matters. Rule 1.6(4) expressly excludes family law matters, including adoption matters, from the definition of "general civil cases." Telephone appearances in family law matters instead are

[14] Italics added.

[15] See rule 2.250(b)(10) (" 'Close of business' is 5 p.m. or any other time on a court day at which the court stops accepting documents for filing at its counter, whichever is earlier").

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addressed in rule 5.324 (for Governmental Child Support cases) and rule 5.9 (for all other family law matters). Accordingly it does not recommend further amendments.

Alternatives considered

The committee considered not recommending any changes. It concluded, however, that, if rule 3.670(h)(1)(B) is not amended, it will remain internally inconsistent. This may create needless confusion for litigants, producing questions and time-consuming arguments about whether notice was appropriately given, adding to the work for courts. Similarly, if instructions on the *Notice to Appear by Telephone* (form CIV–020) are left unrevised, they will be inconsistent with current rules, referring to outdated numbering and notice requirements. Problems may arise with disputes between parties and confusion at the filing windows regarding whether the form is timely filed and served.

Implementation Requirements, Costs, and Operational Impacts

Correcting the issues described in this report should not create challenges or expense for courts. Rather the proposed amendments to the rule and the form would likely help to avoid uncertainty or confusion for litigants, reducing the number of questions directed to court clerks' offices and freeing court staff to attend to other duties. Clarification of the rule requirements related to service also may avoid errors that are time consuming for litigants, judicial officers, and court staff.

Attachments

1. Cal. Rules of Court, rule 3.670, at pages 9–10
2. Form CIV–020, at page 11
3. Chart of comments, which circulated from April 18 to June 18, 2014, at pages 12–19
4. Chart of comments, which circulated from April 17 to June 17, 2015, at pages 20–26

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California Rules of Court, rule 3.670 is amended, effective January 1, 2016, to read:

Rule 3.670. Telephone appearance

(a)–(g) * * *

(h) Notice by party

(1) Except as provided in (6), a party choosing to appear by telephone at a hearing, conference, or proceeding, other than on an ex parte application, under this rule must either:

(A) Place the phrase "Telephone Appearance" below the title of the moving, opposing, or reply papers; or

(B) At least two court days before the appearance, notify the court and all other parties of the party's intent to appear by telephone. If the notice is oral, it must be given either in person or by telephone. If the notice is in writing, it must be given by filing a "Notice of Intent to Appear by Telephone" with the court at least two court days before the appearance and by serving the notice ~~at the same time on all other parties by personal delivery, fax transmission, express mail, e-mail if such service is required by local rule or court order or agreed to by the parties, or other~~ by any means authorized by law and reasonably calculated to ensure delivery to the parties ~~no later than the close of the next business day~~ at least two court days before the appearance.

(2) If after receiving notice from another party as provided under (1) a party that has not given notice also decides to appear by telephone, the party may do so by notifying the court and all other parties that have appeared in the action, no later than noon on the court day before the appearance, of its intent to appear by telephone.

(3) An applicant choosing to appear by telephone at an ex parte appearance under this rule must:

(A) Place the phrase "Telephone Appearance" below the title of the application papers;

(B) File and serve the papers in such a way that they will be received by the court and all parties by no later than 10:00 a.m. two court days before the ex parte appearance; and

(C) If provided by local rule, ensure that copies of the papers are received in the department in which the matter is to be considered.

(4) Any party other than an applicant choosing to appear by telephone at an ex parte appearance under this rule must notify the court and all other parties that have appeared in the action, no later than 2:00 p.m. or the "close of business" (as that term is defined in rule 2.250(b)(10)), whichever is earlier, on the court day before the

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appearance, of its intent to appear by telephone. If the notice is oral, it must be given either in person or by telephone. If the notice is in writing, it must be given by filing a "Notice of Intent to Appear by Telephone" with the court and by serving the notice ~~at the same time~~ on all other parties by any means authorized by law reasonably calculated to ensure delivery to the parties no later than 2:00 p.m. or "the close of business" (as that term is defined in rule 2.250(b)(10)), whichever is earlier, on the court day before the appearance.

(5) If a party that has given notice that it intends to appear by telephone under (1) subsequently chooses to appear in person, the party may appear in person.

(6) A party may ask the court for leave to appear by telephone without the notice provided for under (1)–(4). The court should permit the party to appear by telephone upon a showing of good cause or unforeseen circumstances.

(i)–(q) * * *

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ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO. *(if available)*: E-MAIL ADDRESS *(if available)*: ATTORNEY FOR (*Name*):	DRAFT 07/02/15 Not approved by Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
NOTICE OF INTENT TO APPEAR BY TELEPHONE	CASE NUMBER:

1. Party intending to appear by telephone is
   - ☐ Plaintiff/Petitioner *(name):*
   - ☐ Defendant/Respondent *(name):*
   - ☐ Other *(name):*
2. The conference, hearing, or proceeding is for *(describe):*

   set on *(date):* at *(time):* in *(department):*

   before *(name of judicial officer, if known):*

Date:

▶ _____

(TYPE OR PRINT NAME) (SIGNATURE)

See Code of Civil Procedure section 367.5 and California Rules of Court, rule 3.670 to determine if a conference, hearing, or proceeding is one generally considered appropriate for telephone appearance. Note that a court may determine on a hearing-by-hearing basis that a personal appearance is required. (Code Civ. Proc., § 367.5(c).)

This form is intended only to provide written notice to a court and parties as provided in rule 3.670(h) of the California Rules of Court. **Check with the court to determine how to make arrangements for telephone services for an appearance either directly with the court or through a court-appointed vendor.**

Read California Rules of Court, rule 3.670(h) to determine when you have to file and serve notice of the intent to appear by telephone. There are different deadlines depending upon the circumstances:

(1) On a regularly noticed hearing, notice must be given at least two court days before the appearance (Cal. Rules of Court, rule 3.670(h)(1)(B)) or, after receiving notice that another party will be appearing telephonically, by noon on the court day before the appearance (Cal. Rules of Court, rule 3.670(h)(2)).

(2) On an ex parte application, notice must be given by an applicant by 10:00 a.m. two court days before the hearing (Cal. Rules of Court, rule 3.670(h)(3)(B)). Any party other than an applicant may give notice by 2:00 p.m. or the "close of business" (as that term is defined in rule 2.251) whichever is earlier, on the court day before an ex parte appearance. (Cal. Rules of Court, rule 3.670(h)(4).)

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SPR14-06
Rule 3.670; revise form CIV-020
Telephone Appearances: Notice for Ex Parte Appearances and Notice Form
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Lawdable Press By: Julie Goren Sherman Oaks, CA	AM	1. There is an ambiguity regarding the form of written notice. Is CIV-020 supposed to be mandatory? As currently drafted, the rule requires that when notice is in writing a "Notice of Intent to Appear by Telephone" must be filed and served. It doesn't refer to form CIV-020, and CIV-020 itself indicates that it is approved for optional use. From the rule and form, then, it appears that a "Notice of Intent to Appear by Telephone" could be drafted on pleading paper; after all, that was how it was done in the years before the optional Judicial Council form was approved. The comments to the proposal state that the rule requires written notice to be given "on the Judicial Council notice form (CIV-020)." If that is the intent, then: (1) a reference to CIV-020 ought to follow "Notice of Intent to Appear by Telephone" in both (h)(1)(B) and (h)(4), and (2) the form needs to be changed from "Form Approved for Optional Use" to "Form Adopted for Mandatory Use." If that is not the intent, the foregoing changes are not necessary. 2. I also recommend a few changes to (h)(1)(B): A. I question the use of the phrase "at the same time" and what it is meant to modify. Is it requiring filing and service at the	1. The form was approved for optional use effective 2010, to make it easier for self-represented parties to provide written notice. The reference in the text of the Invitation to Comment that the form "must" be used for written notice was a misstatement. It remains an optional form. 2.A. This phrase has been used in the rule to indicate that the time for filing and for notice were to be the same. The proposed change is outside the scope of this proposal. The committee agrees, however, that the language is ambiguous and in the revised proposal that it circulated for

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	Commentator	Position	Comment	Committee Response
			same time? Is it requiring service on all parties at the same time? Neither could realistically be accomplished or should be required. I would delete it here and in (h)(4).	comment, it has removed this phrase.
			B. Instead of listing all of the possible service methods (and in so doing referring to service by "e-mail" instead of "electronic service" and only mentioning "agreed to by the parties" in relation to e-mail when agreement by the parties is also required for fax service), use the language in (h)(4) "any means authorized by law reasonably calculated to ensure ..."	1.B. The committee agrees and has modified its proposal to reflect the suggestion.
			C. I also have problems with the phrase "close of the next business day" as used here. (1) What is the "close"? 5:00 p.m.? Does it depend on the recipient's office? A specific time, like 5:00 p.m., would be much clearer. (2) Why use "business day" when "court day" is defined elsewhere and is used throughout this rule? Having the notice filed and served two court days before the hearing and delivered the next business day (when what actually is intended is delivery by the next court day, i.e., the court day before the appearance) could lead to unnecessary confusion. There are business days that are not court days (e.g., Cesar Chavez Day, Lincoln's Birthday, Day after Thanksgiving). As such, the next business day might not be the court day before the appearance.	1.C. The committee agrees and has modified the its proposal to reflect this suggestion.

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SPR14-06
Rule 3.670; revise form CIV-020
Telephone Appearances: Notice for Ex Parte Appearances and Notice Form
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	Commentator	Position	Comment	Committee Response
			Were the comments in A-C to be adopted, it would read: "If the notice is in writing, it must be given by filing a "Notice of Intent to Appear by Telephone" (Judicial Council Form No. CIV-020) with the court at least two court days before the appearance and by serving the notice on all other parties by any means authorized by law reasonably calculated to ensure delivery to the parties no later than 5:00 p.m. on the next court day."	As noted above, the Notice of Intent to Appear by Telephone (form CIV–020) was approved for optional use. The committee therefore declines to add a reference to that specific form to the rule. It agrees in substance with the other suggestions above and has modified its proposal to reflect them.
			3. Paragraph (h)(2) doesn't state how notice is to be given. For consistency, shouldn't it also be oral or written, and if written, shouldn't CIV-020 be required to be served so as to be received by noon the court day before the hearing?	3. The committee appreciates the suggestion but concludes that it is not necessary to reiterate the permissible methods for providing notice in paragraph (h)(2).
			4. The same changes suggested in 2.A. should be made to (h)(4): adding reference to CIV-020, and deleting the phrase "at the same time."	4. Please see responses to comments 1 and 2.A. above.
			Changes to CIV-020	Changes to form CIV–020.
			1. Insert "the" in the second paragraph, second line, between "with" and "court."	1. The committee agrees and has modified the proposal to reflect this suggestion.
			2. Presumably the form must be filed and served in compliance with three different	2. The committee agrees and has modified the proposal to reflect the suggestion, although

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	Commentator	Position	Comment	Committee Response
			provisions: (1) two court days before the appearance under (h)(1)(B), (2) by noon on the court day before the appearance under (h)(2), and by 2:00 p.m. the court day before the appearance. The instruction box is somewhat misleading as it doesn't mention the (h)(2) deadline (if indeed the form is intended to be required under (h)(2)), advising the reader to look elsewhere only for the ex parte rules. There seems to be plenty of room on the form to address all three time frames. I suggest revising it to say: "There are three different deadlines for filing and serving this notice, depending upon the circumstances: (1) two court days before the appearance under Cal. Rules of Court, rule 3.670 (h)(1)(B), (2) by noon on the court day before the appearance under Cal. Rules of Court, rule 3.670 (h)(2), and by 2:00 p.m. the court day before an ex parte appearance under Cal. Rules of Court, rule 3.670 (h)(4). Be sure to comply with the rules." 3. If the form is indeed mandatory, change "Form Approved for Optional Use" to "Form Adopted for Mandatory Use."	grouping the deadlines into two categories instead, namely, notices for regularly scheduled hearings, and notices for ex parte, hearings. 3. Please see response to comment 1, above. The form is approved for optional use.
2.	Maria Livingston Manager Superior Court of Orange County	A	Commenter agrees with the proposed changes. The proposed changes are specific to the stated purpose of the changes. Self-represented litigants require clarity and this minor change clarifies one of the notice provisions for ex parte applications. This change specifies that written notice, just like oral notice of intent to appear	The committee notes the commentator's agreement with the proposal.

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SPR14-06
Rule 3.670; revise form CIV-020
Telephone Appearances: Notice for Ex Parte Appearances and Notice Form
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	Commentator	Position	Comment	Committee Response
			telephonically to oppose an ex parte application must be served no later than 2 p.m. on the court day before the appearance. This is an important clarification as the rule ambiguously provided for written notice to be served by the end of business day while oral notice was required by 2:00 p.m. This change will negate any arguments as to the propriety of the amount of notice given and shift arguments to more substantive matters. The other change is to Form Civ-020 which is the mandatory form for Written Notice of Intent to Appear Telephonically. The changes in this form are necessary to make the instructions reflect the current proposed rule changes and the appropriate time frame. Self-Represented Litigants rely heavily on forms and it is essential that the forms are logically related to the procedural rules which the forms implement or the litigant's become more confused. The 2 month deadline to enact these changes prior to January 2015 is more than sufficient time for the court system to adjust. The form is already in existence so no new coding should be required. The only change is the requirement that the service of the written notice must be by 2:00 p.m. the day before the appearance rather than by the end of the day. Regarding this particular proposal, the size of the court should not matter as long as the presiding judge accepts and encourages the idea	The committee notes the commentator's agreement with the proposal.

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	Commentator	Position	Comment	Committee Response
			of telephonic appearances. Every size county and court should be attempting to cut time and expenses from each case which includes having the attorneys and parties come from long distances to hearings which could be effectively handled by a telephonic appearance.	
3.	Orange County Bar Association Orange County Bar Association	AM	Comments: A problem exists in Rule 3.670(h)(1)(B) that is not resolved by this proposed amendment: the Rule requires notice to be served by a party (if in writing) so as to be received "no later than the close of the next business day", but Rule 3.670(h)(2) requires the other parties receiving the notice to notify the court and parties "no later than noon on the court day before the appearance" of their intent to also appear by telephone. The Rule thereby precludes an opposing party from receiving notice and electing to appear telephonically if that opposing party does not receive until the "close of the next business day" which is actually after the noon court day before the appearance to also elect. The proposal otherwise addresses the stated purposes.	The committee notes the inconsistency. As the subject exceeds the scope of this proposal, the committee revised the proposal to include an amendment resolving the issue, and has circulated the revised proposal for public comment.
4.	State Bar of California, Committee on Administration of Justice Saul Bercovitch CAJ, Legislative Counsel	A	CAJ supports this proposal.	The committee notes the commentator's agreement with the proposal.
5.	Superior Court of Los Angeles County Los Angeles County Superior Court	A	No specific comment	The committee notes the commentator's agreement with the proposal.

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SPR14-06
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Telephone Appearances: Notice for Ex Parte Appearances and Notice Form
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	Commentator	Position	Comment	Committee Response
6.	Superior Court of Riverside County Riverside County Superior Court Staff	A	No specific comment	The committee notes the commentator's agreement with the proposal.
7.	Superior Court of San Diego County Michael M. Roddy Executive Officer	A	No specific comment	The committee notes the commentator's agreement with the proposal.
8.	TCPJAC/CEOC Joint Rules Committee TCPJAC/CEOC	A	This proposal clarifies prior rule changes. It would require development of new local rules only if courts have existing local rules in conflict with the clarification. **The following are responses to the proposal's Request for Specific Comments:** Does the proposal appropriately address the stated purpose? ***Yes, the proposal clarifies the rule.*** Would the proposal provide cost savings? If so, please quantify. ***No, we did not identify any 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), changing docket codes in case management systems, or modifying case management systems? ***The changes would involve minimal training of staff as to the form changes and the notice requirements.***	The committee notes the commentator's agreement with the proposal.

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SPR14-06
Rule 3.670; revise form CIV-020
Telephone Appearances: Notice for Ex Parte Appearances and Notice Form
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			Would two 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? ***This proposal provides clarity to courts of all sizes.***	

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SPR15-12

Telephone Appearances: Time for Notice and Notice Form (amend rule 3.670(h), revise form CIV-020)

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

	Commentator	Position	Comment	Committee Response
1.	California Judges Association by Joan P. Weber, President	A	The Judicial Council's Civil and Small Claims Advisory Committee proposes amendments to CRC 3.670 relating to the notice requirements for telephonic appearances. The amendments, which would be effective January 1, 2016, are intended to "clean up" the amendments made in 2014. Those amendments expanded the list of civil matters at which parties could appear by telephone to include ex parte applications and also shortened notice for all telephonic appearances from three days to two. The proposal would amend CRC 3.670(h)(1) to require that if written notice of intent to appear telephonically is provided in a matter other than an ex parte application, the notice must be served in a manner reasonably calculated to ensure delivery by 5 p.m. that same day, as opposed to the next business day, which the rule currently provides for. The proposal would also amend Rule 3.670(h)(4) to clarify that both written notice and oral notice of intent to appear telephonically to oppose an ex parte application must be provided to the court and the parties no later than 2 p.m. or the close of business, whichever is earlier, on the court day before the appearance. Finally, the proposal would revise Judicial Council Form CIV-020 (Notice of Intent to Appear by Telephone) to reflect these changes. The proposed amendments are not substantive and should have little or no impact on the way civil courts do business. Therefore, we support the proposal.	The committee notes the commentator's support of the proposal.

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SPR15-12
Telephone Appearances: Time for Notice and Notice Form (amend rule 3.670(h), revise form CIV-020)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
2.	Azar Elihu, Attorney at Law Los Angeles	A	No specific comment.	The committee notes the commentator's agreement with the proposal.
3.	Julie Goren, Author Sherman Oaks	AM	Rule 3.670(h)(4) - The inclusion of "or the close of business" and "whichever is earlier" does not comport with the comments: "The proposed amendment would change the last sentence in the subdivision to make it consistent with the first sentence by providing that written notice is to be done in such a way that it is received by all parties no later than 2 p.m." and creates an ambiguity -- whose "close of business"? I recommend simply making the change to 2 p.m. CIV-020 - In the text box at (2), the reference to notice by the applicant by 10:00 is incorrect. CRC Rule 3.670(h)(3) directs the applicant to place the phrase "Telephone Appearance" on the application; there is no provision for any other form of notice by the applicant. In the first sentence, strike "notice must be given ..." through the end of the sentence, and in the next sentence, change "Any" to "any" making it a single sentence. Also, if (h)(4) is changed so that the deadline is simply 2:00 p.m., then the wording of the form needs to change as well. The revision date of the form is incorrect.	The committee appreciates the comment and agrees that the provision can be clarified. It has modified the proposal to add reference to rule 2.250(b)(10), which defines the term close of business." The committee agrees that an applicant intending to appear by telephone for an ex parte hearing must include notice of that intent on the application papers themselves, rather than filing a separate notice (e.g., form CIV-020). The committee disagrees, however, that the referenced text about the required notice period is incorrect and declines to strike it. Instead, it has modified the first sentence of paragraph three of the proposed instructions to remove the suggestion that "this notice" (i.e., form CIV–020) must be used in all listed instances. The committee agrees and has modified its proposed amendments to the form to reflect the suggestion.
4.	Orange County Bar Association by Ashleigh Aitken, President	A	Proposed changes appear to address the issues and correct the inconsistencies.	The committee notes the commentator's agreement with the proposal.

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SPR15-12
Telephone Appearances: Time for Notice and Notice Form (amend rule 3.670(h), revise form CIV-020)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
5.	State Bar of California Committee On Administration of Justice	A	The State Bar of California's Committee on Administration of Justice (CAJ) has reviewed and analyzed the Judicial Council's Invitation to Comment, and appreciates the opportunity to submit these comments. CAJ supports this proposal subject to the comments below. A. <u>Proposed revision to rule 3.670(h)(1)(B)</u> CAJ notes that, under the proposed amendments to rule 3.670(h)(1)(B), an applicant providing notice of intent to appear telephonically in writing must file a notice with the court two court days before the hearing, and must effect service of the notice by 5 p.m. that same day. This presumably requires either personal service or service by fax or email. However, in some cases, personal service may be impracticable and service by fax or email may not be permitted (as these forms of service require court order or consent; see Code Civ. P. § 1010.6, 1013(e)). If the parties have not agreed to email or fax service and for whatever reason (e.g., counsel reside in different cities) personal service is impracticable, the proposed amended rule would require something that cannot be done. CAJ concludes that this is unlikely to present a real world problem, because the rule permits oral notice. This would seem to permit the filing with the court of the notice of intent to appear telephonically two	The committee notes the commentator's agreement with the proposal and provides a further response below. A. The committee does not agree that, under rule 3.670(h)(1)(B), a party might file with the court a written notice and then abstain from

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	Commentator	Position	Comment	Committee Response
			court days before the hearing, while providing oral notice that day to opposing counsel. CAJ believes that consideration should be given to stating expressly, in the amended rule, that oral notice is sufficient where it is not practicable to effect service of the written notice by the 5 p.m. deadline. B. <u>Proposed revision to rule 3.670(h)(4)</u> CAJ suggests a clarifying revision to the proposed amendment. The proposed revision requires that if a party (other than the applicant) wishes to appear telephonically at the hearing, the party must notify the court and other parties "no later than 2:00 p.m. or the close of business on the court day before the appearance, whichever is earlier." The reference to close of business being earlier than 2:00 p.m. may be confusing. CAJ understands that the early close of business may result from a court filing window closing earlier than 2 p.m., as contemplated by California Rules of Court, rule 2.250(b)(10). To avoid confusion, CAJ suggests revising the proposed rule to read as follows, with proposed new text in bold and underline: "no later than 2:00 p.m. or the close of business **<u>(as defined in California Rules of Court, rule 2.250(b)(10))</u>** on the court day before the appearance, whichever is earlier."	serving it on the other parties, providing only oral notice to them instead. The committee declines to modify its proposal to include a provision allowing such a bifurcated approach. Doing so would overly complicate the provision and is unnecessary because the rule already allows the option of providing oral notice to both the court and all other parties. Written notice is not required. B. The committee agrees and has modified the proposal accordingly.

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Telephone Appearances: Time for Notice and Notice Form (amend rule 3.670(h), revise form CIV-020)
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	Commentator	Position	Comment	Committee Response
6.	State Bar of California Litigation Section Rules and Legislation Committee By Reuben A. Ginsburg, Chair	A	The Committee supports the proposed revisions and believes that they appropriately address the stated purpose to eliminate timing inconsistencies and correct the notice form. In addition, we note two typographical errors: the slash after "hearing" in the third line from the bottom of the page should be deleted, and the revision date of "January 1, 2065" at the bottom left of the page should be corrected.	The committee notes the commentator's support of the proposal and agrees with the suggestion. It has made the corrections to form CIV–020.
7.	State Bar of California Standing Committee on the Delivery of Legal Services (SCDLS) by Maria C. Livingston, Chair	A	Does the proposal appropriately address the stated purpose? Yes. The intent of this proposal is to update and clarify service of notice provisions in light of the recent rule change which shortened notice requirements for all telephonic appearances from three days to two. The revisions to the *Notice of Intent to Appear by Telephone* (form CIV-020) will help avoid confusion by correcting and updating references to the rules and the changes to the rules will correct the current inconsistencies in notice timeframes. However, SCDLS notes that while telephonic appearances increase access to the courts to many litigants, self-represented limited English proficient speakers face a significant barrier in accessing this "point of entry" to the courts since there is no uniform language accessibility for telephonic appearances: this may be something to consider in the ongoing efforts to develop the statewide Language Access Plan.	The committee notes the commentator's agreement with the proposal. The committee appreciates the suggestion about language accessibility for telephone appearances. The committee will refer this suggestion to the Judicial Council's Language Access Plan Implementation Task Force and Court Interpreters Advisory Panel for future action, as they are currently developing proposed procedures and forms directly related to interpreters.

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	Commentator	Position	Comment	Committee Response
8.	Superior Court of Los Angeles County (no name indicated)	A	No specific comment.	The committee notes the commentator's agreement with the proposal.
9.	Superior Court of Orange County by Family Law Operations Managers & Juvenile Court Operations Mgrs.	NI	The Advisory Committee comment under CRC 3.670 states, "*This rule does not apply… to family law matters, except in certain respects as provided in rule 5.324 relating to telephone appearances in proceedings for child or family support under Title IV-D of the Social Security Act...*" It is unclear if this rule is applicable to Family Centered Case Resolution pursuant to CRC 5.83(d)(2) or adoption proceedings, specifically F.C. 8613.5 (a)(1)(B). Please provide clarification on the applicability of this rule to family court. Additionally, we recommend adding an interpreter line item to the Notice of Intent to Appear by Telephone (CIV-020).	The committee has considered this comment and concludes that the rules are sufficiently clear on this point. Rule 3.670(b) confirms that the rule only applies to general civil cases, as that term is defined in rule 1.6, and to specified other non-family law matters. Rule 1.6(4) expressly excludes family law matters, including adoption matters, from the definition of "general civil cases." Telephone appearances in family law matters instead are addressed in rule 5.324 (for Governmental Child Support cases) and rule 5.9 (for all other family law matters). Please see the response to comment 7 above.
10.	Superior Court of Riverside County (no name indicated)	A	No specific comment.	The committee notes the commentator's agreement with the proposal.
11.	Superior Court of San Diego County 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. No. What would the implementation requirements be for courts? Advising staff via e-mail of the change. Our court permits appearances via	The committee notes the commentator's agreement with the proposal.

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	Commentator	Position	Comment	Committee Response
			telephone with notice as late as the day of the hearing. Would 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.	

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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: October 27, 2015

Title
Criminal and Traffic Procedure: Appearance in Court for Infractions Without Deposit of Bail

Rules, Forms, Standards, or Statutes Affected
Amend rule 4.105 of the California Rules of Court

Recommended by
Criminal Law Advisory Committee
Hon. Tricia A. Bigelow, Chair

Traffic Advisory Committee
Hon. Mark Borrell, Chair

Agenda Item Type
Action Required

Effective Date
December 1, 2015

Date of Report
September 11, 2015

Contact
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Criminal Justice Services, 415-865-7702
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Executive Summary

The Criminal Law and Traffic Advisory Committees recommend amendments to rule 4.105 of the California Rules of Court to apply the rule to non-traffic infractions and to require courts to consider the totality of the circumstances when setting bail amounts before trial. The committees also recommend adding advisory committee comments to clarify the scope of the rule and explain that the totality of the circumstances may include whether the bail amount would impose an undue hardship on the defendant. The amendments were developed in response to recent Judicial Council directives to expand the application of the rule and promote access to justice in all infraction cases.

Recommendation

The Criminal Law and Traffic Advisory Committees recommend that the Judicial Council, effective December 1, 2015, amend rule 4.105 to:

1. Apply the rule to non-traffic infractions by deleting various references to "traffic" and the "Vehicle Code";

2. Add subdivision (c)(4) to require courts to consider the totality of the circumstances in determining the amount of any bail set before trial under subdivisions (c)(2) and (c)(3);

3. Add the following advisory committee comment to clarify the application of the rule under subdivision (a): "The rule does not apply to post-conviction matters or cases in which the defendant seeks an appearance in court after a failure to appear or pay";

4. Add to the advisory committee comment an explanation of the distinct statutory purposes and functions that bail and related considerations serve in infraction cases as distinguished from felony and misdemeanor cases;

5. Add the following citation to the advisory committee comment to provide examples of statutory alternatives to appearing for arraignment: "(See, e.g., Pen. Code, §§ 853.5, 853.6; Veh. Code, §§ 40510, 40512, and 40512.5 [authorizing defendants to post and forfeit bail in lieu of appearing for arraignment].)";

6. Add to the advisory committee comment a statement that in considering the "totality of the circumstances" under new subdivision (c)(4), courts may consider "whether the bail amount would impose an undue hardship on the defendant"; and

7. Delete unnecessary references to the totality of the circumstances in light of the addition of those considerations under new subdivision (c)(4).

The text of the amended rule and advisory committee comment are attached at pages 6–7.

Previous Council Action

Rule 4.105 was adopted by the Judicial Council effective June 8, 2015.

Rationale for Recommendation

Current rule

Rule 4.105 was originally adopted in response to recent criticisms aimed at state traffic laws and trial court procedures for deposit of bail in traffic infraction cases. The purpose of the rule is to improve access to justice for defendants who appear in court as promised to challenge their traffic infraction citations. In short, the rule requires courts to allow traffic infraction defendants to appear as promised for arraignment and trial without prior deposit of bail, unless certain specified exceptions apply, and to require courts to notify defendants of the option to appear in court without deposit of bail in any instructions or other materials regarding bail provided by courts to the public.

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When adopting the rule, the Judicial Council also directed the appropriate advisory committees to develop recommendations to expand the application of the rule to non-traffic infractions and to promote access to justice in all infraction cases. The recommended amendments were developed by the committees in response to the council's directives.

Proposed Amendments

The recommended amendments would expand application of the rule to non-traffic infractions and require courts to consider the totality of the circumstances when setting bail amounts before trial. To promote court consideration of financial hardships on defendants, the amendments would also add an advisory committee comment to explain that the totality of the circumstances may include "whether the amount of bail would cause an undue hardship on the defendant."

To clarify the scope of the rule, the amendments also add advisory committee comments to (1) explain that the rule "does not apply to post-conviction matters or cases in which the defendant seeks an appearance in court after a failure to appear or pay," (2) provide more examples of statutory alternatives to appearances in court for arraignment, and (3) clarify that the rule takes into account the distinct statutory purposes and functions that bail and related considerations serve in infraction cases, as distinguished from felony and most misdemeanor cases.

Collectively, the amendments are designed to promote procedural fairness across all categories of infraction cases, reduce confusion about the application of the rule, and promote court consideration of the totality of the circumstances when determining bail amounts before trial, including any undue hardships on defendants.

Comments, Alternatives Considered, and Policy Implications

Because of the significant concerns about defendants' access to courts in infraction cases and the related directives from the Judicial Council, the committees developed the proposed amendments on an expedited basis.

The proposed amendments circulated for public comment from August 20, 2015, to September 7, 2015. A total of eleven comments were received; of those, one agreed with the proposal, two agreed if modified, two disagreed, and five did not indicate a position. One comment did not specifically relate to the proposal and therefore the text of the comment is not included on the comment chart. A chart with the comments and committees' responses is attached at pages 8–24.

Internal reevaluation of undue hardship considerations

Current subdivision (c)(3) authorizes courts to require deposit of bail before trial if the court determines that the defendant is unlikely to appear for trial as ordered without prior deposit of bail. To promote court consideration of financial hardships on defendants, the committees originally proposed amending subdivision (c)(3) to require courts to consider the "totality of the circumstances" when determining whether the defendant is unlikely to appear, and adding an

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advisory committee comment to explain that the totality of the circumstances includes "whether compliance with the order setting bail would impose an undue hardship on the defendant."

Upon internal reevaluation, however, the committees decided that the two considerations—the likelihood of appearing and undue hardships caused by bail—are inherently distinct and necessarily apply to *separate* determinations. Accordingly, the committees decided to shift court consideration of the totality of the circumstances, including undue hardships, from the determination about the likelihood of appearing to the determination of the appropriate *amount* of bail.

Specifically, the committees deleted the proposed references to "totality" and other "circumstances" in subdivision (c)(3) and the related advisory committee comment, and instead added the following as new subdivision (c)(4): "In determining the amount of bail set under (2) and (3), courts must consider the totality of the circumstances." The committees also added the following corresponding advisory committee comment: "In considering the 'totality of the circumstances' under this subdivision, courts may consider whether the bail amount would impose an undue hardship on the defendant."

Notable comments

Notable comments and the committees' response include:

- ***Atypical bail considerations***. One commentator suggested that the rule's proposed bail considerations are improper because they are not applicable in felony and misdemeanor cases and would create a "slippery slope" into those cases. The rule's bail considerations, however, were developed in light of the unique nature and purposes of bail in infraction cases, as distinguished from felony and misdemeanor cases. To emphasize that the rule's bail considerations, including considerations of undue hardships, reflect the distinct statutory functions of bail applicable *only* to infraction cases, the committees added the following advisory committee comment: "**Subdivision (c).** This subdivision takes into account the distinct statutory purposes and functions that bail and related considerations serve in infraction cases, as distinguished from felony and most misdemeanor cases, including, for example, the posting and forfeiting of bail in uncontested cases and the use of bail to satisfy later judgments."

- ***Delayed effective date***. The committees originally proposed a November 1, 2015, effective date for the amended rule. The committees, however, agreed to delay the proposed effective date to December 1, 2015, as requested by the Trial Court Presiding Judges and Court Executives Advisory Committees' Joint Rules Subcommittee to ensure sufficient time for courts to implement the changes.

Alternatives

As explained in the advisory committee comments, the rule only applies to pretrial proceedings for infraction defendants who have appeared by the appearance date or an approved extension of

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that date. Several commentators suggested that the scope of the rule should be extended to various other proceedings, including post-conviction proceedings, administrative matters, and proceedings after the defendant has failed to appear or pay. Those proceedings, however, involve procedural requirements and other implications that are considerably distinct. The committees, therefore, declined the suggestions as exceeding the scope of the proposal, but will consider separate rule recommendations to address other proceedings.

Implementation Requirements, Costs, and Operational Impacts

No significant costs or operational impacts are anticipated. The rule is designed to ensure that infraction defendants have access to courts without prior deposit of bail unless limited exceptions apply; it is not intended to interfere with the various statutory alternatives to arraignments and formal appearances in court.

In addition, although the proposal sets forth additional considerations for courts, the committees believe that those considerations can be accomplished without significant interference with calendar management and any increased burdens are outweighed by the resulting procedural fairness.

Attachments

1. Text of recommended amendments to California Rules of Court, rule 4.105, at pages 6–7
2. Chart of comments, at pages 8–24

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California Rules of Court, rule 4.105, would be amended, effective December 1, 2015, to read:

Rule 4.105. Appearance without deposit of bail in traffic infraction cases

(a) Application

This rule applies to any ~~traffic~~ infraction ~~violation of the Vehicle Code~~ for which the defendant has received a written notice to appear.

(b) Appearance without deposit of bail

Except as provided in (c), courts must allow a defendant to appear for arraignment and trial without deposit of bail.

(c) Deposit of bail

(1) Courts must require the deposit of bail when the defendant elects a statutory procedure that requires the deposit of bail~~;~~.

(2) Courts may require the deposit of bail when the defendant does not sign a written promise to appear as required by the court~~; and~~.

(3) Courts may require a deposit of bail before trial if the court finds~~, based on the circumstances of a particular case,~~ that the defendant is unlikely to appear as ordered without a deposit of bail and the court expressly states the reasons for the finding.

(4) In determining the amount of bail set under (2) and (3), courts must consider the totality of the circumstances.

(d) Notice

Courts must inform defendants of the option to appear in court without the deposit of bail in any instructions or other materials courts provide for the public that relate to bail for traffic infractions, including any website information, written instructions, courtesy notices, and forms. ~~Courts must implement this subdivision as soon as reasonably possible but no later than September 15, 2015.~~

Rule 4.105 adopted effective June 8, 2015; revised effective December 1, 2015.

Advisory Committee Comment

Subdivision (a). The rule is intended to apply only to an ~~traffic~~ infraction violation ~~of the Vehicle Code~~ for which the defendant has received a written notice to appear and has appeared by the

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California Rules of Court, rule 4.105, would be amended, effective December 1, 2015, to read:

appearance date or an approved extension of that date. The rule does not apply to post-conviction matters or cases in which the defendant seeks an appearance in court after a failure to appear or pay.

Subdivision (c). This subdivision takes into account the distinct statutory purposes and functions that bail and related considerations serve in infraction cases, as distinguished from felony and most misdemeanor cases, including, for example, the posting and forfeiting of bail in uncontested cases and the use of bail to satisfy later judgments.

Subdivision (c)(1). Various statutory provisions authorize traffic infraction defendants who have received a written notice to appear to elect to deposit bail in lieu of appearing in court or in advance of the notice to appear date. (See, e.g., Veh. Code, §§ 40510 [authorizing defendants to deposit bail before the notice to appear date]; 40519(a) [authorizing defendants who have received a written notice to appear to declare the intention to plead not guilty and deposit bail before the notice to appear date for purposes of electing to schedule an arraignment and trial on the same date or on separate dates]; 40519(b) [authorizing defendants who have received a written notice to appear to deposit bail and plead not guilty in writing in lieu of appearing in person]; and 40902 [authorizing trial by written declaration].)

This rule is not intended to modify or contravene any statutorily authorized alternatives to appearing in court. (See, e.g., Pen. Code, §§ 853.5, 853.6; Veh. Code, §§ 40510, 40512, and 40512.5 [authorizing defendants to post and forfeit bail in lieu of appearing for arraignment].) The purpose of this rule is to clarify that if the defendant declines to use a statutorily authorized alternative, courts must allow the defendant to appear *without* prior deposit of bail as provided above.

Subdivision (c)(2). As used in this subdivision, the phrase "written promise to appear as required by the court" refers to a signed promise, made by a defendant who has appeared in court, to return to court on a future date and time as ordered by the court.

Subdivision (c)(3). In exercising discretion to require deposit of bail on a particular case, courts should consider ~~the totality of the circumstances, including~~, among other factors, whether previous failures to pay or appear were willful or involved adequate notice.

Subdivision (c)(4). In considering the "totality of the circumstances" under this subdivision, courts may consider whether the bail amount would impose an undue hardship on the defendant.

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SP15-06

Criminal and Traffic Procedure: Appearance in Court for Infractions (Cal. Rules of Court 4.105)

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

	Commentator	Position	Comment	Committees' Response
1.	Marin County Office of the Public Defender By Jose Varela, Public Defender	N	I object to this rule because it is too ambiguous and will [be] applied differently throughout the state. A "Totality of circumstances" standard will cause undue litigation when litigants challenge the finding. Also, if courts delegate this finding to clerks there will be an issue of whether the clerks have the legal right to make such a finding. I recommend that the rule be rejected and that instead the rule be: Bail will not be required for the setting of traffic trial. Upon completion of the trial, the court will assess trial costs not to exceed $200 above the citation fine imposed. A litigant will be charged $150 above the citation fine imposed if they set a case for trial and then plead guilty on the day of trial. If a client is exonerated at trial an administrative fee of $50 will be charged to cover court costs. Indigent clients may be assessed community service equivalent hours to cover costs as the court determines. This rule is clear; it keeps people from trying to game the system and gives court discretion to allow indigent clients access to justice.	The committees decline the suggestion to abolish—by rule of court—bail before trial in infraction cases as exceeding the scope of the proposal and the purview of the Judicial Council.
2.	Hon. Jay M. Bloom Superior Court of San Diego County	N	I oppose this change. All bail causes some financial hardship or other hardship to people. To consider that factor thus makes no sense. In addition, the Penal Code does not condone consideration of financial hardship or any form of hardship. See Penal Code section 1275. I question whether a rule change can occur	Under subdivision (c)(3), courts are authorized to require deposit of bail before trial if the court determines that the defendant is unlikely to appear for trial as ordered without prior deposit of bail. To promote court consideration of financial hardships on defendants, the committees originally proposed amending that subdivision to

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

	Commentator	Position	Comment	Committees' Response
			without some legislative change. While this proposal only deals with low level matters, it starts courts down the slippery slope to misdemeanors and then felonies. Should a serious felon get reduced bail because he can't afford to make bail or it will cause a hardship. It also opens the door for every bail decision down the road to involve hearings concerning hardship whether financial, social, or otherwise. This is a road I do not believe we should go down.	require courts to consider the "totality of the circumstances" and adding an advisory committee comment to explain that the totality of the circumstances includes "whether compliance with the order setting bail would impose an undue hardship on the defendant." Upon reflection, however, the committees decided to shift court consideration of the totality of the circumstances, including undue hardship, from the determination about whether bail is necessary to ensure the defendant's appearance, to the determination of the appropriate *amount* of bail. Accordingly, the committees deleted the proposed references to "totality" and other circumstances in subdivision (c)(3) and the related advisory committee comment, and instead added the following as subdivision (c)(4): "<u>In determining the amount of bail set under (2) and (3), courts must consider the totality of the circumstances.</u>" The committees also added the following corresponding advisory committee comment: "**Subdivision (c)(4).** In considering the 'totality of the circumstances' under this subdivision, courts may consider whether the bail amount would impose an undue hardship on the defendant." In addition, given the unique nature and purposes of bail in infraction cases, as opposed to felony and misdemeanor cases, the committees added the following advisory committee comment to emphasize that the rule's bail considerations, including considerations of undue hardships,

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	Commentator	Position	Comment	Committees' Response
				reflect the distinct statutory functions of bail applicable *only* to infraction cases: "**Subdivision (c).** This subdivision takes into account the distinct statutory purposes and function that bail and related considerations serve in infraction cases, as distinguished from felony and most misdemeanor cases, including, for example, the posting and forfeiting of bail in uncontested cases and the use of bail to satisfy later judgments."
3.	Hon. Mark A. Borenstein Superior Court of Los Angeles County	AM	The proposed rule expands the rule that generally would not require the posting of bail (usually the amount of the fine or penalty) to non traffic infractions. That is a good thing. However, many non traffic infractions are handled administratively under Govt Code 53060.4, Veh. Code 40230, Food & Agr. Code 31622 and Pub. Utilities Code 99582 (there are a few other administrative substitutes for low level misdemeanors and infractions). Generally, the penalty for the administrative citation must be paid before any review of the citation is initiated. The statutes require the citing cities or agencies to evaluate claims that the citee lacks the ability to pay, but these systems are haphazard, different cities require different information and often the citee does not realize he or she can apply, in effect for a penalty waiver, pending appeal. In my view, the rule that applies to non traffic infractions should also apply to administrative citations that are the very same offenses many cities and agencies charge as infractions. I urge	The committees appreciate but decline the suggestion to expand the application of the rule to administrative proceedings as exceeding the scope of the proposal. The committees, however, will study the issue for possible future recommendations.

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	Commentator	Position	Comment	Committees' Response
			the committees to consider expanding the rule that the penalty does not have to be paid in advance in order to for the contestant to seek review of the administrative citation. Thank you.	
4.	Hon. Curtis E.A. Karnow Superior Court of San Francisco County	NI	The Committee may find useful a quick look at my article, located at e.g. http://scholarship.law.berkeley.edu/bjcl/vol13/iss1/1/ The article, although now somewhat dated (2008), supports the efforts of the Committee in having courts consider among other things hardship and generally the economic situation of the defendant, if the point is to ensure the future appearance of the defendant.	No response required.
5.	Superior Court of San Diego County By Michael Roddy, Court Executive Officer	A	No additional comments.	No response required.
6.	Trial Court Presiding Judges/Court Executives Advisory Committees Joint Rules Subcommittee By Claudia Ortega, Senior Court Services Analyst	AM	On behalf of the Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC), the TCPJAC/CEAC Joint Rules Subcommittee (JRS) respectfully submits the following comment and conveys a position of "agree with proposed changes if modified." The JRS requests that the proposed period of one week for implementation be changed to thirty (30) days to provide the trial courts with sufficient time to provide training for court	To ensure that courts have sufficient time to implement the recommended rule amendments, the committees agreed to delay the recommended effective date from November 1, 2015, to December 1, 2015, as requested.

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

	Commentator	Position	Comment	Committees' Response
			staff, and modify notices and internal processes. For those courts that would be especially impacted by these proposed rule changes, the JRS members anticipate that one week would not allow for a smooth transition and full implementation. Staff shortages and other fiscal constraints balanced with the courts' ongoing regular business make immediate implementation difficult if not impossible for some courts. Trial courts may not submit comments expressing the need for an extended implementation period, but this may be because the proposal is only out for comment for a limited time. On behalf of those trial courts that could not provide comment because of the condensed comment period, the JRS requests that the committees provide the courts with 30 days for implementation so that they can implement the new changes to the rule in a comprehensive manner.	
7.	Western Center on Law and Poverty The Coalition By Antionette Dozier, Senior Attorney Elisa Della-Piana Director of Programs East Bay Community Law Center Michael Herald Legislative Advocate	NI	Thank you for the opportunity to comment on proposed amendments to Rule 4.105 ("the Proposal"). The organizations signatory to this letter ("the Coalition") represent low-income clients, many of whom have been adversely affected – sometimes for years – by traffic court policies and procedures. The Coalition collectively authored the report *Not Just a Ferguson Problem: How Traffic Court Drives Inequality in California*, released earlier this year and is currently preparing to monitor the	

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	Commentator	Position	Comment	Committees' Response
	Antionette Dozier Senior Attorney Western Center on Law and Poverty Dana Isaac Thurgood Marshall Fellow Lawyers' Committee for Civil Rights of the San Francisco Bay Area Claire Johnson Raba Staff Attorney Bay Area Legal Aid Brittany Stonesifer Staff Attorney Legal Services for Prisoners with Children Theresa Zhen Skadden Fellow A New Way of Life Reentry Project Stephen Bingham Retired Legal Aid Attorney		implementation of Rule 4.105 statewide. We are pleased that the Committees are promptly proposing an expansion of Rule 4.105 to enable greater court access to low-income litigants. We outline below our specific comments to the Proposal. **1. Non-traffic infractions**: We fully support the Proposal's language to remove all references to "traffic" and the "Vehicle Code." As described in the Proposal, Rule 4.105 must promote procedural fairness for all categories of infraction cases. Though Vehicle Code violations make up a substantial number of infractions for which prepaid bail is currently required for a court appearance, there are also municipal, county, transit and Penal Code violations that are heard as infractions in traffic court and require the posting of bail before trial. The same need for equal access applies to all infractions, regardless of the code section under which they are issued. **2. Totality of the circumstances:** We support the Proposal's language to specify "totality of the circumstances" in (c)(3). We also recommend that the Judicial Council adopt the definition of "totality of the circumstances" to include "…whether compliance with the order setting bail would impose an undue hardship on the defendant." **3. Application of the Rule:** We strongly object	1. No response required. 2. Please see the related response to comment #2 above regarding considerations of undue hardship. 3. The committees decline the suggestion to delete

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	Commentator	Position	Comment	Committees' Response
			to the Proposal's recommendation to add the following advisory committee comment: "The rule does not apply to post conviction matters or cases in which the defendant seeks an appearance in court after a failure to appear or pay." We recommend that the Judicial Council explicitly reject this language. First, in our experience, it is inaccurate to classify a proceeding as a "post-conviction matter" if a defendant previously failed to appear in court. Under Vehicle Code section 40508(a), a conviction for failure to appear requires a finding of willfulness.[1] Without such a judicial determination of willfulness or an opportunity by the defendant to be heard on the reasons for non-appearance, the failure to appear is not a "conviction." Because individuals may have good cause for the failure to appear, courts cannot simply presume that all failures to appear are willful. Procedurally, a failure to appear is best characterized as an allegation, not a conviction. Second, there are serious due process concerns with the proposed amendment. If adopted in its current form, individuals will be required to post bail before the court considers any exculpatory evidence. There is often good cause for failure to appear, such as medical emergencies, incarceration, lack of notice (particularly for homeless defendants), or good faith attempts to come to court that were stymied (e.g., long wait to enter the courthouse, resulting in late arrival	the advisory committee comment to clarify the scope of the rule. As explained in the current advisory committee comment, the current rule only applies to pretrial proceedings for infraction defendants who have appeared by the appearance date or an approved extension of that date. The recommended advisory committee comment, therefore, accurately clarifies the scope of the rule. The committees will, however, consider separate rule recommendations to address post-conviction matters and proceedings after failures to appear or pay, which would also circulate for public comment.

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	Commentator	Position	Comment	Committees' Response
			in courtroom.) By requiring the deposit of bail to access court to present evidence of good cause for a failure to appear or pay, a court deprives a defendant of the opportunity to be heard simply because he or she does not have the funds to post bail. Third, limiting the scope of the rule to initial hearings subverts access to justice in traffic court. Across the state 4.2 million licenses were suspended from 2006-2013 for failure to appear and failure to pay.[2] In Los Angeles alone, thousands of failures to appear are processed weekly.[3] If the rule as drafted is adopted, the right to proceed to arraignment and trial without the deposit of bail will be foreclosed to potentially millions of Californians. Rule 4.105 will not substantially change the status quo, and the goal of promoting procedural fairness for all categories of infraction cases will be thwarted. Finally, adopting the Proposal while excluding consideration of the effect of administrative fines on failures to appear and failures to pay will negatively impact the most vulnerable and financially distressed Californians. Bail is defined as the total amount owed in base fines, civil assessment fees, surcharges, and penalty assessments. Each failure to appear adds a $300 civil assessment fee to the total amount of bail. This is cost-prohibitive for those who are experiencing financial hardship. It will effectively prevent low-income persons from resolving their traffic court obligations.	

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	Commentator	Position	Comment	Committees' Response
			In conclusion, we recommend that the Committees explicitly reject any provisions limiting requests for hearing after the defendant has failed to appear or pay. Thank you for considering our views on these very important amendments to Rule 4.105. Please do not hesitate to contact any member of the Coalition should have additional questions. [1] Penal Code section 40508(a) provides that "A person willfully violating his or her written promise to appear or a lawfully granted continuance of his or her promise to appear in court or before a person authorized to receive a deposit of bail is guilty of a misdemeanor regardless of the disposition of the charge upon which he or she was originally arrested." Similarly, section 40508(b) states that "A person willfully failing to pay bail in installments as agreed to under Section 40510.5 or a lawfully imposed fine for a violation of a provision of this code or a local ordinance adopted pursuant to this code within the time authorized by the court and without lawful excuse having been presented to the court on or before the date the bail or fine is due is guilty of a misdemeanor regardless of the full payment of the bail or fine after that time." [2] ALEX BENDER ET AL., NOT JUST A FERGUSON PROBLEM: HOW TRAFFIC COURTS DRIVE INEQUALITY IN CALIFORNIA 13 (2015). [3] *Steen v. Appellate Division, Superior Court of Los Angeles County*, 59 Cal. 4th 1045 (Cal. 2014), Second Declaration of Greg Blair.	

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SP15-06
Criminal and Traffic Procedure: Appearance in Court for Infractions (Cal. Rules of Court 4.105)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committees' Response
8.	Nora Sanchez Operations Director Criminal, Traffic & Collaborative Courts Superior Court of Orange County	NI	The biggest challenge with this rule is that it does not clearly outline to the public that without the deposit of bail, the clerk's office is not authorized to set a case for arraignment and court trial. Only by appearing for arraignment, can a plea be entered in court of not guilty along with the request to waive the posting of bail. When the public reads … 4.105(b), "Except as provided in (c), courts must allow a defendant to appear for arraignment and trial without the deposit of bail", they truly believe that this rule allows them to set the case for trial without the need for bail in the clerk's office. To clarify this Rule for the public, the rule should be changed as shown in **red:** **Rule 4.105: Appearance** for Arraignment **without deposit of bail in ~~traffic~~ infraction cases** **(a) Application** This rule applies to any ~~traffic~~ infraction ~~violation of the Vehicle Code~~ for which the defendant has received a written notice to appear. **(b) Appearance without deposit of bail** Except as provided in (c), **the clerk's office is not authorized to schedule a matter for arraignment and** trial without deposit of bail.	The committees decline the suggestion as unnecessary and exceeding the scope of the proposal. As explained in the advisory committee comment, the rule only applies to cases in which the defendant has appeared by the appearance date or an approved extension of that date. The rule is not intended to modify or contravene any statutorily authorized alternatives to appearing in court. In addition, many courts have developed unique local practices for processing infraction cases and the rule is not intended to obstruct or interfere with those practices.

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

	Commentator	Position	Comment	Committees' Response
			(c) Deposit of bail (1) Courts must require the deposit of bail when the defendant elects a statutory procedure that requires the deposit of bail; (2) **A judicial officer** may require the deposit of bail when the defendant does not sign a written promise to appear as required by the court~~; and~~. (3) **A judicial officer** may require a deposit of bail before trial if the court finds, based on the totality of the circumstances of a particular case, that the defendant is unlikely to appear as ordered without a deposit of bail and the court expressly states the reasons for the finding.	
9.	ACLU of Northern California By Christine P. Sun Associate Director | Director of Legal-Policy Department Marley Degner, Esq. Counsel Pillsbury Winthrop Shaw Pittman LLP	NI	We are attorneys with the American Civil Liberties Union of Northern California and the law firm of Pillsbury Winthrop Shaw Pittman LLP, respectively. We are writing to provide comments regarding the proposed amendment to Rule 4.105, pursuant to the Invitation to Comment, SP15-06. Prior to its adoption, we submitted comments to Rule 4.105 (see May 29, 2015 letter and June 5, 2015 letter) and hereby renew those comments to the extent that they were not incorporated into the Rule. Below are our comments to the proposed amendments. Non-Traffic Infractions We support the expansion of the Rule to apply to non-traffic infractions. As previously noted	No response required.

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	Commentator	Position	Comment	Committees' Response
			by others, traffic courts hear numerous types of infractions other than traffic infractions, including "quality of life" infractions that disproportionately affect low-income and homeless people. As with traffic infractions, withholding the right to contest a non-traffic citation until the fines, penalty assessments, and other surcharges for the citation are paid in full is a clear violation of due process, equal protection, and other constitutional rights and guarantees. We urge the Judicial Council to adopt this amendment. <u>Totality of the Circumstances</u> As we previously commented, Rule 4.105 should be modified to state clearly that in no circumstance will a defendant be denied a trial because of an inability to post "bail." Although requiring courts to consider whether the imposition of bail would pose an "undue hardship" is a step in the right direction, it does not entirely resolve the constitutional concerns that we raised in our previous comments. (See, e.g., *Southern Union Co. v. U.S.* (2012) 132 S.Ct. 2344, 2350-2351; *People v. Hanson* (2000) 23 Cal.4th 355, 360-363 [criminal fine is a type of criminal punishment]; *Bell v. Wolfish* (1979) 441 U.S. 520, 535; *Kennedy v. Mendoza-Martinez* (1963) 372 U.S. 144, 165-166; *Wong Wing v. U.S.* (1896) 163 U.S. 228, 237 [due process prohibits government from imposing	The committees decline the suggestion as exceeding the scope of the proposal. Because California's current statutory scheme contemplates application of bail laws to infractions (see, e.g., Pen. Code, § 1458), any significant reconfiguration of the scheme would require legislation.

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	Commentator	Position	Comment	Committees' Response
			criminal punishment prior to an adjudication of guilt]; *United States v. James Daniel Good Real Property* (1993) 510 U.S. 43, 48, 53 [due process generally requires that individuals must receive notice and an opportunity to be heard before the government deprives them of property]; *Jersey v. John Muir Medical Center* (2002) 97 Cal.App.4th 814, 821 [fundamental right of access to the courts]; see *Payne v. Superior Court* (1976) 17 Cal.3d 908, 922-923[creating two classes of people: those who can pay to access the courts in infraction cases and those who cannot violates equal protection].)	
			We further urge the Judicial Council to provide guidance to the courts that would ensure that the proper procedural safeguards are followed with respect to the "totality of the circumstances" and "undue hardship" assessments, including but not limited to providing to defendants notice and the opportunity to be heard.	Because the rule applies to cases in which the defendants have appeared as required, the defendants have the opportunity to be heard.
			<u>Application of the Rule to Post-Conviction Matters</u> We join in the comments by the Western Center on Law & Poverty and other organizations concerning the prepayment of "bail" for those defendants who have failed to pay or to appear. Moreover, as noted above and in our previous comments, there are serious constitutional problems with restricting the ability of defendants to petition the Court for relief from a	Please see the related response to comment #7 above regarding post-conviction matters.

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	Commentator	Position	Comment	Committees' Response
			civil assessment or other penalty, or to contest the underlying infraction, based on their financial capacity to prepay "bail." <u>Bail forfeiture</u> We urge the Judicial Council to develop alternatives to appearing in court that would not involve the prepayment of "bail." For example, we have been contacted by several people who have encountered significant difficulties and long wait times in obtaining a trial date in person, including in Alameda County. It is antithetical to our system of justice to allow some persons, but not others, convenient access to our courts solely because they have the financial capacity to pay "bail" upfront. <u>Notice</u> We urge that the Judicial Council amend the Notice requirement of Rule 4.105 to include language that makes clear that in the circumstances where the court may decide to impose fines and fees for a Vehicle Code infraction, that the defendant has the right to an ability to pay determination. Vehicle Code 42003(c) states in relevant part that, "In any case when a person appears before a traffic referee or judge of the superior court for adjudication of a violation of this code, the court, *upon request of the defendant*, shall consider the defendant's ability to pay." (emphasis added). This subsection also	The committees decline the suggestion to develop alternative procedures for appearances as exceeding the scope of the proposal. The committees, however, will study the issue for possible future recommendations. The committees decline the suggestion to require notice of the opportunity to request ability-to-pay determinations for fines after judgment as exceeding the scope of the proposal. The committees, however, will consider the suggestion for possible future recommendations.

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	Commentator	Position	Comment	Committees' Response
			describes certain procedural due process protections that defendants are entitled to as part of the court's assessment, including the right to present witnesses and other documentary evidence, the right to cross-examination, and a written statement of the findings by the court or county officer. It is likely that many indigent or low-income defendants do not avail themselves of these protections simply because they are unaware of this provision of the Vehicle Code. Requiring that courts notify all persons of their statutory rights to an ability to pay assessment would be a small but important step in helping to equalize the playing field. Thank you for your time and attention to this matter.	
10.	Law Offices of the Los Angeles County Public Defender By Ronald L. Brown, Public Defender	NI	As the Public Defender of Los Angeles County, I and the attorneys in my office represent indigent defendants charged with felony and misdemeanor violations of various California Codes including, but not limited to, the Penal Code and Vehicle Code. Although we do not represent defendants whose cases originally are filed as infractions, eventually many of our clients have their cases reduced to infractions either by a court under Penal Code section 17(b) or by a prosecutor as a result of a negotiated disposition. Thus, in addition to our concern as attorneys with equal access to the justice system for all persons, we have a particular interest in such access on behalf of our clients. It is in this spirit that I offer the following comments for your	Please see the related response to comment #2 above regarding considerations of undue hardship.

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	Commentator	Position	Comment	Committees' Response
			consideration: I believe that the Proposal appropriately addresses the stated purpose of the judicial council, "to promote procedural fairness across all categories of infractions cases, reduce confusion about the application of the rule, enhance the information in the advisory committee comments by adding examples, and ensure that courts consider the totality of the circumstances of a particular case when making bail decisions, including any hardships on the defendant." The Proposal is comprehensive, the language is clear and precise as well. I would, however, suggest a small but important change. In order to ensure that courts consider whether the deposit of bail before trial would create undue hardships on defendants, I propose moving the following language, set forth in the Proposed Amendments, from the advisory committee to the actual rule. Language proposed to be added to advisory committee notes: *"totality of the circumstances includes whether compliance with the order setting bail would impose an undue hardship on the defendant."* The new rule 4.105(c)(3) would read: Courts may require a deposit of bail before trial if the court finds, based on the totality of	

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	Commentator	Position	Comment	Committees' Response
			circumstances of a particular case, that the defendant is unlikely to appear as ordered without a deposit of bail and the court expressly states the reasons for the finding. *The totality of the circumstances when determining whether bail is appropriate includes whether compliance with the order setting bail would impose an undue hardship on the defendant."* Respectfully submitted, Ronald L. Brown Public Defender of Los Angeles County	
11.	Nathan		[Comment not specifically related to the proposal]	No response required.

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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: October 26, 2015

Title
Criminal Procedure: Petition and Order for Dismissal—Human Trafficking Victims

Rules, Forms, Standards, or Statutes Affected
Revise forms CR-180 and CR-181

Recommended by
Criminal Law Advisory Committee
Hon. Tricia Ann Bigelow, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2016

Date of Report
September 18, 2015

Contact
Eve Hershcopf, 415-865-7961
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Executive Summary

In response to legislation that provides a new statutory basis for dismissals, the Criminal Law Advisory Committee recommends revising the *Petition for Dismissal* (form CR-180) and *Order for Dismissal* (form CR-181) to add data fields to facilitate dismissals under Penal Code section 1203.49 for victims of human trafficking. The committee also recommends revising both forms to incorporate reductions of misdemeanors to infractions under Penal Code section 17(d)(2) and to improve the format, advisements, and instructions on both forms.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2016, revise the *Petition for Dismissal* (form CR-180) and the *Order for Dismissal* (form CR-181) to:

1. Add new item 4 to form CR-180, including a check box and related instructions, to facilitate requests for dismissal under Penal Code section 1203.49, and add a check box for Penal Code section 1203.49 to the request for relief.

2. Revise items 1 and 2 on form CR-181 to include reductions from a misdemeanor to an infraction under Penal Code section 17(d)(2) and to clarify whether the court's decision to grant or deny the requested relief is for all or only selected convictions in the case.

3. Add check boxes to items 3 and 4 on form CR-181 for courts to grant or deny dismissal relief under Penal Code section 1203.49 for all or some of the convictions.

4. Add new item 5 to form CR-181 to facilitate the ordering of relief when the court grants the petition under Penal Code section 1203.49 to indicate whether the court is ordering all or some of the relief described in Penal Code section 1203.4.

5. Delete the following phrase (former item 5(c) on form CR-181) to reduce confusion about alternative forms of relief: "The petitioner may also be eligible to obtain a certificate of rehabilitation and pardon under the procedure set forth in Penal Code section 4852.01 et seq."

6. Add new item 7 to form CR-181 to notify the Department of Justice, when relief is granted under Penal Code section 1203.49, that the petitioner was a victim of human trafficking when he or she committed the crime, and of the relief ordered.

7. Add a reference to Penal Code section 1203.49 to the advisement in item 8, and references to Penal Code sections 17(d)(2) and 1203.49 to the advisements in item 9 on form CR-181.

8. Revise the format, advisements, and instructions by (a) adding a reference to Penal Code section 1203.49 and 17(d)(2) to the caption of both forms; (b) removing the box for specifying the titles of the offenses for which the petitioner is seeking dismissal in item 1 on form CR-180, and adding the word "offenses" to the introductory sentence; and (c) adding a box to item 1 on form CR-180 for specifying whether each offense is "[e]ligible for reduction to infraction under Penal Code section 17(d)(2) (Yes or No)."

The proposed revised forms are attached at pages 5–8.

Previous Council Action

Revisions to both forms were previously approved by the Judicial Council on October 28, 2014, with an effective date of January 1, 2015, in response to criminal justice realignment legislation that provided a new statutory basis for dismissals. The revisions added data fields to facilitate dismissals under Penal Code section 1203.41 for cases in which the defendant received a felony county jail sentence under Penal Code section 1170(h)(5), assist the court in specifying the granting or denial of a dismissal request for each conviction in a case, and confirm which convictions, if any, to reduce from felonies to misdemeanors under Penal Code section 17(b).

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Rationale for Recommendation

The *Petition for Dismissal* (form CR-180) and *Order for Dismissal* (form CR-181) are optional forms used by petitioners and courts to facilitate the dismissal procedures authorized by Penal Code sections 1203.4, 1203.4a, and 1203.41. In 2014, legislation added Penal Code section 1203.49 to authorize a defendant who has been convicted of misdemeanor solicitation or prostitution under Penal Code section 647(b), and who has completed a term of probation for that conviction, to petition the court for dismissal relief.[1] If the petitioner can establish by clear and convincing evidence that the conviction was the result of his or her status as a victim of human trafficking, the legislation authorizes the court to issue an order that (1) finds that the petitioner was a victim of human trafficking when he or she committed the crime, (2) orders any of the relief described in Penal Code section 1203.4, and (3) notifies the Department of Justice that the petitioner was a victim of human trafficking and of the relief ordered.

Because the framework for relief under Penal Code section 1203.49 is similar to dismissals under Penal Code sections 1203.4, 1203.4a, and 1203.41,[2] the committee recommends adding the new statutory basis for relief to the existing petition and order for dismissal forms.

Comments, Alternatives Considered, and Policy Implications

The attached forms circulated for public comment from April 17, 2015, to June 17, 2015. A total of 13 comments were received; of those, 5 agreed with the proposal, 5 agreed if modified, and 3 offered suggested modifications without indicating an overall position on the proposal. No commentators opposed the proposal. A chart with all comments received and the committee's responses is attached at pages 9–26.

Notable comments

Notable comments and committee responses include:

- ***Misdemeanor reductions under Penal Code section 17(d)(2).*** The Superior Court of Los Angeles County noted that some petitioners request to have their misdemeanor convictions reduced to infractions under Penal Code section 17(d)(2), and that forms CR-180 and CR-181 currently do not provide for this option. In response, the committee added references and check boxes to both forms to facilitate determinations to grant or deny reductions to an infraction under Penal Code section 17(d)(2).

- ***Reference to maximum sentence for misdemeanors.*** Six commentators noted that Penal Code section 18.5, effective January 1, 2015,[3] provides that "[e]very offense which is prescribed by any law of the state to be punishable by imprisonment in a county jail up to

[1] Assem. Bill 1585 [Alejo]; Stats. 2014, ch. 708.
[2] Please note that the committee is separately recommending adoption of a new set of optional forms (CR-183/MIL-183 and CR-184/MIL-184) to facilitate requests for dismissal relief under Penal Code section 1170.9, which is available to certain defendants who acquired a criminal record due to a mental health disorder stemming from service in the United States military.
[3] Sen. Bill 1310 [Lara]; Stats. 2014, ch. 174.

or not exceeding one year shall be punishable by imprisonment in a county jail for a period not to exceed 364 days." The commentators requested that form CR-181 be revised to include language noting the maximum sentence for misdemeanors as set forth in Penal Code section 18.5 because this information can be significant for immigration and other purposes. In response, the committee revised item 1 on form CR-181 to include the requested language.

- ***Reference to certificate of rehabilitation.*** One commentator suggested deleting item 5(c) on existing form CR-181: "The petitioner may also be eligible to obtain a certificate of rehabilitation and pardon under the procedure set forth in Penal Code section 4852.01 et seq." In *People v. Moreno* (2014) 231 Cal.App.4th 934, the court held that that if a petitioner's crimes are reduced to misdemeanors and dismissed, the petitioner no longer qualifies for a certificate of rehabilitation. In light of this recent ruling, the committee deleted the advisement to reduce confusion about the application of other forms of relief following reductions.

Alternatives considered

One commentator requested that the *Petition for Dismissal* (form CR-180) provide examples of documentation for establishing a presumption that the petitioner is a victim of human trafficking and that his or her crime is a result of that status. The commentator noted that providing this information to petitioners would increase court efficiency and reduce the likelihood of retraumatizing the victim, given the sensitive nature of these crimes. Although the committee declined to add the suggested examples to form CR-180, the committee is separately developing an informational form to accompany the dismissal forms that would explain the requirements for each basis for dismissal and provide instructions for completing the forms. As part of that effort, the committee will consider providing the suggested examples.

The committee also considered postponing or declining to recommend any form revisions in light of the severe economic circumstances faced by courts. The committee, however, decided to recommend the revisions to facilitate court implementation of the recent legislation. The committee believes the revisions would not impose any significant change in court practices; rather, the recommended revisions are designed to improve conviction reduction and dismissal procedures by enhancing the information on these optional forms.

Implementation Requirements, Costs, and Operational Impacts

Expected costs and implementation requirements are limited to training and the production of new forms. No other implementation requirements or operational impacts are expected.

Attachments and Links

1. Judicial Council forms CR-180 and CR-181, at pages 5–8
2. Chart of comments, at pages 9–26

DRAFT

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**
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: DATE OF BIRTH:	CASE NUMBER:
PETITION FOR DISMISSAL **(Pen. Code, §§ 17(b), 17(d)(2), 1203.4, 1203.4a, 1203.41, 1203.49)**	*FOR COURT USE ONLY* Date: Time: Department:

1. On *(date):* _____, the petitioner *(the defendant in the above-entitled criminal action)* was convicted of a violation of the following offenses:

Code	Section	**Type of offense:** *(Felony; Misdemeanor; Infraction)*	**Eligible for reduction to misdemeanor under Penal Code § 17(b)** *(Yes or No)*	**Eligible for reduction to infraction under Penal Code § 17(d)(2)** *(Yes or No)*

If additional space is needed for listing offenses, use *Attachment to Judicial Council Form* (form MC-025).

2. ☐ **Felony or misdemeanor with probation granted *(Pen. Code, § 1203.4)***

Probation was granted on the terms and conditions set forth in the docket of the above-entitled court; the petitioner is not serving a sentence for any offense, nor on probation for any offense, nor under charge of commission of any crime, and the petitioner (*check all that apply*):

a. ☐ has fulfilled the conditions of probation for the entire period thereof;

b. ☐ has been discharged from probation prior to the termination of the period thereof;

c. ☐ should be granted relief in the interests of justice. *(Please note: You must explain why granting a dismissal would be in the interests of justice. You may complete and attach the* Attached Declaration *(form MC-031) or submit other relevant documents.)*

3. ☐ **Misdemeanor or infraction with sentence other than probation *(Pen. Code, § 1203.4a)***

Probation was not granted; more than one year has elapsed since the date of pronouncement of judgment. The petitioner has complied with the sentence of the court and is not serving a sentence for any offense or under charge of commission of any crime; and the petitioner *(check one)*:

a. ☐ has lived an honest and upright life since pronouncement of judgment and conformed to and obeyed the laws of the land; ***or***

b. ☐ should be granted relief in the interests of justice. *(Please note: You must explain why granting a dismissal would be in the interests of justice. You may complete and attach the* Attached Declaration *(form MC-031) or submit other relevant documents.)*

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:

4. ☐ **Misdemeanor conviction under Penal Code section 647(b) *(Pen. Code, § 1203.49)***

The petitioner has completed a term of probation for a conviction under Penal Code section 647(b).

The petitioner should be granted relief because the petitioner can establish by clear and convincing evidence that the conviction was the result of his or her status as a victim of human trafficking. *(Please note: You may complete and attach the* Attached Declaration *(form MC-031) or submit other relevant documents to establish that the conviction was the result of your status as a victim of human trafficking.)*

5. ☐ **Felony county jail sentence under Penal Code section 1170(h)(5) *(Pen. Code, § 1203.41)***

The petitioner is not under supervision under Penal Code section 1170(h)(5)(B) and is not serving a sentence for, on probation for, or charged with the commission of any offense, and should be granted relief in the interests of justice, and *(check one)*:

a. ☐ more than one year has elapsed since petitioner completed the felony county jail sentence **with** a period of mandatory supervision imposed under Penal Code section 1170(h)(5)(B); ***or***

b. ☐ more than two years have elapsed since petitioner completed the felony county jail sentence **without** a period of mandatory supervision imposed under Penal Code section 1170(h)(5)(A).

(*Please note: You must explain why granting a dismissal would be in the interests of justice. You may complete and attach the* Attached Declaration *(form MC-031) or submit other relevant documents.)*

Petitioner requests that the eligible felony offenses listed above be reduced to misdemeanors under Penal Code section 17(b) and eligible misdemeanor offenses be reduced to infractions under Penal Code section 17(d)(2).

Petitioner requests that he/she be permitted to withdraw the plea of guilty, or that the verdict or finding of guilt be set aside and a plea of not guilty be entered and the court dismiss this action under section:

☐ 1203.4, ☐ 1203.4a, ☐ 1203.41, or ☐ 1203.49 of the Penal Code.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on: _____
(DATE)

▶ _____
(SIGNATURE OF PETITIONER OR ATTORNEY)

_____
(ADDRESS, PETITIONER)

_____ _____ _____
(CITY) (STATE) (ZIP CODE)

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**
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: DATE OF BIRTH:	
ORDER FOR DISMISSAL **(Pen. Code, §§ 17(b), 17(d)(2), 1203.4, 1203.4a, 1203.41, 1203.49)**	CASE NUMBER:

The court finds from the records on file in this case, and from the foregoing petition, that the petitioner *(the defendant in the above-entitled criminal action)* is eligible for the following requested relief:

1. The court **GRANTS** the petition for reduction of a felony to a misdemeanor (maximum punishment of 364 days per Pen. Code, § 18.5) under Penal Code section 17(b) and/or for reduction of a misdemeanor to an infraction under Penal Code section 17(d)(2) and reduces the following convictions:
   - ☐ ALL FELONY CONVICTIONS in the above-entitled action;
   - ☐ ALL MISDEMEANOR CONVICTIONS in the above-entitled action; OR
   - ☐ Only the following convictions in the above-entitled action *(specify charges and date of conviction)*:

2. The court **DENIES** the petition for reduction of a felony to a misdemeanor under Penal Code section 17(b) and/or for reduction of a misdemeanor to an infraction under Penal Code section 17(d)(2) for:
   - ☐ ALL FELONY CONVICTIONS in the above-entitled action;
   - ☐ ALL MISDEMEANOR CONVICTIONS in the above-entitled action; OR
   - ☐ Only the following convictions in the above-entitled action *(specify charges and date of conviction)*:

3. The court **GRANTS** the petition for dismissal regarding the following convictions under Penal Code ☐ § 1203.4, or ☐ § 1203.4a, or ☐ § 1203.41, or ☐ § 1203.49, and it is ordered that the pleas, verdicts, or findings of guilt be set aside and vacated and a plea of not guilty be entered and that the complaint be, and is hereby, dismissed for:
   - ☐ ALL CONVICTIONS in the above-entitled action; or
   - ☐ Only the following convictions in the above-entitled action *(specify charges and date of conviction)*:

4. The court **DENIES** the petition for dismissal regarding the following convictions under Penal Code ☐ § 1203.4, or ☐ § 1203.4a, or ☐ § 1203.41, or ☐ § 1203.49 for:
   - ☐ ALL CONVICTIONS in the above-entitled action; or
   - ☐ Only the following convictions in the above-entitled action *(specify charges and date of conviction)*:

5. In granting this order under the provisions of Penal Code section 1203.49:
   a. The court finds that the petitioner was a victim of human trafficking when he or she committed the crime.
   b. ☐ The court orders the relief described in section 1203.4; or
      ☐ The court orders the relief described in section 1203.4, with the following exceptions *(specify)*:

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:

6. If this order is granted under the provisions of Penal Code section 1203.4 or 1203.41:
   a. The petitioner is required to disclose the above conviction in response to any direct question contained in any questionnaire or application for public office, or for licensure by any state or local agency, or for contracting with the California State Lottery Commission.
   b. Dismissal of the conviction does not *automatically* relieve petitioner from the requirement to register as a sex offender. (See, e.g., Pen. Code, § 290.5.)

7. If the order is granted under the provisions of Penal Code section 1203.49, the Department of Justice is hereby notified that the petitioner was a victim of human trafficking when he or she committed the crime, and the relief ordered.

8. If the order is granted under the provisions of either Penal Code section 1203.4, 1203.4a, 1203.41, or 1203.49, the petitioner is released from all penalties and disabilities resulting from the offense except as provided in Penal Code sections 29800 and 29900 (formerly sections 12021 and 12021.1) and Vehicle Code section 13555. In any subsequent prosecution of the petitioner for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if probation had not been granted or the accusation or information dismissed. The dismissal does not permit a person to own, possess, or have in his or her control a firearm if prevented by Penal Code sections 29800 or 29900 (formerly sections 12021 and 12021.1). Dismissal of a conviction does not permit a person prohibited from holding public office as a result of that conviction to hold public office.

9. In addition, as required by Penal Code section 299(f), relief under Penal Code sections 17(b), 17(d)(2), 1203.4, 1203.4a, 1203.41, or 1203.49 does *not* release petitioner from the separate administrative duty to provide specimens, samples, or print impressions under the DNA and Forensic Identification Database and Data Bank Act (Pen. Code, § 295 et seq.) if petitioner was found guilty by a trier of fact, not guilty by reason of insanity, or pled no contest to a qualifying offense as defined in Penal Code section 296(a).

FOR COURT USE ONLY

Date:

_____

(JUDICIAL OFFICER)

SPR15–15
Criminal Procedure: Petition and Order for Dismissal (Military Personnel) (Approve forms CR-183 and CR-184)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Proposed Advisory Committee Response
1.	Albert De La Isla Principal Analyst Superior Court of Orange County	AM	Need information as to whether these forms are subject to a similar administrative fee charged by the court on 1203.4 petitions. If so, we would request that the order from CR-184 have a section where the judge can enter the fees due for the order.	The committee declines the suggestion because Penal Code section 1203.49 does not expressly authorize the imposition of fees.
2.	East Bay Community Law Center Eliza Hersh, Director Clean Slate Practice	AM	**Suggested Amendments to CR-183** 1. *Suggestion:* On section 1, remove "Offense" Box. *Reason*: A petitioner or attorney may not know the exact title of the offense, it adds an additional step, and the removal of this box will create room to increase the size of the "Code" and "Section" boxes, which are too small. 2. *Suggestion:* Should section 5(c) be amended to (suggested change is underlined): ". . . in accordance with Penal Code section 1203.4"? **Suggested Amendments to CR-184** 1. *Suggestion:* Amend section 3 to include language that tracks the change to Penal Code section 18.5 (suggested change underlined)**:** "The court GRANTS the petition for reduction of a felony to a misdemeanor under Penal Code section 17(b) and reduces the following felony	• To avoid confusion regarding the offenses that are the subject of the petition, the committee has revised item 2 on form CR-183/MIL-183 to remove the box for specifying the name of the offense, expanded the boxes for specifying the code name and section number, and revised the introductory sentence to read: *1. On (date) _____, the petitioner (the defendant in the above-entitled criminal action) was convicted of a violation of the following offenses:* • To clarify the authority for the relief provided, the committee has revised item 5(c) on form CR-183/MIL-183 to read: "…in accordance with Penal Code section 1203.4, as specified in Penal Code section 1170.9(h)(3)(C)." • To enhance the information on the order form, the committee agrees to reference the new statutory maximum period of confinement for misdemeanors under Penal Code section 18.5 in item 3 on form CR-184/MIL-184.

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

	Commentator	Position	Comment	Proposed Advisory Committee Response
			convictions to misdemeanors <u>which carry a potential maximum of 364 days, as provided by Penal Code section 18.5</u>." *Reason for request:* Having an order that clearly states the potential 364-day maximum sentence on a newly reduced misdemeanor is essential to immigrants. This one-day distinction can spell the difference between mandatory deportation and access to immigration relief and legalization. The majority--over 75%--of immigrants represent themselves pro se in immigration removal proceedings and it is absolutely crucial for them to have state criminal court orders that clearly specify the maximum potential sentence that an offense carries. 2. *Suggestion:* Should section 5 should be amended to read (suggested change is underlined): "The court GRANTS the petition for dismissal regarding the following felony convictions under Penal Code § 1170.9(h)<u>, in accordance with § 1203.4</u>"?	• To clarify the authority for the relief provided, the committee has revised item 5 on form CR-184/MIL-184 to read: "…in accordance with Penal Code section <u>1203.4, as specified in Penal Code section 1170.9(h)(3)(C).</u>"
3.	Azar Elihu Criminal Defense Attorney Los Angeles	A	(no comments were provided)	No response required.
4.	Legal Services for Prisoners with Children Dorsey Nunn, Executive Director	AM	**<u>Suggested Amendments to CR-183</u>** Legal Services for Prisoners With Children ("LSPC") writes to inform you to make the	• To avoid confusion regarding the offenses that are the subject of the petition, the committee has revised item 2 on form CR-

	Commentator	Position	Comment	Proposed Advisory Committee Response
			following suggestions on Petition For Dismissal (Military Personnel) (form CR-183), on section 1, remove "Offense" Box. The intent of these suggestions are for the following reasons, a petitioner or attorney may not know the exact title of the offense, it adds an additional step, and the removal of this box will create room to increase the size of the "Code" and "Section" boxes, which are too small. LSPC also suggest, section 5(c) be amended to (suggested change is underlined): ". . . in accordance with Penal Code section 1203.4". **Suggested Amendments to CR-184** LSPC also suggest to amend section 3 to include language that tracks the change to Penal Code section 18.5 (suggested change underlined)**:** "The court GRANTS the petition for reduction of a felony to a misdemeanor under Penal Code section 17(b) and reduces the following felony convictions to misdemeanors which carry a potential maximum of 364 days, as provided by Penal Code section 18.5." The intent of these suggestions are for the following reasons, having an order that clearly states the potential 364-day maximum sentence on a newly reduced misdemeanor is essential to immigrants. This one-day distinction can spell the difference between mandatory deportation and access to immigration relief and legalization. The majority--over 75%--of	183/MIL-183 to remove the box for specifying the name of the offense, expanded the boxes for specifying the code name and section number, and revised the introductory sentence to read: *2. On (date) _____, the petitioner (the defendant in the above-entitled criminal action) was convicted of a violation of the following offenses:* • To clarify the authority for the relief provided, the committee has revised item 5(c) on form CR-183/MIL-183 to read: "…in accordance with Penal Code section 1203.4, as specified in Penal Code section 1170.9(h)(3)(C)." • To enhance the information on the order form, the committee agrees to reference the new statutory maximum period of confinement for misdemeanors under Penal Code section 18.5 in item 3 on form CR-184/MIL-184.

	Commentator	Position	Comment	Proposed Advisory Committee Response
			immigrants represent themselves pro se in immigration removal proceedings and it is absolutely crucial for them to have state criminal court orders that clearly specify the maximum potential sentence that an offense carries. Another suggest Order for Dismissal (Military Personnel) (Form CR-184) section 5 should be amended to read (suggested change is underlined): "The court GRANTS the petition for dismissal regarding the following felony convictions under Penal Code § 1170.9(h), in accordance with § 1203.4".	• To clarify the authority for the relief provided, the committee has revised item 5 on form CR-184 to read: "…in accordance with Penal Code section 1203.4, as specified in Penal Code section 1170.9(h)(3)(C)."
5.	Hon. Eileen C. Moore Associate Justice of the Court of Appeal Fourth Appellate District, Division Three (Santa Ana)	AM	1. Item 8 (i) on proposed from CR-184 does not have any stated statutory basis and there is nothing about public office in Penal Code § 1170.9. I suggest this subdivision be deleted. 2. The title of the forms [CR-183; CR-184] is of concern to me. All of the other military forms have a title beginning with MIL. In other areas [AT-138/EJ-125 for example], forms have two titles. Because I fear people will not know to look at CR for military forms, I suggest the form be given dual titles: CR-183/MIL-XXX; CR-184-MIL-XXX. Because of the passage of Penal Code § 858, it is obvious to me the Legislature has concern that the veteran be personally told of his/her rights. I assume the Legislature thinks that criminal defense lawyers are not advising their veteran clients about their rights. Thus, I think finding	• Penal Code section 1170.9(h)(4) releases the defendant from all penalties and disabilities resulting from the offense except for those provided in that paragraph; a prohibition on holding public office is not one of the exceptions, and therefore the committee has deleted item 8(i) on form CR-184/MIL-184. • The committee agrees with the suggestion that it would be helpful to include a prefix to clearly identify these optional Judicial Council forms as military-related forms as well as criminal forms, and has added a "MIL" form number: "CR-183/MIL-183" and "CR-184/MIL-184".

	Commentator	Position	Comment	Proposed Advisory Committee Response
			forms that specifically relate to veterans should be made as easy as possible.	
			3. Before I make my next suggestion, I want to give some background. The Collaborative Courts Advisory Committee has been trying to solve a problem concerning the restoration of rights granted to a defendant by the court under Penal Code § 1170.9. The problem is that the veteran who has had his/her rights restored states "no arrest/no conviction" on job application and it turns out the potential employer has information about the arrest/conviction already. We realized that one of the problems has been that the Dept. of Justice does not have a place on their forms for the clerks to check. We have tried to plug that hole and may have done so. We think the DOJ has added a place on their form, but I am not certain of that. Another hole which needs to be plugged is at the individual clerk level. That is, the clerk in the very same courthouse does not know the defendant's file should be sealed. Now to my suggestion: It would seem to me that CR-184 is a perfect place to have the judge who restores the veteran defendant's rights also order the DOJ be notified and that the clerk of the court seal the records.	• The committee agrees with the suggestion. Under Penal Code section 1170.9(h)(4)(D) the court has discretion to order the sealing of police records of the arrest and court records of the dismissed action; the committee has added subdivision (d) to item 5 on CR-183/MIL-183 to facilitate a request for the court to order sealing of the records, and added check boxes as items 7 and 8 on form CR-184/MIL-184 for the court to order sealing and that the Department of Justice be notified of the sealing order.
			4. By far, this comment is the least of my concerns, but with regard to proposed form CR-183, at subdivision 4(b), it says "formal	• The committee declines the suggestion. "Formal education" is the term included in Penal Code section 1170.9(h)(2)(B) and the

SPR15–15
Criminal Procedure: Petition and Order for Dismissal (Military Personnel) (Approve forms CR-183 and CR-184)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Proposed Advisory Committee Response
			education." I wonder why the court is only interested in "formal" education, as opposed to education in a trade. In fact, most of the veterans I see when I go to Veterans Court as a mentor are striving toward something like plumbing or electronics.	forms track the language of the statute on form CR-183/MIL-183, item 4b.
6.	Orange County Bar Association Ashleigh Aitken, President	A	Does the proposal appropriately address the stated purpose? Yes Are the proposed new forms, Petition for Dismissal (Military Personnel) (form CR-183) and Order for Dismissal (Military Personnel) (CR-184), an effective way to address the legislation adding Penal Code section 1170.9(h)? Yes.	No response required.
7.	State Bar of California, Standing Committee on the Delivery of Legal Services Maria Livingston, Chair	A	Does the proposal appropriately address the stated purpose? Yes. The proposal would allow petitioners to obtain relief pursuant to Penal Code section 1170.9(h). Are the proposed new forms, Petition for Dismissal (Military Personnel)(form CR-183) and Order for Dismissal (Military Personnel)(CR-184), an effective way to address the legislation adding Penal Code Section 1170.9(h)?	No response required.

SPR15–15
Criminal Procedure: Petition and Order for Dismissal (Military Personnel) (Approve forms CR-183 and CR-184)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Proposed Advisory Committee Response
			Yes. The forms provide uniformity and clarity to the courts and to self-represented litigants requesting relief under the new Penal Code section.	
8.	Superior Court of Los Angeles County	A	(no comments were provided)	No response required.
9.	Superior Court of San Diego County Mike Roddy, Court Executive Officer	A	(no comments were provided)	No response required.

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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: October 26, 2015

Title
Criminal Procedure: Petition and Order for Dismissal (Military Personnel)

Rules, Forms, Standards, or Statutes Affected
Approve forms CR-183 and CR-184

Recommended by
Criminal Law Advisory Committee
Hon. Tricia Ann Bigelow, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2016

Date of Report
August 13, 2015

Contact
Eve Hershcopf, 415-865-7961
eve.hershcopf@jud.ca.gov

DRAFT

Executive Summary

The Criminal Law Advisory Committee recommends two new optional forms, a *Petition for Dismissal (Military Personnel)* (form CR-183/MIL-183) and an *Order for Dismissal (Military Personnel)* (form CR-184/MIL-184), to facilitate court implementation of recent legislation that authorizes courts to order dismissal relief for certain defendants who acquired a criminal record due to a mental health disorder stemming from service in the United States military.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2016, adopt:

1. *Petition for Dismissal (Military Personnel)* (form CR-183/MIL-183) for use by petitioners who acquired a criminal record due to a mental health disorder stemming from service in the United States military to request dismissal relief from courts;

2. *Order for Dismissal (Military Personnel)* (form CR-184/MIL-184) for use by courts to order dismissal relief for petitioners who acquired a criminal record due to a mental

health disorder stemming from service in the United States military and who meet the statutory requirements.

The proposed forms are attached at pages 5–8.

Previous Council Action

There has been no previous council action regarding these recommended forms.

Rationale for Recommendation

Recent legislation[1] added Penal Code section 1170.9(h) to authorize a defendant to petition the court for dismissal relief if the defendant was, or currently is, a member of the United States military, acquired a criminal record due to a mental health disorder stemming from service in the military, was granted probation, and has substantially complied with the conditions of probation.

In determining whether granting restorative relief under Penal Code section 1170.9 is in the interests of justice, the court may consider, among other factors, the defendant's completion and degree of participation in education, treatment, and rehabilitation. If the court finds that the defendant satisfies each of the requirements, Penal Code section 1170.9(h) authorizes the court to:

- Deem all conditions of probation, other than court-ordered victim restitution, to be satisfied and terminate probation prior to the expiration of the term of probation;
- Reduce eligible felonies to misdemeanors pursuant to Penal Code section 17(b); and
- Grant relief in accordance with Penal Code section 1203.4.

In addition, a defendant granted a dismissal under Penal Code section 1170.9(h) is released from all penalties and disabilities resulting from the conviction, with certain exceptions,[2] and:

- The court has discretion to order the sealing of police records of the arrest and court records of the dismissed action, which are thereafter viewable by the public only in accordance with a court order;
- The defendant is not obligated to disclose the arrest or the set-aside conviction when information concerning prior arrests or convictions is requested to be given under oath, affirmation, or otherwise, except in response to a direct question in a questionnaire or application for any law enforcement position; and
- The dismissal is a bar to any future action based on the conduct in the dismissed action, though the set-aside conviction may be pleaded and proved as a prior conviction in any subsequent prosecution or for administratively revoking or suspending the defendant's driving privilege.

[1] Assem. Bill 2371 (Butler); Stats. 2012, ch. 403.

[2] The defendant's DNA sample remains in the DNA databank, and the defendant is not authorized to own, possess, or have a firearm in his or her custody or control.

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Although there are currently other Judicial Council forms—*Petition for Dismissal* (form CR-180) and *Order for Dismissal* (form CR-181)—to facilitate dismissal procedures under Penal Code sections 1203.4, 1203.4a, and 1203.41,[3] the dismissal procedures authorized by section 1170.9(h) differ in two significant ways: the manifold eligibility criteria and the more extensive relief provided to eligible defendants.

By specifically detailing the requirements for a dismissal under Penal Code section 1170.9(h), and the relief available, the forms are designed to facilitate court implementation of a new procedure with unique procedural requirements, and promote access to justice for self-represented defendants with military histories.

Comments, Alternatives Considered, and Policy Implications

The attached forms were circulated for public comment from April 17, 2015, to June 17, 2015. A total of nine comments were received; of those, four agreed with the proposal, and five agreed if modified. In addition, the Veterans Subcommittee of the Collaborative Justice Courts Advisory Committee reviewed the proposed dismissal forms. No opposition to the proposal was received. A chart with all comments received and the committee's responses is attached at pages 9–15.

Notable comments

Notable comments and committee responses include:

- ***Dual titles.*** As circulated, the proposed forms were numbered "CR-183" and "CR-184." Justice Eileen Moore of the Fourth Appellate District, Division Three, suggested that the forms be given dual numbers with a "MIL" prefix to clearly identify the forms as military-related forms as well as criminal forms. In response, the committee added a "MIL" prefix to the form numbers: "CR-183/MIL-183" and "CR-184/MIL-184."

- ***Sealing records and notifying the Department of Justice.*** Justice Moore also suggested that form CR-184/MIL-184 include a check box for the court to order the sealing of the police and court records in the dismissed action, and another check box for the court to inform the Department of Justice that the court has ordered the records sealed. Under Penal Code section 1170.9(h)(4)(D), the court has discretion to order the sealing of police records of the arrest and court records of the dismissed action. In response to Justice Moore's comment, the committee added subdivision (d) to item 5 on CR-183/MIL-183 to facilitate a request for the court to order sealing of the records, and added a check box to item 7 on form CR-184/MIL-184 to facilitate the court's action in ordering the police and court records sealed. The committee also added item 8 to form CR-184/MIL-184 to provide a check box for the court to order that the Department of Justice be notified of the sealing order.

[3] The committee is separately recommending revisions to existing council forms to incorporate similar dismissal procedures for victims of human trafficking under newly enacted Penal Code section 1203.49.

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- ***Ordering fees.*** Another commentator suggested that form CR-184/MIL-184 include a check box for the court to order the amount of the "fees due for the order." The committee, however, declined the suggestion because the statute does not expressly authorize the imposition of fees.

Alternatives considered

In consideration of the additional burden that any new forms place on the courts, the committee considered postponing or declining to propose new forms to implement the provisions of Penal Code section 1170.9(h). Alternatively, the committee considered implementing the provisions of Penal Code section 1170.9(h) through revisions to existing Judicial Council dismissal forms, *Petition for Dismissal* (form CR-180) and *Order for Dismissal* (form CR-181). The committee decided, however, to recommend two new optional forms to implement the provisions of Penal Code section 1170.9(h) because of the legislature's emphasis on providing dismissal relief for eligible defendants who were, or are, members of the United States military and, as noted above, because of the significant differences between Penal Code section 1170.9(h) dismissals and those granted under sections 1203.4, 1203.4a, and 1203.41. The committee determined that providing a separate set of forms that detail the requirements for Penal Code section 1170.9 dismissals will reduce confusion for petitioners and assist courts in providing appropriate dismissal relief to current or former military personnel.

Implementation Requirements, Costs, and Operational Impacts

Because the forms are optional, 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. Judicial Council forms CR-183/MIL-183 and CR-184/MIL-184, at pages 5–8
2. Chart of comments, at pages 9–15

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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**
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: DATE OF BIRTH:	
PETITION FOR DISMISSAL (Military Personnel) **(Pen. Code, §§ 17(b), 1170.9(h))**	CASE NUMBER:

INSTRUCTIONS

Before filing this form, petitioner should consult local rules and court staff to schedule the hearing in item 1.

1. **HEARING INFORMATION:** A hearing on this petition for dismissal has been scheduled as follows:

   Date: Time: Department:

   Location *(if different than court address above):*

   If an interpreter is needed, please specify language:

2. On *(date):* _____, the petitioner *(the defendant in the above-entitled criminal action)* was convicted of a violation of the following offenses:

Code	**Section**	**Type of offense:** *(Felony or Misdemeanor)*	**Eligible for reduction to misdemeanor under Penal Code § 17(b)** *(Yes or No)*

   If additional space is needed for listing offenses, use *Attachment to Judicial Council Form* (form MC-025).

3. **Felony or misdemeanor with probation granted (Pen. Code, § 1170.9(h)):**
   Petitioner was granted probation on the terms and conditions set forth in the docket of the above-entitled court. At the time probation was granted, the petitioner was a person described in Penal Code section 1170.9(a) (a member of the United States military suffering from sexual trauma, traumatic brain injury, posttraumatic stress disorder, substance abuse, or mental health problems as a result of his or her service) and the petitioner:

   - is in substantial compliance with the conditions of that probation;
   - has successfully participated in court-ordered treatment and services to address the sexual trauma, traumatic brain injury, posttraumatic stress disorder, substance abuse, or mental health problems stemming from military service;
   - does not represent a danger to the health or safety of others; and
   - has demonstrated significant benefit from court-ordered education, treatment, or rehabilitation to clearly show that granting restorative relief would be in the interests of justice.

   (Note: You may complete and attach the Attached Declaration *(form MC-031) or submit other relevant documents in support of one or more of the above statements.)*

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PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:

4. **The petitioner has *(check all that apply):***

   a. ☐ participated in education, treatment, and rehabilitation as ordered by the court (indicate the degree of participation and whether it was completed).

   b. ☐ progressed in formal education.

   c. ☐ developed career potential.

   d. ☐ demonstrated leadership and personal responsibility efforts.

   e. ☐ contributed service in support of the community.

   f. ☐ other factors.

   (Note: You may complete and attach the Attached Declaration *(form MC-031) or submit other relevant documents in support of one or more of the statements checked above to explain why granting a dismissal would be in the interests of justice.)*

5. **The petitioner requests that the court order *(check all that apply):***

   a. ☐ deem all conditions of probation, other than victim restitution, to be satisfied, including fines, fees, assessments, and programs, and terminate probation prior to the expiration of the term of probation.

   b. ☐ reduce the eligible felony offenses listed above to misdemeanors under Penal Code section 17(b).

   c. ☐ permit the petitioner to withdraw the plea of guilty, or set aside the verdict or finding of guilt and enter a plea of not guilty, and the court dismiss this action and grant relief in accordance with Penal Code section 1203.4, as specified in Penal Code section 1170.9(h)(3)(C).

   d. ☐ seal police records of the arrest and court records of the dismissed action in accordance with Penal Code section 1170.9(h)(4)(D).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on: _____ ▶ _____

(DATE) (SIGNATURE OF PETITIONER OR ATTORNEY)

_____ _____ _____ _____

(ADDRESS, PETITIONER) (CITY) (STATE) (ZIP CODE)

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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**
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: DATE OF BIRTH:	
ORDER FOR DISMISSAL (Military Personnel) **(Pen. Code, §§ 17(b), 1170.9(h))**	CASE NUMBER:

The court finds from the records on file in this case, and from the foregoing petition, that granting restorative relief is in the interests of justice, and that the petitioner *(the defendant in the above-entitled criminal action)* is eligible for and ORDERS the following requested relief:

1. ☐ The court deems all conditions of probation, other than victim restitution, to be satisfied, including fines, fees, assessments, and programs.

2. ☐ The court terminates probation prior to the expiration of the term of probation, if the term of probation has not yet expired.

3. The court **GRANTS** the petition for reduction of a felony to a misdemeanor (maximum punishment of 364 days per Pen. Code, § 18.5) under Penal Code section 17(b) and reduces the following felony convictions to misdemeanors:
   - ☐ ALL FELONY CONVICTIONS in the above-entitled action; or
   - ☐ Only the following felony convictions in the above-entitled action *(specify charges and date of conviction)*:

4. The court **DENIES** the petition for reduction of a felony to a misdemeanor under Penal Code section 17(b) for the following felony convictions:
   - ☐ ALL FELONY CONVICTIONS in the above-entitled action; or
   - ☐ Only the following felony convictions in the above-entitled action *(specify charges and date of conviction)*:

5. The court **GRANTS** the petition for dismissal regarding the following felony convictions in accordance with Penal Code section 1203.4, as specified in Penal Code section 1170.9(h)(3)(C), and it is ordered that the pleas, verdicts, or findings of guilt be set aside and vacated and a plea of not guilty be entered and that the complaint be, and is hereby, dismissed:
   - ☐ ALL FELONY CONVICTIONS in the above-entitled action; or
   - ☐ Only the following felony convictions in the above-entitled action *(specify charges and date of conviction)*:

6. The court **DENIES** the petition for dismissal regarding the following felony convictions under Penal Code section 1170.9(h):
   - ☐ ALL FELONY CONVICTIONS in the above-entitled action; or
   - ☐ Only the following felony convictions in the above-entitled action *(specify charges and date of conviction)*:

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PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:

7. ☐ The court ORDERS, in accordance with Penal Code section 1170.9(h)(4)(D), the sealing of police records of the arrest and court records of the dismissed action, hereafter viewable by the public only in accordance with a court order.

8. ☐ The court ORDERS that the Department of Justice be notified of the sealing order.

9. If this order is granted under the provisions of Penal Code section 1170.9(h):

   a. The petitioner is released from all penalties and disabilities resulting from the offense(s) of which he or she has been convicted in the dismissed action.
   b. Dismissal of the conviction does not *automatically* relieve a person from the requirement to register as a sex offender under Penal Code section 290. (See, e.g., Pen. Code, § 290.5.)
   c. The petitioner is not obligated to disclose the arrest on the dismissed action, or the conviction that was set aside when information concerning prior arrests or convictions is requested to be given under oath, affirmation, or otherwise, except when he or she is required to disclose the arrest, the conviction that was set aside, and the dismissed action in response to any direct question contained in any questionnaire or application for any law enforcement position.
   d. The dismissal of the action shall be a bar to any future action based on the conduct charged in the dismissed action.
   e. In any subsequent prosecution for any other offense, a conviction that was set aside in the dismissed action may be pleaded and proved as a prior conviction and shall have the same effect as if the dismissal had not been granted.
   f. A conviction that was set aside in the dismissed action may be considered a conviction for the purpose of administratively revoking or suspending or otherwise limiting the petitioner's driving privilege on the ground of two or more convictions.
   g. The petitioner's DNA sample and profile in the DNA data bank shall not be removed by a dismissal.
   h. Dismissal of an accusation, information, or conviction does not authorize a petitioner to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction pursuant to Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6.

10. In addition, as required by Penal Code section 299(f), relief under Penal Code sections 17(b) or 1170.9(h) does *not* release petitioner from the separate administrative duty to provide specimens, samples, or print impressions under the DNA and Forensic Identification Database and Data Bank Act (Pen. Code, § 295 et seq.) if he or she was found guilty by a trier of fact, not guilty by reason of insanity, or pled no contest to a qualifying offense as defined in Penal Code section 296(a).

FOR COURT USE ONLY

Date:

_____

(JUDICIAL OFFICER)

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SPR15–15
Criminal Procedure: Petition and Order for Dismissal (Military Personnel) (Approve forms CR-183 and CR-184)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Proposed Advisory Committee Response
1.	Albert De La Isla Principal Analyst Superior Court of Orange County	AM	Need information as to whether these forms are subject to a similar administrative fee charged by the court on 1203.4 petitions. If so, we would request that the order from CR-184 have a section where the judge can enter the fees due for the order.	The committee declines the suggestion because Penal Code section 1203.49 does not expressly authorize the imposition of fees.
2.	East Bay Community Law Center Eliza Hersh, Director Clean Slate Practice	AM	**Suggested Amendments to CR-183** 1. *Suggestion:* On section 1, remove "Offense" Box. *Reason*: A petitioner or attorney may not know the exact title of the offense, it adds an additional step, and the removal of this box will create room to increase the size of the "Code" and "Section" boxes, which are too small. 2. *Suggestion:* Should section 5(c) be amended to (suggested change is underlined): ". . . in accordance with Penal Code section 1203.4"? **Suggested Amendments to CR-184** 1. *Suggestion:* Amend section 3 to include language that tracks the change to Penal Code section 18.5 (suggested change underlined)**:** "The court GRANTS the petition for reduction of a felony to a misdemeanor under Penal Code section 17(b) and reduces the following felony	• To avoid confusion regarding the offenses that are the subject of the petition, the committee has revised item 2 on form CR-183/MIL-183 to remove the box for specifying the name of the offense, expanded the boxes for specifying the code name and section number, and revised the introductory sentence to read: *1. On (date) _____, the petitioner (the defendant in the above-entitled criminal action) was convicted of a violation of the following offenses:* • To clarify the authority for the relief provided, the committee has revised item 5(c) on form CR-183/MIL-183 to read: "…in accordance with Penal Code section 1203.4, as specified in Penal Code section 1170.9(h)(3)(C)." • To enhance the information on the order form, the committee agrees to reference the new statutory maximum period of confinement for misdemeanors under Penal Code section 18.5 in item 3 on form CR-184/MIL-184.

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	Commentator	Position	Comment	Proposed Advisory Committee Response
			convictions to misdemeanors <u>which carry a potential maximum of 364 days, as provided by Penal Code section 18.5</u>." *Reason for request:* Having an order that clearly states the potential 364-day maximum sentence on a newly reduced misdemeanor is essential to immigrants. This one-day distinction can spell the difference between mandatory deportation and access to immigration relief and legalization. The majority--over 75%--of immigrants represent themselves pro se in immigration removal proceedings and it is absolutely crucial for them to have state criminal court orders that clearly specify the maximum potential sentence that an offense carries. 2. *Suggestion:* Should section 5 should be amended to read (suggested change is underlined): "The court GRANTS the petition for dismissal regarding the following felony convictions under Penal Code § 1170.9(h)<u>, in accordance with § 1203.4</u>"?	• To clarify the authority for the relief provided, the committee has revised item 5 on form CR-184/MIL-184 to read: "…in accordance with Penal Code section <u>1203.4, as specified in Penal Code section 1170.9(h)(3)(C).</u>"
3.	Azar Elihu Criminal Defense Attorney Los Angeles	A	(no comments were provided)	No response required.
4.	Legal Services for Prisoners with Children Dorsey Nunn, Executive Director	AM	**<u>Suggested Amendments to CR-183</u>** Legal Services for Prisoners With Children ("LSPC") writes to inform you to make the	• To avoid confusion regarding the offenses that are the subject of the petition, the committee has revised item 2 on form CR-

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	Commentator	Position	Comment	Proposed Advisory Committee Response
			following suggestions on Petition For Dismissal (Military Personnel) (form CR-183), on section 1, remove "Offense" Box. The intent of these suggestions are for the following reasons, a petitioner or attorney may not know the exact title of the offense, it adds an additional step, and the removal of this box will create room to increase the size of the "Code" and "Section" boxes, which are too small. LSPC also suggest, section 5(c) be amended to (suggested change is underlined): ". . . in accordance with Penal Code section 1203.4". **Suggested Amendments to CR-184** LSPC also suggest to amend section 3 to include language that tracks the change to Penal Code section 18.5 (suggested change underlined)**:** "The court GRANTS the petition for reduction of a felony to a misdemeanor under Penal Code section 17(b) and reduces the following felony convictions to misdemeanors which carry a potential maximum of 364 days, as provided by Penal Code section 18.5." The intent of these suggestions are for the following reasons, having an order that clearly states the potential 364-day maximum sentence on a newly reduced misdemeanor is essential to immigrants. This one-day distinction can spell the difference between mandatory deportation and access to immigration relief and legalization. The majority--over 75%--of	183/MIL-183 to remove the box for specifying the name of the offense, expanded the boxes for specifying the code name and section number, and revised the introductory sentence to read: *2. On (date) _____, the petitioner (the defendant in the above-entitled criminal action) was convicted of a violation of the following offenses:* • To clarify the authority for the relief provided, the committee has revised item 5(c) on form CR-183/MIL-183 to read: "…in accordance with Penal Code section 1203.4, as specified in Penal Code section 1170.9(h)(3)(C)." • To enhance the information on the order form, the committee agrees to reference the new statutory maximum period of confinement for misdemeanors under Penal Code section 18.5 in item 3 on form CR-184/MIL-184.

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	Commentator	Position	Comment	Proposed Advisory Committee Response
			immigrants represent themselves pro se in immigration removal proceedings and it is absolutely crucial for them to have state criminal court orders that clearly specify the maximum potential sentence that an offense carries. Another suggest Order for Dismissal (Military Personnel) (Form CR-184) section 5 should be amended to read (suggested change is underlined): "The court GRANTS the petition for dismissal regarding the following felony convictions under Penal Code § 1170.9(h), in accordance with § 1203.4".	• To clarify the authority for the relief provided, the committee has revised item 5 on form CR-184 to read: "…in accordance with Penal Code section 1203.4, as specified in Penal Code section 1170.9(h)(3)(C)."
5.	Hon. Eileen C. Moore Associate Justice of the Court of Appeal Fourth Appellate District, Division Three (Santa Ana)	AM	1. Item 8 (i) on proposed from CR-184 does not have any stated statutory basis and there is nothing about public office in Penal Code § 1170.9. I suggest this subdivision be deleted. 2. The title of the forms [CR-183; CR-184] is of concern to me. All of the other military forms have a title beginning with MIL. In other areas [AT-138/EJ-125 for example], forms have two titles. Because I fear people will not know to look at CR for military forms, I suggest the form be given dual titles: CR-183/MIL-XXX; CR-184-MIL-XXX. Because of the passage of Penal Code § 858, it is obvious to me the Legislature has concern that the veteran be personally told of his/her rights. I assume the Legislature thinks that criminal defense lawyers are not advising their veteran clients about their rights. Thus, I think finding	• Penal Code section 1170.9(h)(4) releases the defendant from all penalties and disabilities resulting from the offense except for those provided in that paragraph; a prohibition on holding public office is not one of the exceptions, and therefore the committee has deleted item 8(i) on form CR-184/MIL-184. • The committee agrees with the suggestion that it would be helpful to include a prefix to clearly identify these optional Judicial Council forms as military-related forms as well as criminal forms, and has added a "MIL" form number: "CR-183/MIL-183" and "CR-184/MIL-184".

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	Commentator	Position	Comment	Proposed Advisory Committee Response
			forms that specifically relate to veterans should be made as easy as possible.	
			3. Before I make my next suggestion, I want to give some background. The Collaborative Courts Advisory Committee has been trying to solve a problem concerning the restoration of rights granted to a defendant by the court under Penal Code § 1170.9. The problem is that the veteran who has had his/her rights restored states "no arrest/no conviction" on job application and it turns out the potential employer has information about the arrest/conviction already. We realized that one of the problems has been that the Dept. of Justice does not have a place on their forms for the clerks to check. We have tried to plug that hole and may have done so. We think the DOJ has added a place on their form, but I am not certain of that. Another hole which needs to be plugged is at the individual clerk level. That is, the clerk in the very same courthouse does not know the defendant's file should be sealed. Now to my suggestion: It would seem to me that CR-184 is a perfect place to have the judge who restores the veteran defendant's rights also order the DOJ be notified and that the clerk of the court seal the records.	• The committee agrees with the suggestion. Under Penal Code section 1170.9(h)(4)(D) the court has discretion to order the sealing of police records of the arrest and court records of the dismissed action; the committee has added subdivision (d) to item 5 on CR-183/MIL-183 to facilitate a request for the court to order sealing of the records, and added check boxes as items 7 and 8 on form CR-184/MIL-184 for the court to order sealing and that the Department of Justice be notified of the sealing order.
			4. By far, this comment is the least of my concerns, but with regard to proposed form CR-183, at subdivision 4(b), it says "formal	• The committee declines the suggestion. "Formal education" is the term included in Penal Code section 1170.9(h)(2)(B) and the

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	Commentator	Position	Comment	Proposed Advisory Committee Response
			education." I wonder why the court is only interested in "formal" education, as opposed to education in a trade. In fact, most of the veterans I see when I go to Veterans Court as a mentor are striving toward something like plumbing or electronics.	forms track the language of the statute on form CR-183/MIL-183, item 4b.
6.	Orange County Bar Association Ashleigh Aitken, President	A	Does the proposal appropriately address the stated purpose? Yes Are the proposed new forms, Petition for Dismissal (Military Personnel) (form CR-183) and Order for Dismissal (Military Personnel) (CR-184), an effective way to address the legislation adding Penal Code section 1170.9(h)? Yes.	No response required.
7.	State Bar of California, Standing Committee on the Delivery of Legal Services Maria Livingston, Chair	A	Does the proposal appropriately address the stated purpose? Yes. The proposal would allow petitioners to obtain relief pursuant to Penal Code section 1170.9(h). Are the proposed new forms, Petition for Dismissal (Military Personnel)(form CR-183) and Order for Dismissal (Military Personnel)(CR-184), an effective way to address the legislation adding Penal Code Section 1170.9(h)?	No response required.

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SPR15–15
Criminal Procedure: Petition and Order for Dismissal (Military Personnel) (Approve forms CR-183 and CR-184)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Proposed Advisory Committee Response
			Yes. The forms provide uniformity and clarity to the courts and to self-represented litigants requesting relief under the new Penal Code section.	
8.	Superior Court of Los Angeles County	A	(no comments were provided)	No response required.
9.	Superior Court of San Diego County Mike Roddy, Court Executive Officer	A	(no comments were provided)	No response required.

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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: October 27, 2015

Title
Domestic Violence: Preparing for Restraining Order Court Hearing

Rules, Forms, Standards, or Statutes Affected
Revise form DV-520-INFO

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, 2016

Date of Report
August 26, 2015

Contact
Julia F. Weber, 415-865-7693
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Executive Summary

Form DV-520-INFO, *Get Ready for the Court Hearing*, has been available for optional use by courts to provide information to litigants about preparing for a domestic violence restraining order hearing. While courts report finding the form helpful, they have also identified problems—for both courts and litigants—with the form. Accordingly, the Family and Juvenile Law Advisory Committee recommends revising the form so that it is clearer, is legally accurate, and as a result, accomplishes the original goal in approving this optional form: to inform litigants and assist in making these complex and important hearings run more smoothly.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2016, revise form DV-520-INFO as follows:

1. Reformat the entire form so that it reflects best practices for providing legal information in plain language, demonstrates improved readability with more white space and graphics, and eliminates unnecessary or confusing language;

2. Change the name of the form to clarify that it provides information about restraining order hearings (*Get Ready for the Restraining Order Court Hearing* instead of *Get Ready for the Court Hearing*);

3. Provide examples of documents that can assist the court in making decisions about support and at the same time explain that the judge will make decisions about what documents may be considered so that litigants are less likely to assume that everything brought to court will be admissible;

4. Provide information about form DV-570, *Which Financial Form—FL-155 or FL-150?*, which can assist parties in determining whether they need to complete an Income and Expense Declaration or a Simplified Financial Statement;

5. Clarify that witnesses may come to court and write statements but may be required to testify if objections to the written declarations arise;

6. Inform parties that a local form may be available with which to request an interpreter;

7. Clarify that a restrained party might be served in the courtroom after a hearing;

8. Clarify that litigants may need to arrange for childcare if a children's waiting room isn't available and children are not permitted in the courtroom during the hearing;

9. Provide more information about what happens at and after the hearing; and

10. Make some technical changes to remove commas and correct a typo.

The proposed revised form is attached at pages 5–7.

Previous Council Action

The Judicial Council last revised DV-520-INFO effective January 1, 2012.

Rationale for Recommendation

Form DV-520-INFO, *Get Ready for the Court Hearing*, has been available for optional use by courts to provide information to litigants about preparing for a domestic violence restraining order hearing, hundreds of which are held each day in courts throughout the state. Although courts report finding the form helpful, the current version includes information that can be confusing and, as a result, may cause unnecessary difficulties and delays at hearings. Rather than

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continuing to provide legally inaccurate information, some courts have chosen not to use the form and do not have a substitute readily available. Additionally, this form remains on the California Courts public website, so litigants may be relying on it to their detriment. The form revisions proposed by the Family and Juvenile Law Advisory Committee in this report will make the form clearer and more legally accurate. As a result, the revised form will better accomplish the original goal in approving the form: to inform litigants and assist in making these complex and important hearings run more smoothly.

Comments, Alternatives Considered, and Policy Implications

The proposal circulated for comment during the spring 2015 comment period. In addition to being posted on the judicial branch website, the invitation to comment was circulated to trial courts and lists of professionals and members of the public who have provided their contact information to review and provide comment on Judicial Council forms. Specific input from professionals who work in the domestic violence field was also solicited.

Eleven commentators provided comments on the proposal. Four agreed with the proposal if modified and one agreed; six did not indicate a position but otherwise provided suggestions for additional edits. In response to specific questions about the value of the form, commentators indicated that the form will be helpful to litigants and suggested outreach efforts to make it more accessible to the public. Others noted that the changes "will improve the ability of all litigants, especially those who are self-represented, to understand the forms and prepare for their restraining order hearing."

Several commentators suggested formatting changes to make the form easier to use. Additionally, because the form seeks to cover information for petitioners as well as respondents, the form contains a lot of information. As a result, the committee decided it would be helpful if the form could be reformatted to include more white space and graphics and eliminate unnecessary words, as well as be edited to include more plain language where possible. Although the new format was developed after the form was circulated for comment, the content of the form still reflects what was circulated with changes made as a result of input from commentators. The committee believes the formatting changes fit in with other plain-language forms in the DV series and will be helpful to the public and the trial courts.

Alternatives

The committee considered retaining the format that has been in place for this form and only changing the content as originally proposed. However, the suggestions commentators made created a form with more information, which decreased the readability of the form when kept in its original format. The committee also considered adding numbers and letters to provide reference points instead of bullets, however, with the proposed reformatting of the form, that suggestion appeared to be unnecessary.

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Implementation Requirements, Costs, and Operational Impacts

Courts may be required to produce paper copies of the information form to replace the existing form.

Attachments and Links

1. Judicial Council form DV-520-INFO, at pages 5–7
2. Chart of comments, at pages 8–31

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DV-520-INFO Get Ready for the Restraining Order Court Hearing

This form explains what to do *before*, *during*, and *after* the restraining order hearing. You can go to www.courts.ca.gov/dvforms for more information and to find the court forms listed in this information form

Before the hearing

Take these papers to court (you can use the check boxes on this page to keep track of what you need or have):

- ☐ 3 copies of **all** papers you filed for your case.
- ☐ 3 copies of documents that support your case (police or medical reports, rental agreements or receipts, photos, bills). Be ready to give the other party copies of what you give to the judge. Sometimes the judge cannot look at or consider certain documents. The judge will decide which documents can be included in your case.
- ☐ 3 copies of pay stubs or other proof of income (only if orders about money, such as child or spousal support were requested). If the judge accepts your proof, s/he will also give a copy to the other person.

If needed, make arrangements for:

- ☐ **A support person.** But that person cannot speak for you in court.
- ☐ **Witness(es)** to testify in court. Or you may bring a witness's signed statement of what they saw or heard. The witness's statement can be on a sheet of paper that says *Declaration* at the top, and *Signed under penalty of perjury* at the bottom, just above the witness's signature. Or the witness may use Form MC-030, *Declaration* instead.

Exception: If the other person objects to your witness, that witness must be in court if you want the judge to hear from him or her.

- ☐ **The signed *Proof of Service* form.** For more information, see DV-200-INFO, *What Is "Proof of Personal Service?"*
- ☐ Make a list of the orders you want (or don't want), and practice saying it. You only have a few minutes to talk to the judge. If you get nervous at the hearing, just read from your list. You may also write a statement and read it to the judge. You may also say other things after you read the statement.
- ☐ **Childcare.** Most of the time, children will not be allowed in the courtroom during the hearing. Call the court and ask if they have a children's waiting room. If not, arrange for childcare.
- ☐ If you do not speak English well, ask the clerk for an **interpreter**. The clerk may ask you to fill out a request form if you want the court to have an interpreter at the hearing. If the court cannot give you an interpreter, bring an adult to interpret for you. Do not ask a witness or a child involved in your case to interpret for you.

If the hearing is about getting a restraining order ***against*** you:

- **Go to the hearing!** If you miss it, the judge can make orders without hearing your side.
- Read DV-120-INFO, *How Can I Respond to a Request for Domestic Violence Restraining Order?*
- You can fill out and file a court form to tell the judge your side (Form DV-120, *Response to Request for Domestic Violence Restraining Order*). Take 3 copies of this form to the court hearing.
- *Note:* If the other person asks for orders about money (child or spousal support or other financial orders), read Form DV-570 to see if you should fill out an Income and Expense Declaration or a Simplified Financial Statement.

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DV-520-INFO Get Ready for the Restraining Order Court Hearing

At the hearing

Get to court at least **30 minutes early**. Find your courtroom. When it opens, go in and tell the courtroom clerk or law enforcement officer you are present, and the names of any witnesses, and if the witness needs an interpreter.

- Do not sit near or talk to the other person. If you are afraid of the other person, tell the officer.
- Watch the other cases so you will know what to do.
- Go to the front of the courtroom when they call your name.
- You may be at court several hours. It depends on how many cases there are. Your hearing may last just a few minutes or over an hour.

Warning! If you asked for the restraining order but do not go to the hearing, your temporary restraining order will end and there may not be a hearing. The court could make other orders if the other side asks, even if the restraining order is not granted. To get another restraining order, you must fill out and file a new set of forms.

In the courtroom

The judge may ask you questions. The other people in the case and their lawyers may ask questions, too.

- Tell the truth. Speak slowly. Give complete answers. You can read from your list.
- Try to answer exactly what the judge asks.
- If you don't understand, say "I don't understand the question."
- Speak only to the judge unless it's your turn to ask questions or the judge tells you to answer a question from the other person or his/her lawyer.
- Do not interrupt anyone! If the other person tells a lie, wait until s/he finishes talking, then tell the judge.

Family Court Sevices

If you ask for parenting time (custody and visitation) orders, the court may send both parents to Family Court Services for *court-connected mediation* or *child custody recommending counseling*. For more information, see Forms: FL-313-INFO, *Child Custody Information Sheet—Recommending Counseling*, or FL- 314-INFO, *Child Custody Information Sheet—Child Custody Mediation*. If you are sent to Family Court Services, the judge may extend the date of the orders (or make new temporary orders) to last until your next court date.

The court may postpone (continue) your case if:

- The person to be restrained has not been served or needs time to get a lawyer or prepare an answer.
- The judge wants more information or your hearing is taking longer than planned.

If this happens, you will have to come back another day. The person who asked for the order may ask the judge to make the temporary orders last until the new hearing date. The court might use *Order to Continue Hearing Date and Extend Temporary Restraining Order* for the new hearing (DV-116).

At the end of the hearing

For most cases, the judge will make decisions about your case at the end of the hearing. To decide if the requested orders should be approved or not, the judge will decide if the evidence shows that the person asking for protection is entitled to a restraining order. The judge will consider the evidence and the safety risks of the adults and children involved in the case. If the judge makes orders at the hearing, the orders will be on Form DV-130, *Restraining Order After Hearing*.

If you asked for the order(s):

- The court clerk might fill out Form DV-130. If so, s/he will take it to the judge. If not, ask who should fill it out, and where to file it. After the form is filed, the court clerk will give you up to 3 copies.
- Read the signed Form DV-130 carefully. If anything is different from what the judge said in court, ask the clerk for help right away. Or talk to your lawyer, if you have one.
- Your temporary orders expire at midnight of the date of your hearing. File your new order the same day so you will be protected.
- If the court makes the restraining order, the clerk will send Form DV-130, *Restraining Order After Hearing* to law enforcement. Doing this puts your orders in a database called CLETS. This lets police everywhere in the state know about the orders.
- ***Important!*** Always keep a copy of the restraining order with you.

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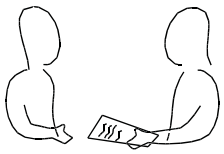
After the hearing

If you **asked** for the restraining order, and the court made the order…

You must have the other person served with a copy of Form DV-130. You may have him or her served with a copy of Form DV-130 in the courtroom after the hearing or by mail.

If the restrained person was *not* at the hearing and the new orders are



- the ***same*** as the temporary order, you may have the other person served with a copy of Form DV-130 by mail.
- ***different*** from the temporary order, you must have someone serve Form DV-130 in person, not by mail. Ask the server to complete Form DV-200, *Proof of Personal Service*, and give it back to you.

Important! You must file a completed Form DV-200, *Proof of Personal Service*, or Form DV-250, *Proof of Service by Mail*. Keep a copy for your records. Keep a copy of the orders with you at all times.

Other orders

If you asked for support or child custody/visitation orders, you may also get one of these forms:

- Form DV-140, *Child Custody and Visitation Order*, if the judge ordered child custody or visitation.
- Form FL-342, *Child Support Information and Order Attachment*, or Form FL-343, *Spousal, Partner, or Family Support Order Attachment*, if the judge orders child support and/or spousal support.

What if you are deaf or hard of hearing?
Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the proceeding. Contact the clerk's office or go to www.courts.ca.gov/forms for *Request for Accommodations by Persons With Disabilities and Order* (Form MC-410). (Civil Code, § 54.8)

If the court made a restraining order **against** you…

- You must obey orders the judge makes at the hearing. Orders are written on Form DV-130. If you do not obey them, you could be arrested.
- You will be served the *Restraining Order After Hearing* (Form DV-130) at the hearing or within a few days, by mail or in person.
- Read the signed Form DV-130 carefully when you receive it. If anything is different from what the judge said, ask the court clerk for help right away. Or talk to your lawyer, if you have one.

If you do not receive a copy of the orders within a few days, ask the clerk for a copy.

Review *How Do I Turn In, Sell, or Store My Firearms* (DV-800-INFO/JV-252-INFO).

Need more help?

Ask the court clerk about free or low-cost legal help. Ask for information at the court about the Self-Help Center or Family Law Facilitator Office.

For a referral to a local domestic violence or legal assistance program, call the National Domestic Violence Hotline: **1-800-799-7233**
TDD: 1-800-787-3224
It's free and private. They can help you in more than 100 languages.

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SPR 15-17
Domestic Violence: Preparing for Restraining Order Court Hearing (revise form DV-250-INFO)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	California Partnership to End Domestic Violence by Krista Niemczyk Public Policy Manager Sacramento	NI	**Are there any aspects of the proposed changes that may be unclear or confusing to self-represented litigants?** We appreciate the Court's attention to the needs of self-represented litigants, and the barriers they often face when the court process is confusing or unclear. Research has indicated that almost 70% of victims of domestic violence and sexual assault must appear in court by themselves (1), making a focus on this group of litigants especially crucial. To improve clarity, we offer the following suggestions. 1. <u>Remove current language from the form which states "Provide the other party with all of your documents"</u> This language currently appears as the second bullet point under **"Be Prepared"**, on page 1 of the proposed DV-520-INFO. A self-represented client should not feel that they must hand over copies of all of their evidence, especially if some of that evidence may be inadmissible. Furthermore, a person seeking protection should not feel forced to approach the other party for any reason, despite the relative safety of a court room. This is something the judge should effectuate, and currently does. 2. <u>Modify the current language "At the hearing, the judge will decide if the</u>	1. The committee proposes changing the form to say, "Be ready to give the other party copies of what you give the judge. Sometimes the judge cannot look at or consider certain documents. The judge will decide which documents can be included in your case."

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

	Commentator	Position	Comment	Committee Response
			evidence shows you are entitled to a restraining order." On page 2 of the proposed DV-520-INFO, under **"The judge will decide"**, the proposed form states, "At the hearing, the judge will decide if the evidence shows you are entitled to a restraining order." Use of the word "you" in this context is vague and confusing because the document provides guidance to both the protected party and the restrained party. This language could mislead the restrained party into believing that they can get a restraining order against the protected party even though they haven't filed their own DVRO application. To remedy this, we recommend changing the language to read, "At the hearing, the judge will decide if the evidence shows that the person asking for protection is entitled to a restraining order." We believe that these modifications will improve the ability of all litigants, and especially those who are self- represented, to understand the forms and prepare for their restraining order hearing. Thank you for the opportunity to provide these comments… [1] Carter, T. (2004). Pour It On: Activists Cite Rising Need for Lawyers to Respond to Domestic Violence, A.B.A. Journal, pg. 73.	2. The committee agrees and proposes to change the language as suggested ("At the hearing, the judge will decide if the evidence shows that the person asking for protection is entitled to a restraining order.")

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

SPR 15-17
Domestic Violence: Preparing for Restraining Order Court Hearing (revise form DV-250-INFO)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
2.	The Executive Committee of the Family Law Section of the State Bar of California (FLEXCOM) by Saul Bercovitch Legislative Counsel San Francisco <u>DISCLAIMER:</u> This position is only that of the FAMILY LAW SECTION of the State Bar of California. This position has not been adopted by either the State Bar's Board of Trustees or overall membership, and is not to be construed as representing the position of the State Bar of California. Membership in the FAMILY LAW SECTION is voluntary and funding for section activities, including all legislative activities, is obtained entirely from voluntary sources.	NI	The Executive Committee of the Family Law Section of the State Bar (FLEXCOM) submits the following comments as to proposed revisions to form DV-520-INFO: -As to the request for specific comments, FLEXCOM believes that this form will be helpful to those litigants who read it. Perhaps some outreach efforts to make litigants aware of helpful forms like this one would result in increased use. -FLEXCOM recommends inserting item numbers on this form to make it easier to read, less overwhelming to look at and to bring it into alignment with other information sheets. In addition, it is difficult to address comments to unnumbered sections. -Item "Be prepared": -Bullet Point #5: Remove "if you haven't already" from end of first sentence as it is unnecessary. Add the requirement to file an I&E or Financial Statement to the last sentence, clarify that support means child or spousal, and add restitution, debt payments and attorney fees and costs to the list. -Bullet Point #6: For clarity, add to the end of the first sentence "to be present at the hearing" or "inside the courtroom."	The committee agrees and is supportive of ongoing efforts to make this and other forms accessible to litigants. The committee proposes a complete reformatting of the form to make it more accessible. Formatting changes have been made to make the document easier to read and follow. Agree. Removed "if you haven't already." Added "Read Form DV-570 to see whether you should complete an Income and Expense Declaration or a Simplified Financial Statement." Agree. Committee proposes adding "Most of the time, children will not be allowed in the courtroom during the hearing."

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SPR 15-17
Domestic Violence: Preparing for Restraining Order Court Hearing (revise form DV-250-INFO)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			-Bullet Point #7: Add the following sentence (or something similar): "Remember that you have a limited time in front of the Judge. If you have a lot to say, you may want to remind the Judge that you already filed a written statement, and then say anything else you have thought of since then."	Added: "You only have a few minutes to talk to the judge…"
			-Item subtitled "Don't miss the hearing":	Added information about what can happen if you miss the hearing.
			-Bullet Point #1: FLEXCOM proposes revising to state: "If you are the person asking for protection and you miss your court date, your restraining order may end and there may be no hearing. The court could make other orders requested by the other side even if the restraining order is not granted. To get another restraining order, you would have to complete a new set of application forms and re-file."	Added, "If you are the person to be restrained and you miss the court date, the hearing will happen without you present and the judge can still make the orders."
			-Bullet Point #2: FLEXCOM proposes revising to state: "If you are the person to be restrained and you miss the court date, the hearing will happen without you present and the Judge can make orders."	
			-Item subtitled "Get there 30 minutes early":	
			-FLEXCOM proposes adding "You have the right to bring a support person to court. If you bring a support person, try to ensure	Form changed to say: "If needed, make arrangements for a support person."

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

	Commentator	Position	Comment	Committee Response
			he/she is not someone who might add to the conflict." The form should clarify the role of a support person under the law. -Furthermore, this form should clarify to the restrained person that the temporary restraining order is good (valid and enforceable) until the end of the hearing, and that any violation may result in an arrest even inside the courthouse. The form should indicate it is recommended that the restrained person not sit anywhere near the other party and not look at him/her, not talk or gesture to him/her, and that neither the restrained nor protected party can have anyone else, including his/her support person, interact with the opposing side during the hearing. Also clarify that if the restrained person is represented, his/her attorney can talk to the protected party or his/her attorney if he/she is represented. -Item subtitled "The judge may ask questions": Bullet Point#4: FLEXCOM proposes adding at the end of the sentence "from the other party or witnesses". Bullet Point#8: FLEXCOM proposes starting this sentence with "Only_____", and ending it with "not witnesses or support persons".	Information about when temporary orders included. Added, "Do not sit near or talk to the other person. If you are afraid of the other person, tell the officer." Because bullet point #4 originally addressed to whom the parties might direct questions, the committee did not make a change as there may be times it would be appropriate for parties to ask questions of others including clerks, for example. Bullet point #8 was not changed as suggested because there may be times that others will have appropriate questions.

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SPR 15-17
Domestic Violence: Preparing for Restraining Order Court Hearing (revise form DV-250-INFO)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			-Item subtitled "The judge will decide": Bullet Point #1: FLEXCOM proposes starting the first sentence with "After both sides have finished talking to the judge, the judge will make orders or determinations."	
			-Item subtitled "What if the judge makes orders . . . ": FLEXCOM proposes that the following sub-points are included such that the points are communicated to the protected party:	No change. Sometimes both parties aren't present.
			-It is important to have the orders prepared and filed the same day because the temporary orders are set to expire at midnight.	
			-If the Protected party is represented, the attorney will be ordered to prepare and file and give him/her copies.	Agree. Added: "It is important to have the orders prepared and filed the same day because the temporary orders are set to expire at midnight."
			-If self-represented, the court may have staff assigned to prepare and file the order right after the hearing and provide her/him copies.	No change. This varies by court.
			-The Protected party is entitled to at least three certified copies.	Already noted that the clerk will provide up to three copies.
			-The Protected party must ensure that a copy is served on the restrained party as ordered by the court in DV-130 (service by mail or in person).	Added.

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

	Commentator	Position	Comment	Committee Response
			Bullet Point #1 under the item subtitled "For person to be restrained" should clarify that if the judge grants the restraining orders, violation of the orders could result in arrest of the restrained party.	Added: "If the court made a restraining order against you, you must obey orders the judge makes at the hearing. If you do not obey them, you could be arrested."
			-Item subtitled "The judge may "continue" your case":	
			FLEXCOM proposes this item include failure to serve as one of the possible reasons to continue the hearing/reissue the TRO.	Agree. Added, "The person to be restrained has not been served or needs time to get a lawyer or prepare an answer."
			FLEXCOM proposes this form should also clarify that the order to continue the case has to be filed the same day to extend the temporary restraining order to the next hearing date.	Disagree. Extension is automatic.
			-Item subtitled "What happens after the hearing?":	
			Bullet Point #7: FLEXCOM proposes replacing the existing proposed text with "If you do not receive a copy of the orders within a few days after the hearing, you may obtain your own copies from the Business Office in the courthouse."	Disagree. Stated as, "If you do not receive a copy of the orders within a few days after the hearing, ask the clerk for a copy."
			-Item subtitled "Need more help?": FLEXCOM proposes including information about the Self Help Center and Family Law Facilitator's Office.	Agree. Added.

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SPR 15-17
Domestic Violence: Preparing for Restraining Order Court Hearing (revise form DV-250-INFO)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
3.	Los Angeles Center for Law and Justice by Diane Trunk Managing Attorney	NI	**A. Comment:** page 1-Heading- Be Prepared- the third bullet states that "Either party can bring a support person…" This statement should be removed as it is NOT in accordance with the DVPA. Only the protected person is be allowed to bring a support person with her to the hearing. See FC §6303. Recommended: "The protected person can bring a support person…"	A. Family Code section 6303(b) states as follows: "A support person shall be permitted to accompany either party to any proceeding to obtain a protective order, as defined in Section 6218. Where the party is not represented by an attorney, the support person may sit with the party at the table that is generally reserved for the party and the party's attorney." The words "to feel safer" have been removed.
			B. Comment: page 1-Heading- Don't miss the hearing - first bullet states: "If you are the person asking for protection ....you will have to complete the paperwork all over again." For clarity, we would like to add that the protected person will only need to complete the paperwork again IF they decide they still need protection. Recommended: "If you are the person asking for protection....you will have to complete the paperwork all over again if you still want protection."	B. The committee agrees. Language changed to "To get another restraining order, …"
			C. Comment: page 1-Heading- Don't miss the hearing – second bullet states: "If you are the person to be restrained and you miss the hearing, the judge can still make the orders." For clarification, we would like to add that the judge can still make the orders requested by the protected person.	Agreed. Changed.

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

	Commentator	Position	Comment	Committee Response
			Recommended: "If you are the person to be restrained and you miss the hearing, the judge can still make the orders requested by the protected person."	
			D. Comment: page 1-Heading- What if you don't speak English – second sentence states: "If a court interpreter is not available, bring someone to interpret for you." This is not in accordance with Evidence Code §756, which states that an interpreter will be provided free of charge. We think this entire sentence needs to be deleted in order to comply with the code section. Recommended: DELETE the sentence to comply with EC §756.	D. The committee recognizes that in some instances, an interpreter may not be available and believes the parties should be informed that they may bring someone to interpret for them.
			E. Comment: page 3- Heading- What happens after the hearing/For person to be protected- fourth bullet states: "Ask the server to complete DV-200, Proof of Personal Service, and give it back to you." We would like to add that the protected person must file the form with the court and keep a copy for their records. Recommended: "Ask the server to complete DV-200, Proof of Personal Service, and give it back to you. You	E. The committee agrees to change the language as indicated.

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SPR 15-17
Domestic Violence: Preparing for Restraining Order Court Hearing (revise form DV-250-INFO)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			will need to file this form with the court and keep a copy for your records."	
4.	Hon. Maren Nelson Supervising Judge Family Law Division Superior Court of Los Angeles County	NI	I agree with Staff's comments and add: (1) Clarify that the person to be restrained must be served. If there is no service the judge may permit a continuance but service must occur. (2) Clarify that the Proof of Service form re: service of the temporary order must be completed in full. If there is no Proof of Service or the Proof of Service is defective and the person to be restrained is not at the hearing the judge can continue the hearing for a proper form but the reissuance must also be served.	Agree. Added (see DV-200-INFO, What Is "Proof of Personal Service"?) under Be Prepared.
5.	Orange County Bar Association by Ashleigh Aitken President	A	Yes, the form will assist self-represented parties. No, the form is not unduly confusing.	Agree.
6.	Fariba Soroosh Supervising Attorney Self Help Center/Family Law Facilitator's Office Superior Court of Santa Clara County	NI	**DV-520-INFO** -Request for comments: I believe that this form, and other information sheet like this, will continue to be helpful to those litigants who read it. Perhaps some outreach efforts to make litigants aware of helpful forms like this one would result in increased use. -Please insert item numbers on this form to make it easier to read, less overwhelming to	The committee agrees and is supportive of ongoing efforts to make this and other forms accessible to litigants. The committee proposes a complete reformatting of the form to make it more accessible.

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	Commentator	Position	Comment	Committee Response
			look at and bring it into alignment with other information sheets. Not to mention that it is hard to address comments to unnumbered sections! -Item "Be prepared": -Bullet Point #5: Remove "if you haven't already" from end of first sentence as it is unnecessary. Add the requirement to file an I&E or Financial Statement to the last sentence, clarify that support means child or spousal, and add restitution, debt payments and attorney fees and costs to the list. -BP #6: For clarity, add to the end of the first sentence "to be present at the hearing" or "inside the courtroom". -Add the following sentence to BP #7 (or something similar): I see many SRL's run out of time during the hearing. So the following reminder may be helpful. "Remember that you have a limited time in front of the Judge. Also the Judge has already read your court file. So if you have a lot to say, you may just want to remind the Judge that you already filed a written statement and say anything else you have thought of since then." -Item "Don't miss the hearing": -BP #1: How about "If you are the	Formatting changes have been made to make the document easier to read and follow. Agree. Removed "if you haven't already." Added "Read Form DV-570 to see whether you should complete an Income and Expense Declaration or a Simplified Financial Statement." Agree. Committee proposes adding "Most of the time, children will not be allowed in the courtroom during the hearing." Added: "You only have a few minutes to talk to the judge. If you get nervous at the hearing, just read from your list. You may also write a statement and read it to the judge. You may also say other things after you read the statement." Added information about what can happen if you

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	Commentator	Position	Comment	Committee Response
			person asking for protection and you miss your court date, there will be no hearing and your restraining order will end at that time. To get another restraining order, you must complete a new set of application forms all over again." ?	miss the hearing.
			BP #2: How about "If you are the person to be restrained and you miss the court date, the hearing will happen without you present and the Judge can make orders."?	Added, "If you are the person to be restrained and you miss the court date, the hearing will happen without you present and the judge can still make the orders."
			-Item "Get there 30 minutes early": -Add information about the right of both parties to bring a support person to court and that It is probably advisable not to bring a new intimate partner or another person that has problems with the other party. Clarify the role of a support person under the law.	Form changed to say: "If needed, make arrangements for a support person."
			-Clarify to the restrained person that the restraining order is good until the end of the hearing (by local rule is some counties and state law if AB1081 is chaptered), and that any violation will result in an arrest even inside the courthouse. Recommend that the restrained person not sit anywhere near the other party and not look at them, not talk or gesture to them, and that	Information about when temporary orders included. Added, "Do not sit near or talk to the other person. If you are afraid of the other person, tell the officer."

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	Commentator	Position	Comment	Committee Response
			they cannot have their support person say do any of that either.	
			-Item "The judge may ask questions": BP#4: Add at the end of the sentence "from the other party or witnesses".	Because bullet point #4 originally addressed to whom the parties might direct questions, the committee did not make a change as there may be times it would be appropriate for parties to ask questions of others including clerks, for example.
			BP#8: Start this sentence with "Only . . . . ", and end it with ", not witnesses or support persons".	Bullet point #8 was not changed as suggested because there may be times that others will have appropriate questions.
			-Item "The judge will decide": BP #1: Start first sentence with "After both sides have finished talking to the judge, the judge will . . . ."	No change. Sometimes both parties aren't present.
			-Item "What if the judge makes orders . . . ": It is important to ensure that the following points are communicated to the protected party here: -It is important to have the orders prepared and filed the same day because the temporary order are set to expire at midnight. -If the protected party is represented, the attorney will prepare and file and give him/her copies.	Agree. Added: "It is important to have the orders prepared and filed the same day because the temporary orders are set to expire at midnight."
			-If self represented, the court may have staff assigned to prepare and file the order	No change. This varies by court.

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	Commentator	Position	Comment	Committee Response
			right after the hearing and give her/him copies. -Protected party is entitle to at least three certified copy.	Already noted that the clerk will provide up to three copies.
			-Protected party has to ensure that a copy is served on restrained party as ordered by the court in DV-130 (by mail or in person). This information is also mentioned on the next page but also makes sense to put it here.	Added.
			BP#1 under "For person to be restrained" should clarify that if the judge grants the restraining orders, violation of the orders could result in arrest.	Added: "If the court made a restraining order against you, you must obey orders the judge makes at the hearing. If you do not obey them, you could be arrested."
			-Item "The judge may "continue" your case": Include failure to serve as one of the reasons to continue the hearing.	Agree. Added, "The person to be restrained has not been served or needs time to get a lawyer or prepare an answer."
			Also clarify that the order to continue the case has to be filed the same day to extend the temporary restraining order to the next hearing date.	Disagree. Extension is automatic.
			-Item "What happens after the hearing?": BP#7: Replace with "If you do not receive a copy of the orders within a few days after the hearing, you may get your own copies at the Clerk's Office	Disagree. Stated as, "If you do not receive a copy of the orders within a few days after the hearing, ask the clerk for a copy

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	Commentator	Position	Comment	Committee Response
			in the courthouse." -Item "Need more help?": Consider including information about the Self Help Center and Family Law Facilitator's Office.	Agree. Added.
7.	The State Bar of California's Standing Committee on the Delivery of Legal Services (SCDLS)	AM	SCDLS recommends consistent use of the first person in the headings and minor edits to clarify points. **Specific Comments** <u>Do the proposed changes more clearly provide litigants with information that will assist them at restraining order hearings?</u> Yes, the form provides clear explanations regarding the proceeding. <u>Are there any aspects of the proposed changes that may be unclear or confusing to self-represented litigants?</u> Please see additional specific comments. **Additional specific comments (including suggested edits):** (1) Underserved and communities in need would benefit from the proposal because it provides a plain language explanation of what to expect from court. DV-520 would need to be	This form in its past incarnation has been translated and made available in multiple languages; once the updated form is approved, the committee agrees that it should also be translated.

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	Commentator	Position	Comment	Committee Response
			translated into multiple languages to be more effective with non-English Speakers. (2) Suggested edits for improvement. *Keep consistent use of the first person in the headings.* ~~Be Prepared.~~ How do I prepare for my hearing? ~~Don't miss the hearing.~~What do I do on my hearing day? • Don't miss the hearing. What if ~~you~~ I don't speak English? ~~The judge may ask questions.~~ What happens during the hearing? • The judge may ask questions. ~~The judge may "continue" your case.~~ What if the judge "continues" my case? *Suggested wording:* **Heading: Be Prepared.** Bullet 1 Bring two copies of all documents and filed forms, including the signed *Proof of Service*. Bullet 4 Witnesses can use form MC-030, *Declaration*, or a sheet of paper entitled "Declaration," and signed under penalty of perjury, to provide statements in writing.	Formatting has been changed to improve access and readability "Signed" added. Added.

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	Commentator	Position	Comment	Committee Response
			Heading: Get there 30 minutes early. Bullet 2 When the courtroom opens, go in and tell the court clerk or officer that you are present. Tell the court clerk the names of your witnesses that will testify and if they will need an interpreter. **Heading: The judge may ask questions.** Bullet 2 ~~Give complete answers.~~ Try to answer the specific question that the judge is asking. The judge cannot accept a nodding or shaking of your head as an answer. **Heading: Which forms will I receive after the hearing?** Bullet 4 ~~Sometimes there may be forms in addition to these.~~ The court may use additional forms, as needed. *Formatting Suggestion* Eliminate white space.	Added information about interpreter. Added: "Try to answer exactly what the judge asks." Committee did not think it was necessary to add this information.
8.	Superior Court of Los Angeles County	AM	**DVPA Instructions:** (1) Clarify that the person to be restrained must be served. If there is no service the judge may permit a continuance but service must occur.	(1) Agree. Information added about where to find more information about service and that the hearing may be continued if there is no service.

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	Commentator	Position	Comment	Committee Response
			(2) Clarify that the Proof of Service form re: service of the temporary order must be completed in full. If there is no Proof of Service or the Proof of Service is defective and the person to be restrained is not at the hearing the judge can continue the hearing for a proper form but the reissuance must also be served. The proposed new version of DV-520-INFO would be further improved by adding a bullet and language to make it clear that the person to be protected needs to file a Proof of Service form if the restrained person served either by mail or in person with a copy of Form DV-130 after the hearing. On page, 3, after the fourth bullet under **"What happens after the hearing? For person to be protected:"** we suggest adding: • If you have the restrained person served either by mail or in person with the Form DV-130 after the hearing, you must file with the court a completed Form DV-200, Proof of Personal Service, or Form DV-250, Proof of Service by Mail." **Request for Specific Comments** In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following: • Do the proposed changes more clearly provide litigants with information that will	(2) Information added about needing to come back another day and that a request may then need to be made for temporary orders to continue until the new hearing date. Agreed. Added in box "Important! You must filed a completed Form DV-200, Proof of Personal Service, or Form DV-250, Proof of Service By Mail," in After the hearing section. The committee appreciates the comment that this will assist litigants.

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	Commentator	Position	Comment	Committee Response
			assist them at restraining order hearings? **Yes.**	
			• Are there any aspects of the proposed changes that may be unclear or confusing to self-represented litigants? **Please see above.**	The committee appreciates the comments providing clarification.
			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. **There might be savings resulting from efficiency at the hearing if self-represented litigants read and follow the instructions and so appear better prepared, but it is too difficult to quantify such savings.**	The committee appreciates the difficulty of measuring the impact and the possibility that the form may assist in providing helpful guidance.
			• 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? **None.**	
			• Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?	The committee appreciates these comments favoring the proposal.

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	Commentator	Position	Comment	Committee Response
			Yes. • How well would this proposal work in courts of different sizes? **The benefit of better prepared self-represented litigants should be relatively the same.**	
9.	Superior Court of Orange County Family Law and Juvenile Court Operations Managers in Orange County	NI	Page 1, in the section regarding not speaking English, we recommend adding, "The court may provide an interpreter the day of the hearing." Page 2, in the section regarding the judge making orders at the hearing, we recommend inserting "*certified*" copies will be provided to the party.	Information added on first page about requesting interpreters. Added, "certified".
10.	Superior Court of San Diego County by Mike Roddy Executive Officer	AM	On page 1 of the DV-520-INFO form, under the first section titled, **"Be prepared."** 1. The first sentence of the second bullet should be made into two separate sentences and should specify that pay stubs or other proof of income should be provided if financial issues (e.g. child support, spousal support, attorney fees, costs and services, or out-of-pocket expenses) have been raised by either party. 2. The fifth bullet implies that the restrained person must file the DV-120. This is incorrect. Often, if the restrained person has criminal charges pending they will not respond in writing by filing a DV-120, once they have been advised of their rights. This	Changes made to include the list but kept to one sentence. Agreed. Changed to "can" file DV-120 and added reference to DV-120-INFO.

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	Commentator	Position	Comment	Committee Response
			bullet should at least be modified to clarify that if the restrained person wants to respond in writing they can do so by completing, serving and filing the DV-120 form. Also, it would be helpful to cross reference the DV-120-INFO form, where the restrained person is notified that what they write or say can be used against them. This form should also include a notice to the restrained person on what to do if they have a firearm in their possession, including cross referencing the DV-120-INFO and/or the DV-800-INFO forms.	Reference to DV 120-INFO added.
11.	Superior Court of Santa Clara County by Hon. Christine Copeland Commissioner	AM	1. 2nd bullet point under "Be Prepared" - The second sentence implies that exhibits should be exchanged before the hearing. I have concerns that that puts too much of a burden on the parties if they read it that way, and am concerned that a restrained person on a TRO is here being invited to violate the TRO by getting the protected person copies of that party's exhibits. Maybe the 2nd bullet can be combined with the first, so that parties are told to have enough copies of exhibits so that protected person, restrained person and the judge can each have one set of copies at the court hearing. 2. 4th bullet under "Be Prepared"- I don't like setting expectations that any judicial officer	1. Changed to "Be ready to give the other party copies of what you give to the judge. Sometimes the judge cannot look at or consider certain documents." 2. The particulars of the case, objections, and judicial discretion determine whether witness statements will be provided. The committee

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	Commentator	Position	Comment	Committee Response
			can or will hear from witnesses by any means other than live testimony. I'm not sure why we encourage them to bring written statements from third parties.	believes the language is accurate and helpful to litigants.
			3. 5th bullet down under "Be Prepared" - Restrained parties should be clear that filing a Response is not mandatory; the court can take their response "out loud" at the court hearing. The way this is written now, it appears to make the filing of a Response mandatory. Particularly for respondents who have a related criminal case pending, they wouldn't want to file a substantive response if they wish to exercise their 5th amendment right. We should just be more clear on this DV-520 INFO that a response is optional.	3. Added information on DV-120-INFO for those filing a response and changed to "You can fill out and file."
			4. 7th bullet down under "Be Prepared"- Many judicial officers, including yours truly, absent some extreme circumstance, do not let either party read a prepared statement. I'll let people refer to notes, but usually the expectations for hearings involve testimony, and not so much reading canned statements. I am concerned that telling litigants here to write out a statement to read to the judge may promise too much.	4. The committee believes that in many instances, it can be useful for litigants to be prepared with notes or a statement in these matters and that this form can be helpful in giving litigants an opportunity to be prepared prior to the hearing. At the same time, officers may determine in a given situation whether a particular presentation in a hearing is appropriate.

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	Commentator	Position	Comment	Committee Response
			5. 1st bullet under "Don't miss the hearing" - we tell a protected party that missing the hearing means the RO will end- that implies there was a TRO in place pending the hearing, which may not be the case. It might be better to say that failure to attend the hearing means that your request for a restraining order will not be considered, and if you had any TRO pending the court date, your failure to appear at the court date will mean that that TRO expires.	5. Changed to "If you are the person asking for protection and you miss the hearing, if you had a temporary restraining order, it will end and there may be no hearing."
			6. 2nd and 4th bullets under "Get there 30 minutes early"- what do we mean by "officer"? Law enforcement officer or courtroom clerk? I am not clear, so I'm not sure litigants will be.	6. Changed to law enforcement officer.
			7. 1st bullet under "The Judge will decide"- I don't understand the last sentence: are we saying that lack of finances is a type of safety concern? I just don't understand the sentence, and it could just be me!	7. Last sentence deleted to improve clarity.
			8. In section "The judge may continue your case"- maybe add a bullet to say it might be continued if you have no proof that restrained person was served with notice for the hearing.	8. Added.
			9. In section "The judge may continue your	9. No change.

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	Commentator	Position	Comment	Committee Response
			case"- 1st bullet says "answer" and we might want to say "response" instead. 10. 2nd bullet under "What happens after the hearing"- I wasn't aware that restrained person is entitled to any service if they attended the hearing	10. Sentence rewritten to clarify what to do depending on whether the person was in court on the day of hearing. Additional comments unrelated to this proposal will be considered by the advisory committee going forward when reviewing domestic violence rules, forms, and legislative proposals.

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JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 27, 2015

Title
Domestic Violence: Request to Modify or Terminate Domestic Violence Restraining Orders; Family Law: Changes to Request for Order Rules and Forms

Agenda Item Type
Action Required

Effective Date
July 1, 2016

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94, and 5.151; adopt or approve forms DV-400, DV-400-INFO, FL-303, and FL-320-INFO; revise forms DV-115, DV-115-INFO, DV-116, DV-130, DV-200, DV-200-INFO, DV-505-INFO, FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, FL-341, FL-341(B), FL-341(C), FL-341(D), and FL-341(E)

Date of Report
September 9, 2015

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Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

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Executive Summary

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective July 1, 2016, adopt, approve, revise, or amend domestic violence forms and family law rules and forms to (1) implement recent changes to Family Code section 245 mandated by Assembly Bill 1081 (Stats. 2015, ch___); (2) implement Family Code section 6345, which requires that the council establish procedures for requesting and recording the modification or

termination of orders issued in *Restraining Order After Hearing* (form DV-130); and (3) respond to suggestions from judicial officers, court professionals, legal organizations, and family law attorneys to improve the *Request for Order* (form FL-300) and its associated rules and forms.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective July 1, 2016:

1. Revise California Rules of Court, rule 5.94, and forms DV-115, DV-115-INFO, DV-116, DV-200, DV-200-INFO, DV-505-INFO, and form FL-306 to implement the changes to Family Code section 245 mandated by Assembly Bill 1081 (Stats. 2015, ch.__).

2. Adopt, approve, or revise forms used to request and record the modification or termination of orders granted in *Restraining Order After Hearing* (form DV-130):
   a. Adopt form DV-400 as the court order to terminate a *Domestic Violence Restraining Order After Hearing* (form DV-130);
   b. Approve form DV-400-INFO to provide guidance to parties about the forms and procedures for requesting the orders;
   c. Revise form DV-130 to reflect orders amended after a court hearing;
   d. Revise form FL-300 to serve as the means by which a party asks for the orders; and
   e. Revise form FL-320 to serve as the means by which a party responds to a request to modify or terminate the orders.

3. Approve *Declaration Regarding Notice and Service of Request for Temporary Emergency (Ex Parte) Orders* (form FL-303) as a standard, optional form to help parties comply with the notice requirements of rules 5.151 through 5.169 of the California Rules of Court when requesting temporary emergency (ex parte) orders in their family law case.

4. Approve *Information Sheet: Responsive Declaration to Request for Order* (form FL-320-INFO) to address a clear need to provide information to a party filing a *Responsive Declaration to Request for Order* (form FL-320) in response to a *Request for Order* (form FL-300).

5. Amend rules 5.12, 5.62, 5.63, 5.92, and 5.151 to include technical and substantive changes in response to suggestions from judicial officers, court professionals, legal organizations, and attorneys.

6. Revise forms FL-305, FL-311, FL-312, FL-336, FL-337, FL-341, FL-341(B), FL-341(C), FL-341(D), and FL-341(E) to make technical and substantive changes in response to suggestions from judicial officers, court professionals, legal organizations, and attorneys.

The text of the amended rules are found at pages 30–39. The new and revised forms appear in alphabetical order on pages 40–97.

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Previous Council Action

Effective January 1, 2014, the Judicial Council separated *Application and Order for Reissuance of Request for Order or Restraining Order (Juvenile) or Order to Show Cause* (form FL-306/JV-252) into two forms. One form was named *Application and Order for Reissuance of Temporary Restraining Order—Juvenile* and renumbered as form JV-251. The other was numbered as form FL-306 and renamed *Application and Order for Reissuance of Request for Order and Temporary Emergency Orders (Family Law—Governmental—Uniform Parentage—Custody and Support)*.

Effective January 1, 2014, the Judicial Council revised form DV-130 to implement the changes mandated by AB 157 (Stats. 2013, ch. 263), AB 161 (Stats. 2013, ch. 261), and AB 539 (Stats. 2013, ch. 739), which created additional relief under the Domestic Violence Prevention Act and provided for enforcement priority of multiple restraining orders.

Effective January 1, 2013, the Judicial Council restructured title V of the California Rules of Court, and amended or adopted new rules of court relating to family law practice and procedure, including rules 5.12, 5.62, 5.63, 5.94, and 5.151.

Effective July 1, 2012, the Judicial Council adopted *Order to Pay Waived Court Fees and Costs* (form FL-336), and *Application to Set Aside Order to Pay Waived Court Fees—Attachment* (form FL-337) to implement changes to Government Code section 68637.

Effective July 1, 2012, the Judicial Council combined the notice of motion and order to show cause forms into a single *Request for Order* (form FL-300) to simplify the process for motions in family court. This change was reflected in amended rule 5.92 and forms FL-300-INFO, FL-305, FL-306, FL-320, and FL-336.

Rationale for Recommendation

Rule and forms changes mandated by Assembly Bill 1081

Assembly Bill 1081 (Stats. 2015, ch.) amends Family Code section 245, effective January 1, 2016. The legislation impacts one rule, a few forms that circulated for comment in spring 2015, and a few other forms that did not circulate for comment and that require only technical changes to conform them to the amended statute.

The statutory changes to Family Code section 245 are illustrated below:

(a) ~~The court may, upon the filing of a declaration by the line petitioner that the respondent could not be served within the time required by statute, reissue an order previously issued and dissolved by the court for failure to serve the respondent. The reissued order line shall remain in effect until the date set for hearing.~~ The respondent shall be entitled, as a matter of course, to one continuance, for a reasonable period, to respond to the petition.

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(b) Either party may request a continuance of the hearing, which the court shall grant on a showing of good cause. The request may be made in writing before or at the hearing or orally at the hearing. The court may also grant a continuance on its own motion.

(c) If the court grants a continuance, any temporary restraining order that has been issued shall remain in effect until the end of the continued hearing, unless otherwise ordered by the court. In granting a continuance, the court may modify or terminate a temporary restraining order.

~~(c) The reissued~~

(d) If the court grants a continuance, the extended temporary restraining order shall state on its face the new date of expiration.

(e) ~~No~~ A fee shall not be charged for the ~~reissuance~~ extension of the ~~order unless the order had been dissolved three times line 3 previously.~~ temporary restraining order.

Rule 5.94. Order shortening time; other filing requirements

In response to those statutory changes, the committee recommends deleting references in the rule to "reissuance" and "reissued order" and replacing them with "extension" and "extended order." The committee also recommends deleting the term "application" and replacing it with "request," and referencing the term "continuance." In addition, the committee recommends that the rule reflect that the moving party may ask the court to change the temporary emergency (ex parte) orders, and that the request may be made orally at the time of the hearing. Further, the committee recommends changes to the rule in response to public comments as described in the comments section of the report.

***Application and Order for Reissuance of Request for Order and Temporary Emergency Orders* (form FL-306)**

The committee recommends making the same revisions to the form as recommended to rule 5.94 so that the language conforms to that used in Family Code section 245. In addition, the committee recommends retitling the form as "*Request and Order to Continue Hearing Date and Extend Temporary Emergency (Ex Parte) Orders*" and making other changes in response to public comments as described in the comments section of the report.

Forms DV-115, DV-115-INFO, DV-116, DV-200, DV-200-INFO, and DV-505-INFO

The committee recommends technical changes to these forms to delete the terms "reissuance" and "reissue" wherever they appear in the forms, and replace them with "extend" or "extension." Because these terms appear in the titles of two forms, the committee also recommends revising the titles of forms DV-115 and DV-116 as follows:

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- *Request to Continue Hearing and Reissue Temporary Restraining Order* (form DV-115) is revised to "*Request to Continue Hearing Date and Extend Temporary Restraining Order";* and

- *Notice of New Hearing Date and Order on Reissuance* (form DV-116) is revised to *"Order to Continue Hearing Date and Extend Temporar**y** Restraining Order."*

Finally, the committee recommends revising the following forms to reflect the new titles of forms DV-115 and DV-116:

- *How to Ask for a New Hearing Date* (form DV-115-INFO);
- *Proof of Personal Service* (form DV-200);
- *What is "Proof of Personal Service"?* (form DV-200-INFO); and
- *How Do I Ask For a Temporary Restraining Order?* (form DV-505-INFO).

Domestic violence forms recommendations

The committee's recommendations to create and revise forms to request that the court modify or terminate a restraining order after hearing in a Domestic Violence Prevention Act (DVPA) case implements the mandate of Family Code section 6380(f), which states that "[i]f a court issues a modification … or termination of a protective order, it shall be on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice…"

The recommendation also implements the mandate of Family Code section 6345(d), which became operative effective January 1, 2012. This code authorizes "termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party." The amended statute provides protections to the victim of domestic violence, such as requiring strict requirements for service of requests filed by the restrained person to modify or terminate a restraining order.

Restraining Order After Hearing **(form DV-130)**

The recommendation implements Family Code section 6380 by including new check boxes to indicate whether the order is new ("Original") or changed ("Amended"). A blank line in front of the check box for "Amended" would allow courts to identify if the order is a first, second, third, or other amended order. The committee also recommends revising item 24 on page 4 to reflect service of a *Request for Order* (form FL-300) in a proceeding to change or end the restraining order after hearing.

Findings and Notice of Termination of Restraining Order After Hearing **(form DV-400)**

The recommendation to adopt form DV-400 implements Family Code section 6345 because the form will serve to memorialize the *termination* of a DVPA order after hearing.

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***How to Change or End a Domestic Violence Restraining Order* (form DV-400-INFO)**
The committee's recommendation to approve this new, four-page information sheet also implements Family Code section 6345 by providing guidance to parties about the forms and procedures developed to request a modification or termination of the restraining order issued on form DV-130.

***Request for Order* (form FL-300)**
The committee's recommendation to revise the form implements section 6380 by serving as the means by which a party either protected or restrained by *Restraining Order After Hearing* (form DV-130) can ask the court to modify or terminate the restraining orders.

***Responsive Declaration to Request for Order* (form FL-320)**
The recommendation to revise this form implements section 6380 by serving as the means by which a party protected or restrained by the *Restraining Order After Hearing* (form DV-130) can respond to the request to modify or terminate the restraining orders.

Family law rules recommendations

Since the Judicial Council adopted *Request for Order* (form FL-300), effective July 1, 2012, court operations managers, supervisors, and clerks from several counties have provided suggestions for practical and clarifying changes to the form. Their suggestions, especially those following two additional rounds of public comment, have informed the Family and Juvenile Law Advisory Committee's current recommendations for technical and substantive changes to the rules and forms relating to a request for order.

The committee's recommendation to improve the rules of court and forms relating to a request for order benefit the judicial branch—along with attorneys and self-represented litigants who use the forms—by clarifying, reorganizing, and rewording specific items that have caused some confusion to persons who complete the forms and to the court clerks who process them.

Rule 5.12. Discovery motions
Rule 5.62. Appearance by respondent or defendant
Rule 5.63. Motion to quash proceeding or responsive relief
As to each of these rules, the committee recommends making technical changes suggested by the court and the public to conform them to the revised language in other family law rules forms. For example, references to a "notice of motion" will be replaced by "request for order." The change avoids confusion for persons who may believe that they must complete a *Notice of Motion* (form FL-301), which was revoked, effective July 1, 2012. In addition, as to rule 5.62, the committee's recommendations add references to Family Code sections 2012 and 3409, which commentators have pointed out are other exceptions to the rule on general appearances.

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Rule 5.92. Request for court order; response
The committee proposed technical and substantive amendments to rule 5.92 to provide better guidance to court users and increase court efficiencies relating to the filing of a *Request for Order* (form FL-300). The proposal included amending the rule to:

- Reformat it under more specific subheadings;
- Clarify that additional forms, rules, and local rules apply to requests for temporary emergency orders;
- Authorize the court clerk to issue a *Request for Order* (form FL-300) as a ministerial act in specific circumstances, such as ordering parties to attend orientation and child custody mediation or child custody recommending counseling as well as in circumstances that do not require the use of judicial discretion;
- Provide a more comprehensive description of when personal service of the FL-300 is required; and
- Include an advisory committee comment below the rule.

Finally, the committee recommends adding an advisory committee comment to provide background information about the rule and form FL-300. It would specifically note that the rule and form were developed in response to the Elkins Family Law Task Force recommendations for one comprehensive form and related procedure to replace the former *Order to Show Cause* and *Notice of Motion*.

Rule 5.151. Request for emergency orders; application; required documents
The committee recommends amending the rule to reference a proposed, new optional form titled *Declaration Regarding Notice and Service of Request for Temporary Emergency (Ex Parte) Orders* (form FL-303).

Family law forms recommendations

***Request for Order* (form FL-300)**
The committee's recommended revisions to the form implement the suggestions of the family law community obtained after two rounds of public comment by:

- Expanding the form to include a request to modify or terminate a domestic violence restraining order after hearing;
- Deleting the "Order to Show Cause" language from the form and replacing it with a warning to the respondent about the consequences of failing to serve a *Responsive Declaration* and appear at the hearing, and to also provide a reference to a new information sheet about how to respond to a request for order; and
- Reorganizing the items and simplifying the language relating to the specific orders requested.

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Information Sheet for Request for Order **(form FL-300-INFO)**
The current form serves as the instruction sheet to help parties complete form FL-300. The committee's recommended revisions to the form implement the suggestions of the family law legal community by:

- Making the form easier to read;
- Clarifying the procedures for serving form FL-300;
- Providing a more extensive checklist of additional forms that a party might need to file along with form FL-300; and
- Providing more information about legal resources and other information.

Declaration Regarding Notice and Delivery of Request for Temporary Emergency (Ex Parte) Orders **(form FL-303)**
The committee recommends approving this optional form to help implement rules 5.151 through 5.169 of the California Rules of Court, adopted effective January 1, 2013. With the adoption of these rules, the Judicial Council implemented a uniform rule in family court addressing the time frame for providing notice to the other party about a request for temporary emergency orders. The rules require, in part—absent the court's approval for shortened notice or a waiver of notice—that, "[a] party seeking emergency orders give notice to all parties or their attorneys so that it is received no later than 10:00 a.m. on the court day before the matter is to be considered by the court."

While some local courts offer a form for parties to complete and demonstrate their compliance with the notice requirements of rule 5.165, the committee recognizes that other courts do not. The *Declaration Regarding Notice and Service of Request for Temporary Emergency (Ex Parte) Orders* (form FL-303) will help fill a need for a standard form that can be accepted for filing in family courts across the state.

Temporary Emergency Court Orders **(form FL-305)**
The current *Temporary Emergency Court Orders* (form FL-305) serves as a court order that is attached to the back of the *Request for Order* (form FL-300) when it is served on the other party. The committee's recommendations implement the suggestions of the family law legal community that this form be a standalone order form instead of an attachment to form FL-300. As a standalone Judicial Council form, form FL-305 will be more easily distinguished as an order when served on the other party in the case.

Responsive Declaration to Request for Order **(form FL-320)**
This form is completed by a party to respond to a *Request for Order* (form FL-300). In addition to the committee's recommendations that the form be updated to allow a party to respond to a request to modify or terminate a domestic violence restraining order—implementing the requirements of Family Code section 6345– the committee's other recommendations implement the suggestions of the family law legal community by reflecting and incorporating the substantive and formatting changes to the *Request for Order* (form FL-300).

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Information Sheet: Responsive Declaration to Request for Order **(form FL-320-INFO)**
The committee's recommendations to approve this new, optional information sheet implements the Judicial Council's strategic goals of access, fairness, and diversity. This form helps remove barriers to the courts for parties responding to a request for order and addresses a clear need to provide balanced information to all parties in a family law case, not only to those who use form FL-300 to request orders. The forms will serve as the counterpart to the current information sheet (form FL-300-INFO), which is used by the party who files and serves a *Request for Order*.

Child Custody and Visitation Application Attachment **(form FL-311)**
Request for Child Abduction Prevention Orders **(form FL-312)**
Order to Pay Waived Court Fees and Costs **(form FL-336)**
Application to Set Aside Order to Pay Waived Court Fees—Attachment **(form FL-337)**
Child Custody and Visitation (Parenting Time) Order Attachment **(form FL-341)**
The above forms were circulated for comment in spring 2013, proposing that they only be revised to delete references to "Order to Show Cause" and *Notice of Motion* (form FL-301) and replace them with *Request for Order* (form FL-300). In addition, the proposal included other technical changes such as inserting "Other Parent/Party" in the caption and throughout the forms.

Based on comments received, the committee now recommends additional substantive revisions to these forms. The recommendations implement the suggestions of judicial officers, court professionals, legal organizations, and family law attorneys by replacing references to "parents" with "parties" and also identifying whether the term "parties" applies to the petitioner, respondent, or other parent/party in the case. This change will improve these forms by allowing for cases in which the petitioner may not be a parent, such as in actions involving a local child support agency (who may be listed as the petitioner in the case), or cases in which the court grants custody or visitation rights to a child's grandparent joined in the action.

Child Abduction Prevention Order Attachment **(form FL-341(B))**
Children's Holiday Schedule Attachment **(form FL-341(C))**
Additional Provisions—Physical Custody Attachment **(form FL-341(D))**
Joint Legal Custody Attachment **(form FL-341(E))**
These forms help a party or the court convey the details of a request or an order about legal and physical custody of a child or about visitation (parenting time). The committee's recommendations as to each of the forms implement the suggestions of legal professionals that:

- The language within the form better reflect use by another party or parent in the case;
- They be better organized and provide more space for a party to provide answers;
- They be updated to include other types of orders currently being requested by parties;
- They be reformatted to improve readability; and
- They consistently reflect use of the term "visitation (parenting time)."

In addition, as to form FL-341(E), *Joint Legal Custody Attachment*, the committee's recommendations help to clarify (1) the meaning of "joint legal custody" under the Family Code,

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and (2) that the form is to be used by a party to request that the court specify when the consent of both parties is required to exercise joint legal custody of the parties' children.

Comments from prior circulations

Domestic violence forms proposal

The Family and Juvenile Law Advisory Committee proposed forms to modify or terminate the Domestic Violence Prevention Act (DVPA) in three previous public comment periods: 2003, 2005, and 2012.

- The initial invitation to comment circulated from April 17, 2003, through July 1, 2003.[1] Comments from this initial circulation are included in the Judicial Council report dated March 11, 2005.

- The committee recirculated the proposal from December 8, 2004, to February 4, 2005, seeking comment on specific issues that were raised during the first circulation.[2] The committee withdrew this part of the proposal and recommended that it be further developed.[3] All comments made during the winter 2005 cycle were published in the above-referenced March 11, 2005 Judicial Council report.

- A new proposal circulated for comment from April 21, 2011, to June 30, 2011.[4] Once again, the committee recommended that it undergo further development. The comment chart was published in the report dated October 20, 2011. [5]

The above-mentioned comments that were published in previous reports to the Judicial Council informed the Family and Juvenile Law Advisory Committee's current proposal but did not previously result in changes to domestic violence or family law forms relating to the modification or termination of orders issued under the DVPA.

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[1] Judicial Council of Cal., Family and Juvenile Law Advisory Com. Rep., *Domestic Violence (revise forms DV-100, DV-110, DV-120, DV-130, DV-500, DV-505, DV-520, DV-540, JV-245, and JV-250) (Action Required)* (Mar. 11, 2005), p. 5. The report is found at: *http://www.courts.ca.gov/documents/0405itema6.pdf*.

[2] *Ibid.*

[3] All comments made during the winter 2005 circulation of proposed forms DV-300, DV-310, DV-320, DV-370, DV-380, and DV-390 were published in the March 2005 Judicial Council report.

[4] Invitation to Comment (SPR11-55), *Family Law—Domestic Violence: Adopt Rule of Court Regarding Modification of Child Custody and Visitation Orders and Revise, Approve, Adopt, or Revoke Forms Used in Domestic Violence Prevention Act Cases*.

[5] Judicial Council of Cal., Family and Juvenile Law Advisory Com. Rep., *Domestic Violence: Forms and rule for use in Domestic Violence Prevention cases* (Oct. 20, 2011), p. 16. The report can be found at: *http://www.courts.ca.gov/documents/ItemA16.pdf*.

Family law rules and forms proposal
The Family and Juvenile Law Advisory Committee and Elkins Family Law Implementation Task Force previously sought comment on proposals to address issues raised by courts about the *Request for Order* (form FL-300).

- *Family Law: Improvements to Request for Order Rules and Forms* circulated from April 19, 2013, to June 19, 2013, proposing changes to rules 5.92, 5.94, and forms FL-300, FL-300-INFO, FL-305, FL-306, FL-312, FL-320, FL-336, FL-337, FL-341(C), FL-341(D), and FL-341(E).[6] The comment chart for this proposal is included in this report as Attachment A.

- A revised proposal titled *Family Law: Changes to Request for Order* circulated for public comment from December 13, 2013, to January 24, 2014,[7] and was expanded to propose amendments to rules 5.12, 5.62, 5.63, 5.151, and 5.170. Following its circulation, the Family and Juvenile Law Advisory Committee tabled the proposal to allow additional time to consider how to respond to the additional substantive changes proposed by commentators. The comment chart for this proposal is included in this report as Attachment B.

Comments, Alternatives Considered, and Policy Implications

The current proposal circulated for comment as part of the spring 2015 invitation to comment cycle, from April 17 to June 17, 2015, 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, social workers, probation officers, Court Appointed Special Advocate (CASA) programs, and other juvenile and family law professionals. The committee also sought comment from legal aid attorneys and attorneys working for domestic violence victim support agencies and the California Department of Justice (DOJ).

The committee received comments form 20 individuals or organizations. Of these commentators, 2 agreed with the proposal, 4 agreed if modified, no one disagreed with the proposal, and 15 expressed no position but included comments. A chart with the full text of the comments received and the committee's responses is attached at pages 98–213.

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[6] *Family Law: Improvements to Request for Order Rules and Forms* (SPR13-22) may be found at: http://www.courts.ca.gov/documents/SPR13-22.pdf.

[7] The invitation to comment may be found at: http://www.courts.ca.gov/documents/W14-12.pdf.

Comments on forms to modify or terminate a DVPA order

Restraining Order After Hearing (form DV-130)
The recommendation implements Family Code section 6345 by providing a manner to specify whether the court issued the initial or modified orders after hearing. The committee received many favorable comments about this form. The commentators included the DOJ, California Restraining and Protective Order Unit, which approved the form and suggested additional changes. In addition, a clerk from the Los Angeles County Sheriff's Department also stated that the changes "…will be extremely helpful to agencies that do the CLETS entries."

Most of the eight commentators approved using the terms "Original" and "Amended" to designate whether the order is the initial order or one that was modified after a hearing. Only two commentators disapproved of using the term "Original" because other Judicial Council forms do not use the term. Although using "Original" in the order differs from the formatting of other forms, the committee recommends the revision to this particular form, since it was developed with significant input from the legal community, including court staff, domestic violence victim advocates, and law enforcement officers. The revision was also approved by the DOJ, California Restraining and Protective Order Unit.

Other commentators suggested changes to the form. One suggested moving "Original" and "Amended" away from the expiration date to avoid the interpretation that they apply only to the expiration date of the order. Instead, commentators suggested relocating them to the top of the form. The committee recommends this change to the form to clarify that the terms apply to the entire order.

After further review, the committee also recommends revising item 25 to add a new line for "Other Criminal Protective Order in effect." Item 25 currently requires other criminal protective orders to be listed on an attached sheet of paper. Adding a preprinted line for one additional order could help reduce the number of pages attached to the order after hearing.

Proof of Personal Service **(form DV-200)**
Proof of Service by Mail **(form DV-250)**
These forms are completed and filed with the court to indicate that the person to be restrained, was personally served (or served by mail) with the forms listed on form DV-200 or DV-250. The circulated invitation to comment proposed changing the form by adding *Request for Order* (form FL-300) to the checklist when one of the parties is asking the court to modify or terminate the orders made in *Restraining Order After Hearing* (form DV-130).

The committee received two commentators about the forms. Both commentators noted that the proposed changes could cause confusion because the forms were intended to be used only when a person is seeking to serve an initial domestic violence restraining order. Because they were not also designed to be used for service on a person already protected or restrained by a *Restraining Order After Hearing* (form DV-130), more extensive changes to these and other DV forms

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would be needed than those which circulated for comment. Further, the form would implement a procedure that is not common practice in family law proceedings—using a domestic violence form to record service of a family law request for order.

After considering the comments, the committee decided not to recommend revising forms DV-200 and DV-250 as originally proposed. The committee believes that the best procedure is to require a process server to use a proof of service from the current family law forms (FL-330 or FL-335) to reflect service of the *Request for Order* (form FL-300).

Findings and Notice of Termination of Restraining Order **(form DV-400)**
The recommendation implements section 6380 by serving as the standalone form to memorialize the *termination* of a DVPA order. The committee received nine comments about this form; none objected to the form, and all, including the DOJ, suggested ways in which to improve it.

In response to comments, the committee's recommendations include:

- That the form be titled *Findings and Order to Terminate Restraining Order After Hearing* to underscore that the form is an order—not merely a notice—that terminates the restraining orders granted on form DV-130.
- That instructions under the title state, "Complete only items 1 and 2. The remaining items are for court use."
- Simplifying the language in item 3b to "An alternative, court-ordered method of service that gives actual notice of the request and hearing."
- Adding another finding to state, "The Protected Party was physically present at the hearing and verified his or her identity."
- Replacing the finding about a dismissal with "Other (specify):" to cover all other findings that a court wants to record.
- Adding check boxes in items 4a and 4b to indicate if orders for child custody and visitation or spousal or partner support remain in effect.
- Adding a new optional section titled "Hearings" to record information about who was present at the hearing. This section includes a check box for those cases in which the matter was proceeded by a hearing. In other cases, a hearing would not be required, such as when parties submit a written stipulation (agreement) to the court to approve and file.
- Changing the language in the "CLETS Entry" section as recommended by the DOJ.
- Changing the "Service of this order" section by replacing the bubble numbers with either "Protected Party" or "Restrained Party" and to indicate which person was the moving party.
- Adding "(CLETS-CANCEL)" in the form's footer to properly code the form for transactions in the California Restraining and Protective Orders System;
- Making other formatting changes to improve the readability of the order.

A commentator also suggested specific additions to the form, which the committee did not recommend. The commentator proposed that *in addition* to the personal service requirement, a

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clerk of the superior court be required to send out a notice by mail to the protected party to the most recent address on file. While the concerns of the commentator are appreciated, the committee does not recommend revising a rule or adopting a form that requires the court clerk to mail the notice as suggested. This would require clerks to be able to identify these cases. Setting up a procedure that is significantly different than other family law and domestic violence matters would be difficult for the courts to implement at this time, particularly given the cutbacks in staffing. Although the committee does not recommend this action, this does not prevent courts from establishing or continuing such a local practice.

The commentator also suggested that the form require that service of form DV-400 and any attachments on a protected party be completed by either a sheriff or a registered service professional. The commentator believed that this will help to avoid the problems associated with false proofs of service and maintain the highest possible protection for the domestic violence victim. The committee does not recommend this change in service requirements without a specific amendment in the Family Code.

***How Do I Ask to Change or End a Domestic Violence Restraining Order After Hearing?* (form DV-400-INFO)**

This new, four-page information sheet provides answers to frequently asked questions and guidance to parties about the forms and procedures for requesting a modification or termination of the restraining order issued on form DV-130. The committee received suggestions from nine commentators for improving the form. No commentators opposed approving the form for optional use.

In response to comments, the committee recommends that the form:

- Title be changed from *"How to Ask to Change or End a Domestic Violence Restraining Order"* to *"How Do I Ask to Change or End a Domestic Violence Restraining Order After Hearing?"*
- Note that form FL-300 is not used to ask the court to renew domestic violence restraining orders.
- Not require a party to attach a copy of the filed order when filing form FL-300. The court has access to the filed order, and requiring a party to attach the order may cause undue delay or cost (to obtain a copy of the order) in filing the request.
- State that a restrained party may not contact a protected party in violation of the existing restraining order in connection with a request to modify or terminate the order.
- State that the orders for child custody, parenting time, and support will remain in effect after the restraining orders are terminated, unless those orders are also terminated or modified by order of the court.
- Include the statement currently found on forms DV-500-INFO, DV-505-INFO, and DV-520-INFO about consulting with a domestic violence advocate and/or an attorney, and providing a reference to the National Domestic Violence Hotline.

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- Include information about serving a protected party who is registered with the Secretary of State's Safe at Home program and has a confidential address.

A commentator also noted that the form should state that there is no fee to file a request to modify or terminate the orders in form DV-130 to conform with the language in Family Code section 6222. Section 6222 provides that:

> There is no filing fee for an application, a responsive pleading, or an order to show cause that seeks to obtain, modify, or enforce a protective order or other order authorized by this division when the request for the other order is necessary to obtain or give effect to a protective order. There is no fee for a subpoena filed in connection with that application, responsive pleading, or order to show cause.

In response, the committee recommends that the form state there is no filing fee. The committee also recommends that the form reflect the language in rule 5.381, which provides that *after* the restraining order ends, the court may charge a fee to file a request to change the child custody, visitation, and support orders granted in form DV-130.

Request for Order **(form FL-300)**
The recommendation implements Family Code section 6380 by adding a new check box in the caption and a corresponding item on page 4 of this form for a party to request either a modification or termination of the DVPA order after hearing.

Of the 13 comments received about the form, no one opposed revising form FL-300 for use by a party asking to modify or terminate the orders in form DV-130. In response to the comments, the committee recommends:

- Not requiring a party to attach a copy of the court order on form DV-130;
- Changing the check box in the caption to "Domestic Violence Order";
- Including a notice box on page 4 of 4 that form FL-300 must not be used to ask for an initial domestic violence restraining order. The notice box will refer to form DV-505-INFO, *How Do I Ask For a Temporary Restraining Order?*; and
- Other substantive changes, as described further in the report.

Responsive Declaration to Request for Order **(form FL-320)**
The recommendation implements section 6380 by adding a specific item on page 2 for a party to check and indicate consent or opposition to the orders requested on form FL-300 to either modify or terminate the DVPA order. Of the seven comments received about this form, no one objected to revising the form as the committee proposed. The committee does recommend additional changes to the form as further described in the report.

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Comments about family law rules of court

Rules 5.12. Discovery motions
Rule 5.62. Appearance by respondent or defendant
Rule 5.63. Motion to quash proceeding or responsive relief
The proposal recommended updating these rules to replace references to a "notice of motion" with "request for order." As to these rules, one commentator noted that the term "request for order" is not used in the Code of Civil Procedure. To avoid confusion when looking at the Code of Civil Procedure, the commentator suggested that each rule include a section to clarify that the terms "request for order" and "motion" are synonymous. In response, the committee recommends changing the rules to include a new opening paragraph: (a) Use of terms. In a family law proceeding, the term "request for order" has the same meaning as the terms "motion" or "notice of motion" when they are used in the Code of Civil Procedure. In addition, the proposal recommended deleting the reference to the term "defendant," since it is no longer used in family law proceedings.

Rule 5.92. Request for court order; response
The committee proposed technical and substantive amendments to rule 5.92 to provide better guidance to court users and increase court efficiencies relating to the filing of a *Request for Order* (form FL-300). In response to the four comments received on this rule, the committee recommends amending the rule to:

- Clarify that a "request for orders" is synonymous with a "motion" or "notice of motion";
- Better clarify the forms needed when a party seeks support orders, orders about the parties' finances, or attorney's fees and costs;
- Clarify that a responding party must file a separate form FL-300 if seeking unrelated relief; and
- Add a reference to information sheets (forms FL-300-INFO and FL-320-INFO).

Rule 5.94. Order shortening time; other filing requirements
In addition to the amendments to the rule mandated by AB 1081 (previously described in the report), the committee recommends minor amendments based on the two comments made about the rule. The committee recommends reformatting the rule to improve reading comprehension and revising some of the language for greater clarity. For example, the rule will (1) state that the moving or responding papers are deemed timely filed if they are submitted "on or before the day the papers are due"; (2) include the revised title reference of form FL-305; and (3) to avoid confusion, the word "actual" will be deleted from the phrase "actual hearing date."

Rule 5.151. Request for emergency court orders; application; required documents
The committee proposed amending the rule to reference a proposed, new optional form titled *Declaration Regarding Notice and Delivery of Request for Temporary Emergency (Ex Parte) Orders* (form FL-303), and received no objection to the recommendation. Based on comments,

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the committee recommends revising the title of the rule to add "(ex parte)" and replacing the word "Delivery" in the title of form FL-303 with the word "Service."

The committee also received a comment from Commissioner Rebecca Wightman who suggested amending the rule to allow an alternative, standalone form for an ex parte emergency application (not just a "notice" declaration). She stated that creating this alternative will avoid the ethics and other issues raised in Formal Opinion No. 2014-004, issued January 16, 2014, by the California Supreme Court Committee on Judicial Ethics Opinions (CJEO).[8]

In response, the committee notes that the CJEO opinion relates to the review of motions when no notice has been given or waived. This proposal anticipates that courts will follow rule 5.151, which requires parties to provide notice or good cause for waiver.

The committee also considered developing a separate ex parte form. However, the committee is concerned that it is difficult for the court and the parties to have multiple filings on the same issue. It also seems that most parties have a difficult time separating out which issues of their child custody issue are an emergency versus other issues, and that declarations will commonly be confused. Instead of creating separate forms, if the court hears the matter on the basis of an order shortening time, an order can be issued and no further hearing need be set, if that is appropriate.

Comments about *Request for Order* (form FL-300) and related forms

Request for Order **(form FL-300)**
The committee received 13 comments with suggestions for improving this form. In response, the committee recommends significant revisions to the form as follows:

- **Reorganizing and reformatting the form** to (1) leave enough space after each item to indicate a summary of the orders requested rather than require the applicant to provide that information on a separate form or at the end of the form (2) add space to the form by moving the notice about child support to an information sheet, and (3) ensure that no item is continued on the next page.

- **Combining items 1 and 2 under item 2**—child custody and visitation (parenting time)—since each section shares information, including the names and ages of each child and the list of Judicial Council forms that can be attached to form FL-300 about child custody and visitation (parenting time). In addition, the committee recommends moving the information about violence restraining or protective orders from under item 2, so that it is the first item on the form.

[8] The opinion is at: *http://www.judicialethicsopinions.ca.gov/sites/default/files/CJEO_Formal_Opinion_2014-004.pdf).*

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- **Simplifying the language in the form** to improve the ability of the applicant to understand how to complete the form and what information must be included with each request. To this end, the committee recommends (1) adding preprinted boxes in item 1 on page 1 to identify the person being served as the petitioner, respondent, other parent/party, and/or another person to be specified; (2) including a short note at the top of page 2 with instructions about completing the form; (3) adding a blank space to allow a party to indicate the amount of attorney's fees and costs being requested; (4) retitling the item for "Order to Shorten Time" to "Time for Service/Time Until Hearing," and changing the item for "Other Relief" to "Other Orders Requested"; (5) including links to open the specific Judicial Council forms referenced throughout the form; and (6) referencing the actual title and number of the earnings assignment orders listed in the child support and spousal or domestic partner support items on page 3 of the form.

- **Deleting the "Property Restraint" request from the form**. Given that the proposed orders on the form are part of automatic restraining orders under Family Code section 2400, the committee believes that the item is not needed on the form as a basic request. Also, because these orders are not available to persons in a parentage action, having the item on the form is potentially confusing for those persons who are not filing in the context of a marriage or domestic partnership. The committee also believes that removing the item would not prejudice an applicant since he or she may specifically request property restraint orders in the item for "Other Orders Requested."

- **Deleting the OSC language from page 1 of the form.** The committee specifically asked if the order-to-show-cause language should be deleted from the court order section on page 1. No commentators disagreed with the revision: two specifically agreed, and two stated some concern about the court's ability to issue a bench warrant for nonappearance of the party should the language be deleted. In response, the committee continues to believe that (1) the revised notice to the other party on page 1—that the court can make the requested orders if the party does not appear—is sufficient, and clearer for litigants; and (2) removing the OSC language should not interfere with the court's ability to order a party to appear or issue a bench warrant.

In addition to the above changes, the committee recommends a change to the first line in the caption ("Attorney or party without an attorney"). The committee recommends reversing the subjects in the phrase so that it read as "Party without an attorney or attorney." This recommendation is made in response to the suggestions of Family Law Facilitators and Self-Help Centers around the state. They report that self-represented litigants often fail to fill in their name and address on the form. Essentially, a party without an attorney will frequently stop reading the first line of the form after encountering the word "Attorney." This becomes a great time consumer to court staff to return documents to the self-represented party and ask them to put their names and addresses in that space. The committee believes that by making a simple change, self-represented litigants will better understand that they are required to complete this part of the form. In turn, this will increase court efficiencies.

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The committee notes that one commentator in this cycle, and three commentators from the prior comment period, from the Superior Court of San Francisco County, suggested that the committee develop a standalone, optional form for a party to request ex parte/emergency orders that will enable the court to write in the date, time, and place of the ex parte hearing.

For this proposal, Commissioner Rebecca Wightman stated that the requirement that form FL-300 be used to submit an application for ex parte (emergency) orders is very confusing and, while the forms may work for many courts, they are very confusing for courts that give the parties a "date" for the submission/hearing of the ex parte request.

The committee considered developing a separate form for ex parte and regular motions. However, the committee noted that recommending a separate form would:

1. Require litigants to file two separate pleadings, incur additional filing fees, keep track of different service requirements, etc.;

2. Presume that litigants understand and could effectively distinguish between emergencies and other motions to file the correct forms; and

3. Presume that litigants could create declarations limited to the specific procedural relief they were requesting.

The committee did recommend modifying the *Temporary Emergency Court Orders* (form FL-305) to add a date for a hearing on remaining issues so that the moving party can serve a *Request for Order* (FL-300) with the date and time for an emergency hearing and the opposing party would then get the date for the continued hearing along with the temporary order.

Information Sheet for Request for Order **(form FL-300-INFO)**
Seven persons or organizations commented about the changes proposed to this form. They generally agreed with the proposed changes to the form, suggested new content, and proposed revisions to improve the information included in the form.

In response to comments, the committee recommends revising form FL-300-INFO to include (1) specifying in item 2 that an agreement has to be approved by the court and filed; (2) more details about how to complete item 1 on page 1, specifying that the parties might include other persons joined in the case, a local child support agency, or a lawyer who represents a child in the case; (3) a notice on page 3 about consulting with an attorney, Family Law Facilitator, or Self-Help Center for questions about serving a *Request for Order*; (4) presenting the information on page 4 about personal service and service by mail in a format that is easier to read; (5) stating that, after the hearing, a *Findings and Order After Hearing* (form FL-340) must be filed and served; and (6) other minor technical or formatting changes.

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Declaration Regarding Notice and Delivery of Request for Temporary Emergency (Ex Parte) Orders **(form FL-303)**

The committee received eight comments about form FL-303. The form generally garnered support from the commentators, and most suggested revisions to improve it. In response to the comments, the committee recommended revising the form by:

- Changing the term "delivery" to "service" throughout the form;
- Adding a check box in item 1 to cover situations in which a person who is not a party provides notice and completes this form;
- Indicating in item 2 that notice of the request must be given before filing the request;
- Adding a specific check box in item 2(a)(1) to show if notice was given to minor's counsel;
- Adding a fillable space in item 2 to provide the date, time, and place that notice was given to the other party; and
- Changing item 3(a) to state that an unfiled copy of the request was delivered.

A commentator stated that the form should be limited to providing information about notice and service. Therefore, items 5 and 6 on the form should be removed since they request information about other court cases and previous requests for the same orders. In response, the committee recommends removing items 5 and 6 so that the form includes only those matters covered by rule 5.151.

Another commentator was not sure whether the form is to be used when notice is given with a request for a domestic violence restraining order. In response, the committee recommends revising the notice box in the form to clearly state: "Do not use this form to ask for a domestic violence restraining order."

Temporary Emergency Court Orders **(form FL-305)**

Seven commentators generally supported the proposed revisions to this form and suggested changes to improve it. The commentators suggested the following substantive and technical changes to the form, which the committee includes in its recommendations to the Judicial Council:

- Revising the title to "Temporary Emergency <u>(Ex Parte)</u> ~~Court~~ Orders";
- Adding a preliminary statement that would establish the basis for granting the temporary emergency orders;
- Adding a separate column in the child custody item for a child's birth date;
- Adding a check box in cases in which parties have more than five minor children;
- Assigning each item a separate number (3)–(7), instead of listing them as subitems 2(a)–(e);
- Providing more fillable space in item 1to list name of party and his or her attorney; and
- Including a separate box for "Visitation (Parenting Time)" in the caption.

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Application and Order for Reissuance of Request for Order and Temporary Emergency Orders **(form FL-306)**
As previously noted, the committee recommends changes to this form that are required by AB 1081, including renaming the form *Request and Order to Continue Hearing Date and Extend Temporary Emergency (Ex Parte) Orders.*

Four commentators suggested formatting and technical changes to form FL-306. In response, the committee recommends switching the order of items 2 and 3, so that the court can quickly reference the date the orders were originally issued, the last scheduled hearing date, and the number of continuances. The committee also recommends simplifying the language in the court orders section and providing more blank space for the judicial officer to specify other orders.

Child Custody and Visitation (Parenting Time) Application Attachment **(form FL-311)**
The committee received seven comments requesting additional changes to this form. In response to a few comments, the committee recommends reformatting item 2e(4) to allow more fillable space, adding missing punctuation at the end of item 2a and 2d, and changing "parenting timeshare" to "parenting time" in the note under item 2.

Another commentator suggested revising item 4d to state "Pick-up or drop-off location to begin the visits *(address):*" and revising 4e to state "Pick-up or drop-off location at the end of the visits *(address):*." However, because these terms can cause confusion to some parties, the committee recommends not using "pick-up or drop-off." Instead, the committee recommends using "The exchange point at the end (or at the beginning) of the visit will be *(address):*" This change will make form FL-311 consistent with the language used in *Child Custody and Visitation (Parenting Time) Order Attachment* (form FL-341).

A commentator suggested revising item 13 to state, "If professional supervised visitation is requested, the party must file an *Income and Expense Declaration* (form FL-150)." The committee does not recommend revising the form as suggested. The change would require additional public comment and impact other rules and forms, which are not included in the proposal.

A commentator also suggested that item 2c is redundant and could be deleted. Item 2c states, "The parties will go to child custody mediation or child custody recommending counseling at *(specify location below):*." Since this language already appears on page 1 of form FL-300, the commentator stated that having the same language on form FL-311 could lead litigants to check this box without specifying any other requests. However, because form FL-311 is also an attachment to other Judicial Council forms, such as the *Petition—Marriage/Domestic Partnership* (form FL-100) and *Response—Marriage/Domestic Partnership* (form FL-120), on which the standard mediation language does not appear, the committee recommends that the language at item 2c remain on form FL-311.

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In response to a comment about the new check boxes in item 2e(1)–(3), the committee recommends reformatting each of them to clarify that a party should check "start of school" or "after school" only if these are applicable to their case and the children are in school. If the children are not in school, or if school is not in session at the time of the request for order, then it will be clear that the party only has to complete the starting and ending day of the week and the time for the visitation. Further, instead of making this section more complicated with an alternate schedule for when school is not in session, the committee prefers that a party provide that information in another part of the form or in an attachment for holidays and vacations.

Request for Child Abduction Prevention Orders **(form FL-312)**
Four commentators requested additional changes to this form. One commentator suggested correcting a typographical error in item 4d, which the committee recommends. Another commentator suggested a new check box for a litigant to request law enforcement assistance, if needed. However, without additional public comment, the committee cannot recommend this substantive change.

A commentator stated that item 4d needs to be revised to allow a complete answer. Specifically, the form should instruct a party to explain the other party's history of domestic violence, child abuse, not cooperating in parenting, or taking the child without the other party's permission. To provide clarity, the committee recommends revising the instructions at item 4d, rearranging the check boxes, and providing more fillable space for a party to explain any such history.

In response to another comment, the committee recommends revising item 9. This item requires a party to register the child abduction prevention orders in another state *before the children can travel to that state*. However, the item does not require a party to provide the court with proof of the registration before the children can travel to that state. The committee recommends this revision to item 9 to make it consistent with existing language in item 12, which requires a party to provide the court with proof that a party notified a foreign embassy or consulate about the court orders preventing child abduction.

Responsive Declaration to Request for Order **(form FL-320)**
Most of the comments received about this form relate to its reference to the *Income and Expense Declaration* (form FL-150). One commentator suggested deleting the word "current" before "Income and Expense Declaration (form FL-150)" in items 3–5. The Department of Child Support Services suggested revising the form to reflect that the department is not required to file an *Income and Expense Declaration* (form FL-150) when it files form FL-320. Another commentator suggested that the form be changed to avoid having a party file three separate income and expense declarations if he or she checks the boxes for child support, spousal or domestic partner support, and attorney's fees and costs. Finally, a commentator suggested moving the notice box at the bottom of page 2 (about domestic violence forms) to the top of page 1 and maximizing the amount of fillable space available for item 10.

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As to the first comment, the committee does not recommend deleting the word "current" because it reflects the requirements of rule 5.260 (General provisions regarding support cases). As to the other comments, the committee prefers:

- That the form remain directed to parties in the family law case and not be revised to indicate that DCSS is not required to file form FL-150. There are a number of procedures that are different with respect to DCSS. The committee does not want to highlight this particular matter either on this form or on form FL-320-INFO.

- To recommend revising forms FL-300-INFO and FL-320-INFO to include a note that one form FL-150 may be filed to respond to requests for support or attorney's fees and costs.

- To remove the information in the notice box about domestic violence forms to the new information sheet and provide a reference and a link to form FL-320 at the top of the first page.

In addition to the above changes suggested by commentators, the committee recommends reformatting this form so that it maintains its consistency with the *Request for Order* (form FL-300). This includes changing the caption so that it reads "Party without Attorney or Attorney" for the reasons stated under comments about *Request for Order* (form FL-300).

Information Sheet: Responsive Declaration to Request for Order **(form FL-320-INFO)**
In response to five comments, the committee recommends various substantive, technical, and formatting changes to this form. The recommended changes include:

- Stating in item 1 that a responding party may seek to continue the hearing date if he or she needs more time to prepare form FL-320;
- Revising item 2 on page 1 to state that the court "may" (instead of "will") make orders if the responding party does not file form FL-320;
- Simplifying the text in items 2 and 3 on page 1 to better describe when the form should and should not be used;
- Reworking the text in item 7 to add the deadline for filing the responsive papers with the court and clarifying that the party should make two copies of the paperwork to take to the court clerk;
- Reformatting item 9 to make the text easier to read and adding that service by mail should be on the party's attorney if he or she has one;
- At item 10, correcting the form to state that the time for service of form FL-320 on the other party is nine court days;[9]

[9] Code Civ. Proc., § 1005(b) provides, in pertinent part, that all papers opposing a motion so noticed shall be filed with the court and a copy served on each party at least nine court days, and all reply papers at least five court days before the hearing. The court, or a judge thereof, may prescribe a shorter time.

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- Adding new text to provide references to information about child custody mediation and child custody recommending counseling appointments; and
- Making other, minor technical and formatting changes to correct the form's numbering and improve its readability.

Order to Pay Waived Court Fees and Costs (Superior Court) **(form FL-336)**
Two commentators requested changes to this form. One commentator stated a concern that a person who files form FL-300 and form FL-337 will be dissuaded from requesting a set-aside of the order if there is a filing fee attached to the filing. Therefore, the commentator suggested changing the form to state that there is no fee to request a hearing. In response, the committee notes that Government Code section 68637(d), which establishes the procedure for the payment of previously waived court fees, provides that a support obligor who is ordered to pay previously waived fees shall be given notice and an opportunity for a hearing. The statute does not provide that the fees for the hearing shall be waived. Because the issue of fees for these hearings is not within the purview of the Judicial Council, any change to the statute requires a change to the Government Code.

The other commentator suggested removing the filing party/attorney box, since courts complete this form. In addition, the commentator was unsure why the notice box was included on page 2 and believed that the section may not be needed. In response, the committee notes that form FL-336 was adopted, effective July 1, 2009. The notice box on page 2 of the form provides information about procedures to help courts comply with the requirements of Government Code section 68637(d). [10]

Application to Set Aside Order to Pay Waived Court Fees—Attachment (Family Law) **(form FL-337)**
No commentators proposed additional substantive changes to this form. Therefore, the committee recommends only minor changes to the notice box to reference *Request for Order* (form FL-300) and add "Other Parent/Party" to the caption and to item 1.

Child Custody and Visitation (Parenting Time) Order Attachment **(form FL-341)**
Five commentators suggested changes to this form.

Two commentators suggested adding a specific reference for *Judgment* (form FL-250) because this form is often attached to parentage judgments. One commentator also suggested deleting item 7e(2), "Alternate weekends starting (date)," because these types of orders are difficult to enforce due to the analysis needed to determine which weekend the minor child is with a parent. In response, the committee recommends adding a new check box for *Judgment* (form FL-250). As to the second suggestion, the committee is not able to recommend the deletion without additional public input.

[10] The report is found at: *http://www.courts.ca.gov/partners/documents/fwjcrep.pdf*.

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Another commentator suggested reformatting items 7e(4), as well as items 12, 13, and 14 (now items 11, 12, 13). As to item 7, the commentator suggested reformatting changes to provide more space to write other orders in this space. As to the other items, the suggestion was also to reduce the blank space provided since attachments are more likely to be used, and reserve the additional blank space for the final item "Other orders." The committee recommends these changes.

Finally, a commentator requested that this form include a new item relating to access to a child's records under Family Code section 3025. The statute provides that a noncustodial parent cannot be denied access to a child's records or information, including medical, dental, and school records. This language is currently on form FL-341(D) but, as the commentator noted, it applies to all child custody orders. In response, the committee recommends revising the form to include a new item, which would provide that both the custodial and noncustodial parent have the right to access records and information about their minor children (including medical, dental, and school records). The language is a restatement of the statute, but will help avoid any misunderstanding by schools or medical facilities when a parent shows them a copy of the order.

In addition to the above changes, the committee recommends deleting item 8 as a technical change to the form. Item 8 is a check box for the court to use to acknowledge the existence of a criminal protective order involving the same parties, and to provide that the criminal orders have priority of enforcement. This language was statutorily required on the form until AB 176 (Stats. 2013, ch. 263) deleted this language from the Family and Penal Codes. Deleting the item from the form will make the form consistent with current law.

Child Abduction Prevention Order Attachment **(form FL-341(B))**
The committee received two comments about this form. One commentator stated that it is a good idea to adapt this form for use as a juvenile court child custody order. The other commentator noted that item 8 does not give directions about where and to whom the children's passports and other vital documents should be turned in. The commentator also suggested adding "This is a Court Order" at the bottom of the form. The committee recommends revising the form as suggested by the commentator.

Children's Holiday Schedule Attachment **(form FL-341(C))**
Two commentators suggested additional changes to this form. One commentator suggested adding "This is a Court Order" at the bottom of the form. The committee does not recommend this change because the form is not used exclusively as an attachment to a court order. As noted at the top of the form, it may also be attached to a *Petition*, a *Response*, or a *Request for Order*.

The other commentator stated that it is a good idea to adapt this form for use as a juvenile court child custody order, but thought it would be problematic to add the new item about resolving conflicts. The committee recommends maintaining the new items on the form to allow the parties to consider examples of how they can resolve disagreements about holidays.

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The commentator then suggested changing the form's title to "Child's Exception to Parenting Time Schedule and Attachment." In response, the committee does not recommend changing the title of the form. The committee believes that the current title clearly and more succinctly summarizes the form's purpose.

Additional Provisions—Physical Custody Attachment **(form FL-341(D))**
The committee received five comments about this form. Most favored the proposed revisions and one commentator objected to the form.

A comment from a domestic violence advocacy group recommended expanding the language following item 1b to also state that a party does not have to disclose their residence, work, or other contact information if they have a domestic violence restraining order against the other party that includes a "No Contact" order or if the person is residing in a confidential location. Without additional public comment on the proposed substantive change, the committee is not able to recommend this change during this cycle.

In response to a commentator's suggestions about item 6, "Phone contact between parties and children," the committee recommends revising item 6b to include that the custodial parent must make the child available for the scheduled telephone contact. The committee also recommends revising item 6c to include that no party or third party may interfere with the calls.

Another commentator disapproved of the form in its entirety. The commentator stated that many of the optional orders contained on this form, such as paragraphs 7–16, are orders that are not authorized by the Family Code and may be unconstitutionally broad as an intrusion on parental decisionmaking, since there is a presumption that fit parents act in their children's best interests. Having these orders in a court order form, however, suggests that such orders are otherwise appropriate. The commentator suggested that if they are included in the form, they should only be in an agreement form—not an order form—with a provision that such agreements are not subject to law enforcement or contempt proceedings but could be the basis for a request for further orders if violation of such agreement was found to be evidence of parental unfitness.

The committee does not believe that the form imposes any restrictions on a parent's right to act in the best interests the child, and continues to support optional form FL-341(D) for the reasons specified in its report to the Judicial Council dated August 15, 2003.[11] Before January 1, 2004, forms FL-311 and FL-341—the only forms relating to child custody and visitation orders—did do not address matters such as holidays, summer vacation, and similar issues that are also of concern to parents. The committee recommended form FL-341(D) "to address common issues in custody and visitation orders, to help provide more standard forms for litigants to use, to allow more specificity in agreements and orders, and to allow better enforcement of these orders." Further, the committee designed the forms out of concern that many unrepresented litigants have

[11] Judicial Council of Cal., Family and Juvenile Law Advisory Com. Rep., *Family Law: Child Custody and Visitation Orders* (Aug. 15, 2003).

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difficulty getting guidance on how to construct an enforceable child custody order. The committee anticipated that, "These forms will assist many litigants and ultimately save time for family court services offices."

Commentators from family court services, court facilitators, and domestic violence advocacy groups continue to support use of the form and have submitted suggestions for improving it during this current and two previous comment periods (SPR13 and W14).

Joint Legal Custody Attachment **(form FL-341(E)**
Five commentators suggested changes to this form. Three commentators stated that this proposal contains a significant change in the language concerning joint legal custody and were concerned with the form stating that the consent of the other party was needed for any of the issues itemized in the form. Of these commentators, one asked whether an order for "joint legal custody" means that a parent can act alone except as to the checked boxes on the form.

In response to the three commentators, the committee notes that the form reflects the provision of Family Code section 3083 without any significant change. The recommended revisions to the form are meant to clarify the form's original purpose. The Judicial Council approved *Joint Legal Custody Attachment* (form FL-341(E)), effective January 1, 2004, to allow the court to specify the circumstances under which the *consent* of both parents is required to be obtained in order for them to exercise legal control of the child and the consequences of the failure to obtain mutual consent as required by Family Code section 3083.

Family Code section 3083 requires that:

> In making an order of joint legal custody, the court shall specify the circumstances under which the consent of both parents is required to be obtained in order to exercise legal control of the child and the consequences of the failure to obtain mutual consent. In all other circumstances, either parent acting alone may exercise legal control of the child.
>
> An order of joint legal custody shall not be construed to permit an action that is inconsistent with the physical custody order unless the action is expressly authorized by the court.

To correct a misunderstanding in the legal community about the meaning of "joint legal custody"—that it means neither party can act alone in making major decisions about a child—the committee added a notice under the caption to specify that, in exercising joint legal custody, the parties may act alone as long as the action does not conflict with any orders about physical custody of the children. In addition, the notice explains the proper use of this optional form. It is used only if a party wants the court to specify when the consent of both parties is required to exercise legal control of the children. The form also conforms to the code by noting that an order under section 3083 must include the consequences for failing to obtain mutual consent.

Because the form reflects the requirements of Family Code section 3083, it does not tread on parents' constitutional rights.

In response to other comments, the committee recommends removing the check box before item 4b to reflect that the provision about access to a child's records and information is a standard family law order mandated by Family Code section 3025. In addition, the committee recommends revising item 4b to state: "Both the custodial and noncustodial parent have the right to access records and information about their minor children (including medical, dental, and school records) and consult with professionals who are providing services to the children."

Alternatives considered

Amend rules and revise forms effective January 1, 2016 or July 1, 2016
The committee considered recommending an effective date of January 1, 2016, for the rules and forms in the report. However, it was concerned that courts and court users might require more than two months to review, and fully implement, the new and revised rules and forms.

Courts, for example, may determine that they have to modify their local rules to be consistent with the family law rules of court. Adopting these rules and forms effective January 1, 2016, might not provide sufficient time for the process of modifying the local rules, circulating them for comment, and reviewing and redrafting them based on comments. Attorneys, litigants, and legal publication companies might also be pressed to make changes if the changes to the rules and forms were adopted by the Judicial Council in October 2016 for an effective date of January 1, 2016.

While the committee believes it is important to implement the changes recommended in the report in a timely manner, the committee prefers that all persons and organizations affected by the changes have more time to fully understand and comply with the rules. For this reason, the task force and committee rejected this option and recommended that the rules take effect on July 1, 2016. This provides the public with 8 months' notice before the changes take effect.

Implementation Requirements, Costs, and Operational Impacts

The committee anticipates that this proposal will result in some costs incurred by the courts to revise forms, train court staff about the changes to the rules and forms included in this proposal, and possibly to revise local court rules and forms so they are consistent with the changes adopted by the Judicial Council. However, the committee expects that the changes will save resources for the courts in the long term by clarifying and simplifying procedures.

Relevant Strategic Plan Goals and Operational Plan Objectives

The rules and forms in the report support the policies underlying Goal I, Access, Fairness, and Diversity, because they help remove barriers to the courts for all parties, especially self-

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represented litigants. The new and revised information sheets (forms DV-400-INFO, FL-300-INFO, and FL-320-INFO) will give self-represented litigants better access to the courts by providing information on completing their forms and finding resources to assist them with their family law case. The information sheets will also help the courts because they will reduce the number of filings that court clerks have to handle multiple times because litigants have not completed their forms correctly. The simplified language and formatting of the *Request for Order* (form FL-300) will help parties better understand how to accurately complete the form and decrease the chance that they will have to complete the form multiple times.

These recommendations also serve Goal III: Modernization of Management and Administration, especially item B, by adopting streamlined practices for recording the termination of restraining orders issued on *Restraining Order After Hearing* (form DV-130) through the new form, *Findings and Order to Terminate Restraining Order After Hearing* (form DV-400). In addition, the amendment to rule 5.92 will allow court clerks, instead of judicial officers, to issue a *Request for Order* (form FL-300) as a ministerial act in limited circumstances. This can positively affect the time required to process these filings when the court, for example, only needs to issue an order on form FL-300 for the parties to attend orientation and confidential mediation or for child custody recommending counseling.

Finally, these recommendations serve Goal IV: Quality of Justice and Service to the Public, by implementing court procedures and processes that are fair and understandable.

Attachments

1. Rule 5.12, 5.62, 5.63, 5.92, 5.94, 5.151, at pages 30–39
2. Forms DV-115, DV-115-INFO, DV-116, DV-130, DV-200, DV-200-INFO, and DV-400, DV-400-INFO, and DV-505-INFO, at pages 40–62
3. Forms FL-300, FL-300-INFO, FL-303, FL-305, FL-306, at pages 63–75
4. Forms FL-311, FL-312, FL-320, FL-320-INFO, FL-336, FL-337, at pages 76–87
5. Forms FL-341, FL-341(B), FL-341(C), FL-341(D), FL-341(E), at pages 88–97
6. Chart of comments, at pages 98–213
7. Attachment A: Chart of comments on proposal SPR13-22 (78 pages)
8. Attachment B: Chart of comments on proposal SPR14-12 (97 pages)

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Rules 5.12, 5.62, 5.63, 5.92, 5.94, and 5.151 of the California Rules of Court are amended, effective July 1, 2016, to read:

Rule 5.12. ~~Discovery motions~~ Request for order regarding discovery

(a) Use of terms

In a family law proceeding, the term "request for order" has the same meaning as the terms "motion" or "notice of motion" when they are used in the Code of Civil Procedure.

(b) ~~(a)~~ Applicable law

A request for order regarding discovery in family court ~~Family law discovery motions are~~ is subject to the provisions ~~of~~ for discovery motions under Code of Civil Procedure sections 2016.010 through 2036.050 and Family Code sections 2100 ~~et seq.~~ through 2113 regarding disclosure of assets and liabilities.

(c) ~~(b)~~ Applicable rules

Discovery proceedings brought in a case under the Family Code must comply with applicable civil rules for motions, including:

(1)–(5) * * *

Rule 5.62. Appearance by respondent ~~or defendant~~

(a) Use of terms

In a family law proceeding, the term "request for order" has the same meaning as the terms "motion" or "notice of motion" when they are used in the Code of Civil Procedure.

(b) ~~(a)~~ Appearance

Except as provided in Code of Civil Procedure sections 418.10 and Family Code sections 2012 and 3409, a respondent ~~or defendant~~ is deemed to have ~~appeared~~ made a general appearance in a proceeding when he or she files:

(1) A response, or answer;

(2) A ~~notice of motion~~ request for order to strike, under section 435 of the Code of Civil Procedure;

(3) A ~~notice of motion~~ request for order to transfer the proceeding under section 395 of the Code of Civil Procedure; or

(4) A written notice of his or her appearance.

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(c) ~~(b)~~ Notice required after appearance

After appearance, the respondent ~~or defendant~~ or his or her attorney is entitled to notice of all subsequent proceedings of which notice is required to be given by these rules or in civil actions generally.

(d) ~~(c)~~ No notice required

Where a respondent ~~or defendant~~ has not appeared, notice of subsequent proceedings need not be given to the respondent ~~or defendant~~ except as provided in these rules.

Rule 5.63. ~~Motion~~ Request for order to quash proceeding or responsive relief

(a) Use of terms

In a family law proceeding, the term "request for order" has the same meaning as the terms "motion" or "notice of motion" when they are used in the Code of Civil Procedure.

(b) ~~(a)~~ * * *

(c) ~~(b)~~ Service of respondent's ~~motion~~ request for order to quash

The ~~motion~~ request for order to quash must be served in compliance with Code of Civil Procedure section 1005(b). If the respondent files a ~~notice of motion~~ request for order to quash, no default may be entered, and the time to file a response will be extended until 15 days after service of the court's order denying the ~~motion~~ request for order to quash.

(d) ~~(c)~~ * * *

(e) ~~(d)~~ Waiver

The parties are deemed to have waived the grounds set forth in (a) if they do not file a ~~motion~~ request for order to quash within the time frame set forth.

(f) ~~(e)~~ Relief

When a ~~motion~~ request for order to quash is granted, the court may grant leave to amend the petition or response and set a date for filing the amended pleadings. The court may also dismiss the action without leave to amend. The action may also be dismissed if the ~~motion~~ request for order has been sustained with leave to amend and the amendment is not made within the time permitted by the court.

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Rule 5.92. Request for court order; ~~response~~ responsive declaration

~~**(a)–(d)**~~

(a) Application

(1) In a family law proceeding under the Family Code:

(A) The term "request for order" has the same meaning as the terms "motion" or "notice of motion" when they are used in the Code of Civil Procedure;

(B) A *Request for Order* (form FL-300) must be used to ask for court orders, unless another Judicial Council form has been adopted or approved for the specific request; and

(C) A *Responsive Declaration to Request for Order* (form FL-320) must be used to respond to the orders sought in form FL-300, unless another Judicial Council form has been adopted or approved for the specific purpose.

(2) In an action under the Domestic Violence Prevention Act, a *Request for Order* (form FL-300) must be used to request a modification or termination of all orders made after a hearing on *Restraining Order After Hearing* (form DV-130).

(3) In a local child support action under the Family Code, any party other than the local child support agency must use *Request for Order* (form FL-300) to ask for court orders.

(b) Request for order; required forms and filing procedure

(1) The *Request for Order* (form FL-300) must set forth facts sufficient to notify the other party of the moving party's contentions in support of the relief requested.

(2) When a party seeks orders for spousal or domestic partner support, attorney's fees and costs, or other orders relating to the parties' property or finances:

(A) The party must complete an *Income and Expense Declaration* (form FL-150) and file it with the *Request for Order* (form FL-300); and

(B) The *Income and Expense Declaration* (form FL-150) must be current, as described in rule 5.260 and include the documents specified in form FL-150 that demonstrate the party's income.

(3) When seeking child support orders:

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(A) A party must complete an *Income and Expense Declaration* (form FL-150) and file it with the *Request for Order* (form FL-300);

(B) The *Income and Expense Declaration* (form FL-150) must be current, as described in rule 5.260 and include the documents specified in the form that demonstrate the party's income; and

(C) A party may complete a current *Financial Statement (Simplified)* (form FL-155) instead of a current *Income and Expense Declaration* (form FL-150) only if the party meets the requirements listed in form FL-155.

(4) The moving party may be required to complete, file, and have additional forms or attachments served along with a *Request for Order* (form FL-300) when seeking court orders for child custody and visitation (parenting time), attorney's fees and costs, support, and other financial matters. For more information, see *Information Sheet for Request for Order* (form FL-300-INFO).

(5) The moving party must file the documents with the court clerk to obtain a court date and then have a filed copy served on all parties in the case within the timelines required by law.

(6) No memorandum of points and authorities need be filed with a *Request for Order* (form FL-300) unless required by the court on a case-by-case basis.

(c) Request for temporary emergency (ex parte) orders

If the moving party seeks temporary emergency orders pending the hearing, the moving party must:

(1) Comply with rules 5.151 through 5.169 of the California Rules of Court;

(2) Complete and include a proposed *Temporary Emergency (Ex Parte) Orders* (form FL-305) with the *Request for Order* (form FL-300); and

(3) Comply with specified local court procedures and/or local court rules about reserving the day for the temporary emergency hearing, submitting the paperwork to the court, and use of local forms.

(d) Request for order shortening time (for service or time until the hearing)

If the moving party seeks an order for a shorter time to serve documents or a shorter time until the hearing:

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(1) The moving party must submit the request as a temporary emergency order on form FL-300 and comply with the requirements of rules 5.151 through 5.169 of the California Rules of Court; and

(2) The moving party's request must be supported by a declaration or a statement of facts showing good cause for the court to prescribe shorter times for the filing and service of the *Request for Order* (form FL-300) than the times specified in Code of Civil Procedure section 1005.

(3) The court may issue the order shortening time in the "Court Orders" section of the *Request for Order* (form FL-300).

(e) Issuance by court clerk

The court clerk's authority to issue a *Request for Order* (form FL-300) as a ministerial act is limited to those orders or notices:

(1) For the parties to attend orientation and confidential mediation or child custody recommending counseling; and

(2) That may be delegated by a judicial officer and do not require the use of judicial discretion.

(f) Request for order; service requirements

(1) The *Request for Order* (form FL-300) and appropriate documents or orders must be served in the manner specified for the service of a summons in Code of Civil Procedure sections 415.10 through 415.95, including personal service, if:

(A) The court granted temporary emergency orders pending the hearing;

(B) The responding party has not yet appeared in the case as described in rule 5.62; or

(C) The court ordered personal service on the other party.

(2) A *Request for Order* (form FL-300) must be served as specified in Family Code section 215 if filed after entry of a family law judgment or after a permanent order was made in any proceeding in which there was at issue the custody, visitation (parenting time), or support of a child.

(A) Requests to change a judgment or permanent order for custody, visitation (parenting time), or support of a child may be served by mail on the other party or parties only if the moving party can verify the other parties' current address.

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(B) *Declaration Regarding Address Verification* (form FL-334) may be used as the address verification required by Family Code section 215. The completed form, or a declaration that includes the same information, must be filed with the proof of service of the *Request for Order*.

(3) All other requests for orders and appropriate documents may be served as specified in Code of Civil Procedure section 1010 et seq., including service by mail.

(4) The following blank forms must be served with a *Request for Order* (form FL-300):

(A) *Responsive Declaration to Request for Order* (form FL-320); and

(B) *Income and Expense Declaration* (form FL-150), when the requesting party is serving a competed FL-150 or FL-155.

(g) Responsive declaration to request for order; procedures

To respond to the issues raised in the *Request for Order* (form FL-300) and accompanying papers, the responding party must complete, file, and have a *Responsive Declaration to Request for Order* (form FL-320) served on all parties in the case.

(1) The *Responsive Declaration to Request for Order* (form FL-320) must set forth facts sufficient to notify the other party of the declarant's contentions in response to the request for order and in support of any relief requested.

(2) The responding party may request relief related to the orders requested in the moving papers. However, unrelated relief must be sought by scheduling a separate hearing using *Request for Order* (form FL-300) and following the filing and service requirements for a *Request for Order* described in this rule.

(3) A completed *Income and Expense Declaration* (form FL-150) must be filed with the *Responsive Declaration to Request for Order* (form FL-320) following the same requirements specified above in rule 5.92(b)(2) and (b)(3).

(4) The responding party may be required to complete, file, and serve additional forms or attachments along with a *Responsive Declaration to Request for Order* (form FL-320) when responding to a *Request for Order* (form FL-300) about child custody and visitation (parenting time), attorney fees and costs, support, and other financial matters. For more information, read *Information Sheet: Responsive Declaration to Request for Order* (form FL-320-INFO).

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(5) No memorandum of points and authorities need be filed with a *Responsive Declaration to Request for Order* (form FL-320) unless required by the court on a case-by-case basis.

(6) A *Responsive Declaration to Request for Order* (form FL-320) may be served on the parties by mail, unless otherwise required by court order.

Advisory Committee Comment

The Family and Juvenile Law Advisory Committee and the Elkins Implementation Task Force developed rule 5.92 and *Request for Order* (form FL-300) in response to *Elkins Family Law Task Force: Final Report and Recommendations (April 2010)* for one comprehensive form and related procedures to replace the *Order to Show Cause* (form FL-300) and *Notice of Motion* (form FL-301). (See page 35 of the final report online at *www.courts.ca.gov/elkins-finalreport.pdf*.)

Rule 5.94. Order shortening time; other filing requirements; request to continue hearing date and extend temporary emergency (ex parte) orders

(a) Order shortening time

* * *

(b) Time for filing proof of service

* * *

(c) ~~(d)~~ Filing of late papers

No moving or responding papers relating to a request for order may be rejected for filing on the ground that ~~it was~~ they were untimely submitted for filing. If the court, in its discretion, refuses to consider a late filed paper, the minutes or order must so indicate.

(d) ~~(e) Computation of~~ Timely submission to court clerk

Moving or responding papers are deemed timely filed if they are submitted: ~~before the close of the clerk's office to the public on the day that the paper is due is deemed timely filed.~~

(1) Before the close of the court clerk's office to the public; and

(2) On or before the day the papers are due.

(e) ~~(c)~~ Failure to timely serve ~~moving papers~~ request for order and temporary emergency (ex parte) orders

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~~If a *Request for Order* (FL-300) is not timely served on the opposing party, the moving party must notify the court as soon as possible before the date assigned for the court hearing and request a new hearing date to allow additional time to serve the *Request for Order* (FL-300) and supporting documents.~~

~~The moving party must also request that the court reissue the *Request for Order* (FL-300) and any temporary orders. To do so, the moving party must complete and submit to the court an *Application and Order for Reissuance of Request for Order* (form FL-306).~~

The *Request for Order* (form FL-300) and *Temporary Emergency (Ex Parte) Orders* (form FL-305) will expire on the date and time of the scheduled hearing if the moving party fails to:

(1) Have the other party timely served before the hearing with the *Request for Order* (form FL-300), supporting documents, and any orders issued on *Temporary Emergency (Ex Parte) Orders* (form FL-305); or

(2) Obtain a court order to continue the hearing and extend the expiration date of the temporary emergency (ex parte) orders until the end of the continued hearing.

(f) Procedures to request continued hearing date and extension of temporary emergency (ex parte) orders

(1) If a *Request for Order* (form FL-300) that includes temporary emergency orders is not timely served on the other party before the date of the hearing, and the moving party wishes to proceed with the request, the moving party must ask the court to continue the hearing date and extend the expiration date of the temporary emergency orders so that they remain in effect until the end of the new hearing.

(2) The following procedures apply to the request:

(A) The moving party must complete and submit an original *Request and Order to Continue Hearing Date and Extend Temporary Emergency (Ex Parte) Orders* (form FL-306) with two copies for the court to review.

(i) The form should be submitted to the court no later than five court days before the hearing date originally set on the *Request for Order*.

(ii) The moving party may present the application to the court at the hearing of the *Request for Order*.

(iii) A moving party who makes an oral request to the court on the date of the hearing is also required to complete and submit form FL-306 if the court grants the request.

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(B) A moving party who requests that the court modify the temporary restraining orders must include a copy of a proposed modified order with form FL-306 and specify the reasons why the court should grant the request;

(C) After the court signs and files form FL-306, a filed copy must be attached as the cover page of the filed *Request for Order* (form FL-300), the original or modified temporary emergency orders, and supporting documents.

(D) The other party must be served with a copy of the filed *Request and Order to Continue Hearing Date and Extend Temporary Emergency (Ex Parte) Orders* (form FL-306), the filed *Request for Order* (form FL-300), original or modified temporary emergency orders, and supporting documents in the manner required under rule 5.92 or as ordered by the court.

(E) If the *Request and Order to Continue Hearing Date and Extend Temporary Emergency (Ex Parte) Orders* (form FL-306), *Request for Order* (FL-300), the original or modified temporary emergency orders, and supporting documents are not timely served on the other party, and the moving party wishes to proceed with the hearing, he or she must repeat the procedures in this rule.

Rule 5.151. Request for temporary emergency (ex parte) orders; application; required documents

(a)–(b) * * *

(c) Required documents

A request for emergency orders must be in writing and must include all of the following completed documents ~~when relevant to the relief requested~~:

(1) *Request for Order* (form FL-300) that identifies the relief requested~~;~~.

(2) When relevant to the relief requested, a current *Income and Expense Declaration* (form FL-150) or *Financial Statement (Simplified)* (form FL-155) and *Property Declaration* (form FL-160)~~;~~.

(3) *Temporary Emergency (Ex Parte) Orders* (form FL-305) to serve as the proposed temporary order~~;~~.

(4) A written declaration regarding notice of application for emergency orders based on personal knowledge ~~and;~~. *Declaration Regarding Notice and Service of Request for Temporary Emergency (Ex Parte) Orders* (form FL-303), a local court form, or a declaration that contains the information as form FL-303 may be used for this purpose.

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(5) * * *

(d)–(e) * * *

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DV-115 Request to Continue Hearing Date and Extend Temporary Restraining Order

Clerk stamps date here when form is filed.

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NOT APPROVED BY THE JUDICIAL COUNCIL

Use this form to change the hearing date listed on form DV-109, *Notice of Court Hearing*. *(Read* DV-115-INFO, How to Ask for a New Hearing Date *for more information).*

1 Name of Person Asking for Protection:

_____

Your lawyer in this case *(if you have one):*

Name: _____ State Bar No.: _____

Firm Name: _____

Address *(If you have a lawyer for this case, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, give a different mailing address instead. You do not have to give your telephone, fax, or e-mail.):*

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

E-Mail Address: _____

Fill in court name and street address:

Superior Court of California, County of

Fills in case number:

Case Number:

2 Name of Person to Be Restrained:

_____

Mailing Address *(if known):* _____

City: _____ State: _____ Zip: _____

3 Request to Continue Hearing Date and Extend Temporary Restraining Order

a. The hearing date is *(date):*

b. The *Notice of Court Hearing* (form DV-109) and any temporary restraining orders have been extended *(specify number):* _____ times.

c. I ask the judge to continue the *Notice of Court Hearing* (form DV-109) and extend the expiration date of any temporary restraining orders granted on *Temporary Restraining Order* (form DV-110) because:

1. ☐ I could not get the papers served before the hearing date.
2. ☐ Other *(specify):* _____

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

_____
Type or print your name

▶ _____
Sign your name

Date: _____

_____
Lawyer's name, if you have one

▶ _____
Lawyer's signature

This is not a Court Order.

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DV-115-INFO How to Ask for a New Hearing Date

You may need to ask for a new hearing date

If you are unable to have form DV-109 *(Notice of Court Hearing)* and other papers served in time before the hearing date, use form DV-115, *Request to Continue Hearing Date and Extend Temporary Restraining Order.*

What does form DV-115 do?

On form DV-115 you ask the judge to "continue" the hearing and "extend" any temporary restraining orders on form DV-110, *Temporary Restraining Order.*

- "Continue" the hearing means to give you a new hearing date.
- "Extend" means to keep any temporary orders in effect until the new hearing date.

Follow these steps:

- Fill out all of form DV-115.
- Fill out items ① and ② on form DV-116, *Order to Continue Hearing Date and Extend Temporary Restraining Order.*
- The judge will need to review your papers. In some courts, you must give your papers to the clerk. Ask the court clerk for information on how you ask the judge to review your papers.
- If the judge signs form DV-116, the court will give you a new hearing date.
- File both forms with the clerk. The clerk will make up to three file-stamped copies for you. Keep at least one copy to bring to court on the hearing date.
- Have a copy of all court papers served personally on the person to be restrained by the time listed in item ⑥ on form DV-116.
- Now the temporary orders, if any, will last until the new hearing date.
- Ask the person who serves the papers to complete form DV-200, *Proof of Personal Service*, and give it to you. Make two copies and bring them all to court on the hearing date.
- The clerk will send the restraining order to law enforcement or CLETS for you. CLETS is a statewide computer system that lets police know about the order.

Bring a copy of all of your papers and the original form DV-200, *Proof of Personal Service*, to the court hearing.

Need help?

Ask the court clerk about free or low-cost legal help.

For a referral to a local domestic violence or legal assistance program, call the National Domestic Violence Hotline:

1-800-799-7233
TDD: 1-800-787-3224

It's free and private.

They can help you in more than 100 languages.

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DV-116 Order to Continue Hearing Date and Extend Temporary Restraining Order

Clerk stamps date here when form is filed.

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NOT APPROVED BY THE JUDICIAL COUNCIL

1 Name of Person Asking for Protection: _____

Your lawyer in this case *(if you have one):* _____
Name: _____ State Bar No.: _____
Firm Name: _____
Address *(If you have a lawyer for this case, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, give a different mailing address instead. You do not have to give your 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

2 Name of Person to Be Restrained:

_____

Fills in case number:

Case Number:

(Court will fill out all sections below.)

3 Reason for New Hearing Date

The hearing currently scheduled for *(date):* _____ is reset to the date in 4 below because:

a. ☐ The person in 2 was not served before the current hearing date.
b. ☐ The parties were referred to Family Court Services.
c. ☐ The person in 2 asked for time to hire a lawyer or prepare a response.
d. ☐ Other *(specify):* _____

4 Order for Continuance and Notice of New Hearing

The *Notice of Court Hearing* (form DV-109) is reset for hearing as follows:

New Hearing Date →
Date: _____ Time: _____
Dept.: _____ Room: _____

Name and address of court if different from above:
_____
_____
_____

This is a Court Order.

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5 Temporary Restraining Order *(Extend and/or Continue)*

a. ☐ No temporary restraining orders were issued in this case.

b. ☐ The request to keep temporary restraining orders in effect until the new hearing date is:

(1) ☐ GRANTED. There are no changes to the Temporary Restraining Order except for the expiration date. Any orders listed on the *Temporary Restraining Order* (form DV-110), issued on *(date):*_____, remain in effect until the end of the hearing in 4.

(2) ☐ GRANTED AS MODIFIED. The Temporary Restraining Order is modified. See the attached modified order. Any orders on the attached form remain in effect until the end of the hearing in 4.

c. ☐ The request to keep temporary restraining orders in effect is **DENIED** until the hearing.
Reason for denial: _____

Warning and Notice to the Person in 2

If 5 b is checked, you must continue to obey the Temporary Restraining Order until it expires at the end of the hearing scheduled in 4.

6 Service of Order

a. ☐ No further service of this Order is required because both parties were present at the hearing when the new hearing date was ordered.

b. ☐ A copy of this Order must be served on the person in 2 at least____ days before the hearing, along with all other forms that were filed with the court requesting domestic violence restraining orders and a hearing date. All forms must be personally served unless otherwise specified in 6 c. If item 5 b is checked, a copy of the Temporary Restraining Order **must** also be served. If item 5 c is checked, a copy of the Temporary Restraining Order must **not** be attached or served.

See form DV-109, *Notice of Court Hearing*, item 5, for a list of all documents that must be personally served with this Order.

c. ☐ Other *(specify):*_____

This is a Court Order.

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7 No Fee to Serve (Notify) Restrained Person

If the sheriff or marshal serves this order, he or she will do it for free.

Date:_____ _____

Judicial Officer

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Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office or go to http://www.courts.ca.gov/forms.htm for *Request for Accommodations by Persons with Disabilities and Response* (form MC-410). (Civ. Code, § 54.8.)

(Clerk will fill out this part.)

—Clerk's Certificate—

Clerk's Certificate

[seal]

I certify that this *Order to Continue Hearing Date and Extend Temporary Restraining Order* (CLETS-TRO) is a true and correct copy of the original on file in the court.

Date:_____ Clerk, by_____, Deputy

This is a Court Order.

DV-130 Restraining Order After Hearing (Order of Protection)

☐ **Original Order** ☐ ____ **Amended Order**

Clerk stamps date here when form is filed.

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NOT APPROVED BY THE JUDICIAL COUNCIL

Fill in court name and street address:

Superior Court of California, County of

Clerk fills in case number when form is filed.

Case Number:

1 Name of Protected Person:

Your lawyer in this case *(if you have one):*
Name: _____ State Bar No.: _____
Firm Name: _____
Address *(If you have a lawyer for this case, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, give a different mailing address instead. You do not have to give your telephone, fax, or e-mail.):*
Address: _____
City: _____ State: _____ Zip: _____
Telephone: _____ Fax: _____
E-Mail Address: _____

2 Name of Restrained Person:

Description of restrained person:

Sex: ☐ M ☐ F Height: _____ Weight: _____ Hair Color: _____ Eye Color: _____
Race: _____ Age: _____ Date of Birth: _____
Mailing Address *(if known):* _____
City: _____ State: _____ Zip: _____
Relationship to protected person: _____

3 ☐ Additional Protected Persons

In addition to the person named in 1, the following persons are protected by orders as indicated in items 6 and 7 *(family or household members):*

Full name	Relationship to person in 1	Sex	Age

☐ *Check here if there are additional protected persons. List them on an attached sheet of paper and write, "DV-130,* Additional Protected Persons*," as a title.*

4 Expiration Date

The orders, except as noted below, end on

(date): _____ at *(time):* _____ ☐ a.m. ☐ p.m. or ☐ midnight

- *If no date is written, the restraining order ends three years after the date of the hearing in item 5(a).*
- *If no time is written, the restraining order ends at midnight on the expiration date.*
- *Note: Custody, visitation, child support, and spousal support orders remain in effect after the restraining order ends. Custody, visitation, and child support orders usually end when the child is 18.*
- ***The court orders are on pages 2, 3, 4, and 5 and attachment pages (if any).***

This order complies with VAWA and shall be enforced throughout the United States. See page 5.

This is a Court Order.

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5 Hearings

a. The hearing was on *(date):* _____ with *(name of judicial officer):* _____

b. These people were at the hearing *(check all that apply):*

☐ The person in 1 ☐ The lawyer for the person in 1 *(name):* _____

☐ The person in 2 ☐ The lawyer for the person in 2 *(name):* _____

c. The people in 1 and 2 must **return to Dept.** _____ **of the court** on (date): _____

at *(time):* _____ ☐ a.m. ☐ p.m. to review *(specify issues):* _____

To the person in 2 :

The court has granted the orders checked below. Item 9 is also an order. 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. The person in 2 must **not** do the following things to the protected people in 1 and 3 :

☐ Harass, attack, strike, threaten, assault *(sexually or otherwise)*, hit, follow, stalk, molest, destroy personal property, disturb the peace, keep under surveillance, impersonate *(on the Internet, electronically or otherwise)*, or block movements.

☐ Contact, either directly or indirectly, by any means, including, but not limited to, by telephone, mail, e-mail, or other electronic means.

☐ Take any action, directly or through others, to obtain the addresses or locations of any protected persons. *(If this item is not checked, the court has found good cause not to make this order.)*

b. Peaceful written contact through a lawyer or process server or another person for service of legal papers related to a court case is allowed and does not violate this order.

c. ☐ Exceptions: Brief and peaceful contact with the person in 1, and peaceful contact with children in 3, as required for court-ordered visitation of children, is allowed unless a criminal protective order says otherwise.

7 ☐ Stay-Away Order

a. The person in 2 **must** stay at least *(specify):* _____ yards away from *(check all that apply):*

☐ The person in 1
☐ The persons in 3
☐ Home of person in 1
☐ The job or workplace of person in 1
☐ Vehicle of person in 1
☐ School of person in 1
☐ The child(ren)'s school or child care
☐ Other *(specify):* _____

b. ☐ Exceptions: Brief and peaceful contact with the person in 1, and peaceful contact with children in 3, as required for court-ordered visitation of children, is allowed unless a criminal protective order says otherwise.

8 ☐ Move-Out Order

The person in 2 must move out immediately from *(address):* _____

9 No Guns or Other Firearms or Ammunition

a. The person in 2 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.

This is a Court Order.

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9 b. The person in (2) must:
- Sell to, or store with, a licensed gun dealer, or turn in to a law enforcement agency, any guns or other firearms within his or her immediate possession or control. Do so within 24 hours of being served with this order.
- Within 48 hours of receiving this order, file with the court a receipt that proves guns have been turned in, sold, or stored. *(*Form DV-800*, Proof of Firearms Turned In, Sold, or Stored*, may be used for the receipt.*)* Bring a court filed copy to the hearing.

c. ☐ The court has received information that the person in (2) owns or possesses a firearm.

d. ☐ The court has made the necessary findings and applies the firearm relinquishment exemption under Family Code section 6389(h). 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.

10 ☐ **Record Unlawful Communications**
The person in (1) has the right to record communications made by the person in (2) that violate the judge's orders.

11 ☐ **Care of Animals**
The person in (1) is given the sole possession, care, and control of the animals listed below. 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 following animals: _____

12 ☐ **Child Custody and Visitation**
Child custody and visitation are ordered on the attached form DV-140, *Child Custody and Visitation Order* or *(specify other form):* _____

13 ☐ **Child Support**
Child support is ordered on the attached form FL-342, *Child Support Information and Order Attachment* or *(specify other form):* _____

14 ☐ **Property Control**
Only the person in (1) can use, control, and possess the following property: _____

15 ☐ **Debt Payment**
The person in (2) must make these payments until this order ends:
Pay to: _____ For: _____ Amount: $ _____ Due date: _____
Pay to: _____ For: _____ Amount: $ _____ Due date: _____
Pay to: _____ For: _____ Amount: $ _____ Due date: _____
☐ *Check here if more payments are ordered. List them on an attached sheet of paper and write* "DV-130, Debt Payments" *as a title.*

16 ☐ **Property Restraint**
The ☐ person in (1) ☐ person in (2) must not transfer, borrow against, sell, hide, or get rid of or destroy any property, including animals, except in the usual course of business or for necessities of life. In addition, the person must notify the other of any new or big expenses and explain them to the court. *(The person in (2) cannot contact the person in (1) if the court has made a "No-Contact" order.)*
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.

This is a Court Order.

DRAFT

17 ☐ **Spousal Support**

Spousal support is ordered on the attached form FL-343, *Spousal, Partner, or Family Support Order Attachment* or *(specify other form):* _____

18 ☐ **Insurance**

☐ The person in (1) ☐ the person in (2) is ordered NOT to cash, borrow against, cancel, transfer, dispose of, or change the beneficiaries of any insurance or coverage held for the benefit of the parties, or their child(ren), if any, for whom support may be ordered, or both.

19 ☐ **Lawyer's Fees and Costs**

The person in (2) must pay the following lawyer's fees and costs:

Pay to: _____ For: _____ Amount: $ _____ Due date: _____
Pay to: _____ For: _____ Amount: $ _____ Due date: _____

20 ☐ **Payments for Costs and Services**

The person in (2) must pay the following:

Pay to: _____ For: _____ Amount: $ _____ Due date: _____
Pay to: _____ For: _____ Amount: $ _____ Due date: _____
Pay to: _____ For: _____ Amount: $ _____ Due date: _____

☐ *Check here if more payments are ordered. List them on an attached sheet of paper and write* "DV-130, Payments for Costs and Services" *as a title.*

21 ☐ **Batterer Intervention Program**

The person in (2) must go to and pay for a 52-week batterer intervention program and show written proof of completion to the court. This program must be approved by the probation department.

22 ☐ **Other Orders**

Other orders *(specify):* _____

23 **No Fee to Serve (Notify) Restrained Person**

If the sheriff or marshal serves this order, he or she will do it for free.

24 **Service**

a. ☐ The people in (1) and (2) were at the hearing or agreed in writing to this order. No other proof of service is needed.

b. ☐ The person in (1) was at the hearing on the request for original orders. The person in (2) was not present.

(1) ☐ Proof of service of form DV-109 and form DV-110 (if issued) was presented to the court. The judge's orders in this form are the same as in form DV-110 except for the end date. The person in (2) must be served. This order can be served by mail.

(2) ☐ Proof of service of form DV-109 and form DV-110 (if issued) was presented to the court. The judge's orders in this form are different from the orders in form DV-110, or form DV-110 was not issued. The person in (2) must be personally "served" (given) a copy of this order.

c. ☐ Proof of service of form FL-300 to modify the orders in form DV-130 was presented to the court.

(1) ☐ The people in (1) and (2) were at the hearing or agreed in writing to this order. No other proof of service is needed.

(2) ☐ The person in ☐ (1) ☐ (2) was not at the hearing and must be personally "served" (given) a copy of this amended order.

25 ☐ **Criminal Protective Order**

a. ☐ Form CR-160, *Criminal Protective Order—Domestic Violence*, is in effect.
Case Number: _____ County: _____ Expiration Date: _____

b. ☐ Other Criminal Protective Order in effect *(specify):* _____
Case Number: _____ County: _____ Expiration Date: _____

This is a Court Order.

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(List other orders on an attached sheet of paper. Write "DV-130, Other Criminal Protective Orders" *as a title.)*

c. ☐ No information has been provided to the judge about a criminal protective order.

26 ☐ **Attached pages are orders.**

- Number of pages attached to this six-page form: _____
- All of the attached pages are part of this order.
- Attachments include *(check all that apply):*

☐ DV-140 ☐ DV-145 ☐ DV-150 ☐ FL-342 ☐ FL-343

☐ Other *(specify):* _____

Date: _____ _____

Judge (or Judicial Officer)

Certificate of Compliance With VAWA

This restraining (protective) order meets all "full faith and credit" requirements of the Violence Against Women Act, 18 U.S.C. § 2265 (1994) (VAWA) upon notice of the restrained person. This court has jurisdiction over the parties and the subject matter; the restrained person has been or will be afforded notice and a timely opportunity to be heard as provided by the laws of this jurisdiction. **This order is valid and entitled to enforcement in each jurisdiction throughout the 50 states of the United States, the District of Columbia, all tribal lands, and all U.S. territories, commonwealths, and possessions and shall be enforced as if it were an order of that jurisdiction.**

Warnings and Notices to the Restrained Person in 2

If you do not obey this order, you can be arrested and charged with a crime.

- If you do not obey this order, you can go to jail or prison and/or pay a fine.
- It is a felony to take or hide a child in violation of this order.
- If you travel to another state or to tribal lands or make the protected person do so, with the intention of disobeying this order, you can be charged with a federal crime.

You cannot have guns, firearms, and/or ammunition.

You cannot own, have, possess, buy or try to buy, receive or try to receive, or otherwise get guns, other firearms, and/or ammunition while the order is in effect. If you do, you can go to jail and pay a $1,000 fine. Unless the court grants an exemption, 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. The judge will ask you for proof that you did so. If you do not obey this order, you can be charged with a crime. Federal law says you cannot have guns or ammunition while the order is in effect. Even if exempt under California law, you may be subject to federal prosecution for possessing or controlling a firearm.

Instructions for Law Enforcement

Start Date and End Date of Orders

The orders *start* on the earlier of the following dates:

- The hearing date in item 5 (a) on page 2, or
- The date next to the judge's signature on this page.

The orders *end* on the expiration date in item 4 on page 1. If no date is listed, they end three years from the hearing date.

This is a Court Order.

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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.

Notice/Proof of Service

Law enforcement must first determine if the restrained person had notice of the orders. If notice cannot be verified, the restrained person must be advised of the terms of the orders. If the restrained person then fails to obey the orders, the officer must enforce them. (Fam. Code, § 6383.)

Consider the restrained person "served" (notified) if:

- 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 at the restraining order hearing or was informed of the order by an officer. (Fam. Code, § 6383; Pen. Code, § 836(c)(2).) An officer can obtain information about the contents of the order in the Domestic Violence Restraining Order System (DVROS). (Fam. Code, § 6381(b)-(c).)

If the Protected Person Contacts the Restrained Person

Even if the protected person invites or consents to contact with the restrained person, the orders remain in effect and must be enforced. The protected person cannot be arrested for inviting or consenting to contact with the restrained person. The orders can be changed only by another court order. (Pen. Code, § 13710(b).)

Child Custody and Visitation

The custody and visitation orders are on form DV-140, items **3** and **4**. They are sometimes also written on additional pages or referenced in DV-140 or other orders that are not part of the restraining order.

Enforcing the Restraining Order in California

Any law enforcement officer in California who receives, sees, or verifies the orders on a paper copy, in the California Law Enforcement Telecommunications System (CLETS), or in an NCIC Protection Order File must enforce the orders.

Conflicting Orders—Priorities for Enforcement

If more than one restraining order has been issued protecting the protected person from the restrained person, the orders must be enforced in the following priority (see Pen. Code, § 136.2 and Fam. Code, §§ 6383(h)(2), 6405(b)):

1. *EPO:* If one of the orders is an *Emergency Protective Order* (form EPO-001) and it 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 in enforcement 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 will fill out this part.)

—Clerk's Certificate—

Clerk's Certificate [seal]

I certify that this *Restraining Order After Hearing (Order of Protection)* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.

DRAFT

DV-200 Proof of Personal Service

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 Name of Person Asking for Protection:

2 Name of Person to Be Restrained:

3 Notice to Server

The server must:

- Be 18 years of age or older.
- Not be listed in items 1 or 3 of form DV-100, *Request for Domestic Violence Restraining Order*.
- Give a copy of all documents checked in 4 to the restrained person in 2. (You cannot send them by mail.) Then complete and sign this form, and give or mail it to the person in 1.

4 I gave the person in 2 a copy of all the documents checked:

a. ☐ DV-109 with DV-100 and a blank DV-120 *(Notice of Court Hearing; Request for Domestic Violence Restraining Order;* blank *Response to Request for Domestic Violence Restraining Order)*
b. ☐ DV-110 *(Temporary Restraining Order)*
c. ☐ DV-105 and DV-140 *(Request for Child Custody and Visitation Orders, Child Custody and Visitation Order)*
d. ☐ FL-150 with a blank FL-150 *(Income and Expense Declaration)*
e. ☐ FL-155 with a blank FL-155 *(Financial Statement (Simplified))*
f. ☐ DV-115 *(Request to Continue Hearing Date and Extend Temporary Restraining Order)*
g. ☐ DV-116 *(Order to Continue Hearing Date and Extend Temporary Restraining Order)*
h. ☐ DV-130 *(Restraining Order After Hearing)*
i. ☐ Other *(specify):*

5 I personally gave copies of the documents checked above to the person in 2 on:

a. Date: _____ b. Time: _____ ☐ a.m. ☐ p.m.

c. At this address: _____

City: _____ State: _____ Zip: _____

6 Server's Information

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

(If you are a registered process server):

County of registration: _____ Registration number: _____

7 I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

_____ ▶ _____

Type or print server's name *Server to sign here*

DRAFT

DV-200-INFO What Is "Proof of Personal Service"?

What is "service"?

Service is the act of giving your legal papers to the other person. There are many kinds of service—in person, by mail, and others. This form is about personal or "in-person" service. The *Notice of Court Hearing* (form DV-109), *Request for Domestic Violence Restraining Order* (form DV-100) and *Temporary Restraining Order* (form DV-110) must be served "in person." That means someone—not you or anyone else protected by the order—must personally "serve" (give) the person to be restrained a copy of the forms. You cannot send them by mail. Service lets the other person know:

- What orders you are asking for
- The hearing date
- How to respond

Why do I have to get the orders served?

- The ***police cannot arrest*** anyone for violating an order ***unless*** the restrained person knows about the order.
- The ***judge cannot make the orders permanent*** unless the restrained person was served.

Don't serve it by mail!

Who can serve?

Ask someone you know, a process server, or a law enforcement agency (for example, a sheriff) to personally serve (give) a copy of the orders to the person to be restrained. You ***cannot*** send the forms to that person by mail.
The server must**:**

- Be 18 years of age or over
- Not be you or anyone to be protected by the orders

A sheriff can serve the order at no cost to you.
A "registered process server" is a business you pay to deliver court forms. Look for "Process Serving" in the Yellow Pages or on the Internet.
(If a law enforcement agency or the process server uses a different Proof of Service form, make sure it lists the forms served.)

How to Serve

Ask the server to:

- Walk up to the person to be served.
- Make sure it's the right person. Ask the person's name.
- Give the person copies of all papers checked on form DV-200, *Proof of Personal Service.*
- Fill out and sign form DV-200.
- Give the signed form DV-200 to you.

What if the person won't take the papers or tears them up?

- If the person won't take the papers, just leave them near him or her.
- It doesn't matter if the person tears them up.

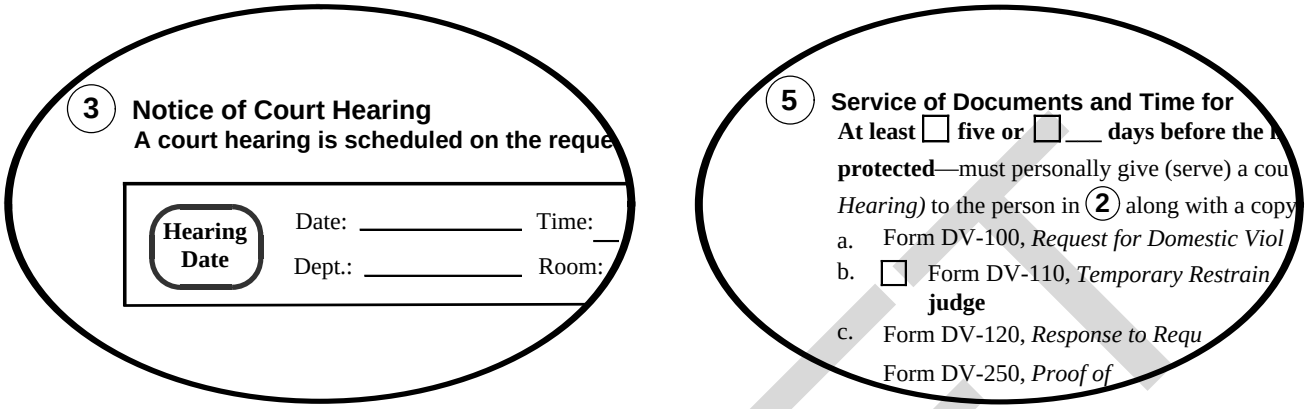
DRAFT

DV-200-INFO What Is "Proof of Personal Service"?

When do the orders have to be served?

It depends. To know the exact date, you have to look at two things on form DV-109:

First, look at the hearing date on page 1 of form DV-109. Next, look at the number of days written in item 5 on page 2.



Look at a calendar. Subtract the number of days in item 5 from the hearing date. That's the final date to have the orders served. It's always OK to serve earlier than that date.

If nothing is written in item 5 you must have the papers served at least 5 days before the hearing.

Who signs the *Proof of Personal Service*?

Only the person who serves the orders can sign the *Proof of Personal Service* (form DV-200). You do not sign it. The person to be restrained does not sign it.

What happens if I cannot get the papers served before the hearing date?

Before your hearing, fill out and file a *Request to Continue Hearing Date and Extend Temporary Restraining Order* (form DV-115) and *Order to Continue Hearing Date and Extend Temporary Restraining Order* (form DV-116). These forms ask the judge for a new hearing date and make any temporary orders last until then. Ask the clerk for the forms or go to www.courts.ca.gov.

You ***must*** attach a copy of form DV-115 and DV-116 to a copy of your original order. That way, the police will know your orders are still in effect. And the restrained person will be served with notice of the new hearing date. For more information on getting a new hearing date, read form DV-115-INFO, *How to Ask for a New Hearing Date.*

What do I do with the completed *Proof of Personal Service*?

Bring a copy of the original *Proof of Personal Service* (form DV-200) to your hearing.

If the sheriff serves the orders, he or she will send the *Proof of Personal Service* to the court and CLETS (California Law Enforcement Telecommunications System), a statewide computer system that lets police know about your order, for you.

If someone other than the sheriff serves the orders, you should:

- If possible, file the original *Proof of Personal Service* (form DV-200) with the court at least 2 days before your hearing. If you were unable to do this, bring the original *Proof of Personal Service* to your hearing.
- The clerk will send it to CLETS.
- Always keep an extra copy of the restraining orders with you for your safety.

DRAFT

DV-400 Findings and Order to Terminate Restraining Order After Hearing

Clerk stamps date here when form is filed.

DRAFT
NOT APPROVED BY THE JUDICIAL COUNCIL

Complete only items 1 and 2. The remaining items are for court use.

1 Name of Protected Party: _____

2 Name of Restrained Party: _____

3 Court Findings (Fam. Code, § 6345 (a) & (d))

a. ☐ The **Protected Party** filed the request to terminate the restraining orders in *Restraining Order After Hearing* (form DV-130). A proof of service (by mail or personal service) of the request on the Restrained Party is filed with the court.

b. ☐ The **Restrained Party** filed the request to terminate restraining orders. The filed proof of service shows that the Protected Party received notice of the Request by:
   1. ☐ Personal service.
   2. ☐ Service on the Secretary of State (the Protected Person is registered in the Safe at Home Program).
   3. ☐ An alternative, court-ordered method of service that gives actual notice of the request and the hearing.

c. ☐ The **Restrained Party** filed the request to terminate the restraining orders in form DV-130. The Protected Party was physically present in court on hearing date, waived his or her right to notice, and does not challenge the sufficiency of the notice.

d. ☐ The **Protected Party** was physically present at the hearing and verified his or her identity.

e. ☐ The **Protected Party and the Restrained Party** submitted a written stipulation (agreement) to terminate the restraining orders in *Restraining Order After Hearing* (form DV-130).

f. ☐ Other *(specify):*

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

4 Court Orders

The protective orders in *Restraining Order After Hearing* (form DV-130) issued or modified on *(date):* _____ are terminated. This order is effective when made.

a. ☐ Child custody, visitation (parenting time), and child support orders in *Restraining Order After Hearing* (form DV-130)
   1. ☐ Remain in effect.
   2. ☐ Have been modified on *(date):* _____
   3. ☐ Are also terminated.

b. ☐ Spousal or domestic partner support orders in *Restraining Order After Hearing* (form DV-130)
   1. ☐ Remain in effect.
   2. ☐ Have been modified on *(date):* _____
   3. ☐ Are also terminated.

c. Unless modified or terminated by court order, any existing orders for child custody, child visitation (parenting time), child support, and spousal or partner support made in a Domestic Violence Prevention Act case after a noticed hearing survive the termination of the protective order, and remain in effect. Family Code sections 6340 (a), 6345(b).

d. This order does not modify or terminate any existing criminal, juvenile, or probate court orders.

This is a Court Order.

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5 ☐ Hearings

a. The hearing was on *(date):* _____ with *(name of judicial officer):* _____

b. These people were at the hearing *(check all that apply):*

☐ The Protected Party
☐ The Restrained Party
☐ Other *(name):* _____
☐ Other *(name):* _____
☐ Protected Party's lawyer *(name):* _____
☐ Restrained Party's lawyer *(name):* _____
☐ Lawyer *(name):* _____
☐ Lawyer *(name):* _____

6 CLETS Entry

The court or its designee will transmit this form within one business day to law enforcement personnel for entry into the statewide Restraining and Protective Orders System via CLETS.

7 Service of this Order

a. ☐ The **Protected Party** and the **Restrained Party** were at the hearing or agreed in writing to this order. No other proof of service is needed.

b. ☐ The **Protected Party** (party who asked for the order) was at the hearing. The **Restrained Party** was not. Someone 18 or over—not anyone else protected or restrained by the restraining order—must personally "serve" the Restrained Party with a filed copy of this order**.**

c. ☐ The **Restrained Party** (party who asked for the order) was at the hearing. The **Protected Party** was not. Someone 18 or over—not anyone else protected or restrained by the restraining order—must personally "serve" the Protected Party with a filed copy of this order**.**

d. ☐ Other *(specify):*

DRAFT

Date: _____

_____
Judge (or Judicial Officer)

(Clerk will fill out this part.)

—Clerk's Certificate—

Clerk's Certificate [seal]

I certify that this *Findings and Order to Terminate Restraining Order After Hearing* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.

DV-400-INFO How Do I Ask to Change or End a Domestic Violence Restraining Order After Hearing?

1 Who can ask the court to change or end the *Restraining Order After Hearing*?

- The Protected Party or the Restrained Party can ask to modify (change) or terminate (end) the restraining orders issued in *Restraining Order After Hearing* (form DV-130) before the orders expire.
- Do not use form FL-300 to ask to renew the restraining orders in form DV-130 before they expire. Use *Request to Renew Restraining Order* (form DV-700).

2 What orders can be changed or ended?

A party may ask the court to change or end any of the orders made on form DV-130, including:

- The restraining orders that protect persons from violence or threat of violence by others (for example, the no contact, stay-away, move out, recording of unlawful communication orders);
- The list of persons protected by the orders;
- Child custody, child visitation (parenting time), or child support orders; and
- Spousal or domestic partner support orders.

3 If I ask to end the restraining order, can I keep child custody, visitation, or support orders?

If the restraining order ends, any child custody, visitation (parenting time), support, or spousal or domestic partnership orders will remain in effect, unless the court also changes or ends those orders.

4 What if the Restrained Party wants to change or end the restraining orders?

A restrained party must not violate the restraining order to contact the protected party. There are strict requirements if the restrained party asks the court to change or end the orders as described in this form.

5 What forms do I fill out to ask to change or end the Restraining Order After Hearing?

a. To ask for an order to change or end your *Restraining Order After Hearing* (form DV-130);
   - ☐ Fill out FL-300, *Request for Order.*

b. To ask to change the child custody or visitation (parenting time) orders, you may need some of these forms:
   - ☐ FL-105, *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act*
   - ☐ FL-311, *Child Custody and Visitation (Parenting Time) Application Attachment*
   - ☐ FL-312, *Request for Child Abduction Prevention Orders*
   - ☐ FL-341(C), *Children's Holiday Schedule Attachment*
   - ☐ FL-341(D), *Additional Provisions—Physical Custody Attachment*
   - ☐ FL-341(E), *Joint Legal Custody Attachment*

c. To ask the court to change the child support orders made in form DV-130, you need:
   - ☐ A current form FL-150, *Income and Expense Declaration.* You may use form FL-155, *Financial Statement (Simplified),* instead of form FL-150 if you meet the requirements listed on page 2 of form FL-155.

d. To ask the court to change the spousal or partner support orders (or orders about your finances), you need:
   - ☐ A current form FL-150, *Income and Expense Declaration*
   - ☐ FL-157, *Spousal or Partner Support Declaration Attachment* (if asking to change a support judgment)

e. To ask the court to make orders for attorney's fees and costs, you need:
   - ☐ A current form FL-150, *Income and Expense Declaration*
   - ☐ FL-319, *Request for Attorney's Fees and Costs Attachment* (or provide the information in a declaration)
   - ☐ FL-158, *Supporting Declaration for Attorney's Fees and Costs* (or provide the information in a declaration)

f. If you plan on having witnesses testify at the hearing, you will need:
   - ☐ FL-321, *Witness List*

g. Additional forms you may need are described on pages 3 and 4 of this information sheet.

6 What if I want to respond to a request to change or end the Restraining Order?

Complete, file, and serve form FL-320, *Responsive Declaration to Request for Order*. See form FL-320-INFO, *Information Sheet: Responsive Declaration to Request for Order* for more information.

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DV-400-INFO How Do I Ask to Change or End a Domestic Violence Restraining Order After Hearing?

7 Complete form FL-300 (page 1)

Caption: Complete the top part of the form, including your name, address, telephone number, e-mail address, and the court address.

- **Write the names of the parties in the caption.**
  If you already have a family law case, use the party names as they are in that case. If you are the Petitioner in that case, you will be the Petitioner on form FL-300. If you are the Respondent in the family law case, you will be the Respondent on form FL-300.

  If you do not already have a family law case, list yourself as the Petitioner on form FL-300 if you are the Protected Party on the restraining order. List yourself as the Respondent on form FL-300 if you are the Restrained Party on the restraining order.

- **Check all the boxes that apply to the orders you want.**
  Check the "Change" box if you want to change the order. Below that, indicate the orders that you want to change; for example, domestic violence order, child custody, visitation (parenting time), spousal or partner support.

  If you want to ask the court to end the domestic violence orders, check the box for "Domestic Violence Order." Then, check "Other, (specify)" and write "End restraining orders in form DV-130."

Item 1: Write the name of the other parties in your case.

Item 2: Leave this blank. The court clerk will fill in the date, time, and location of the hearing.

Item 3: This is a notice to the other parties in the case.

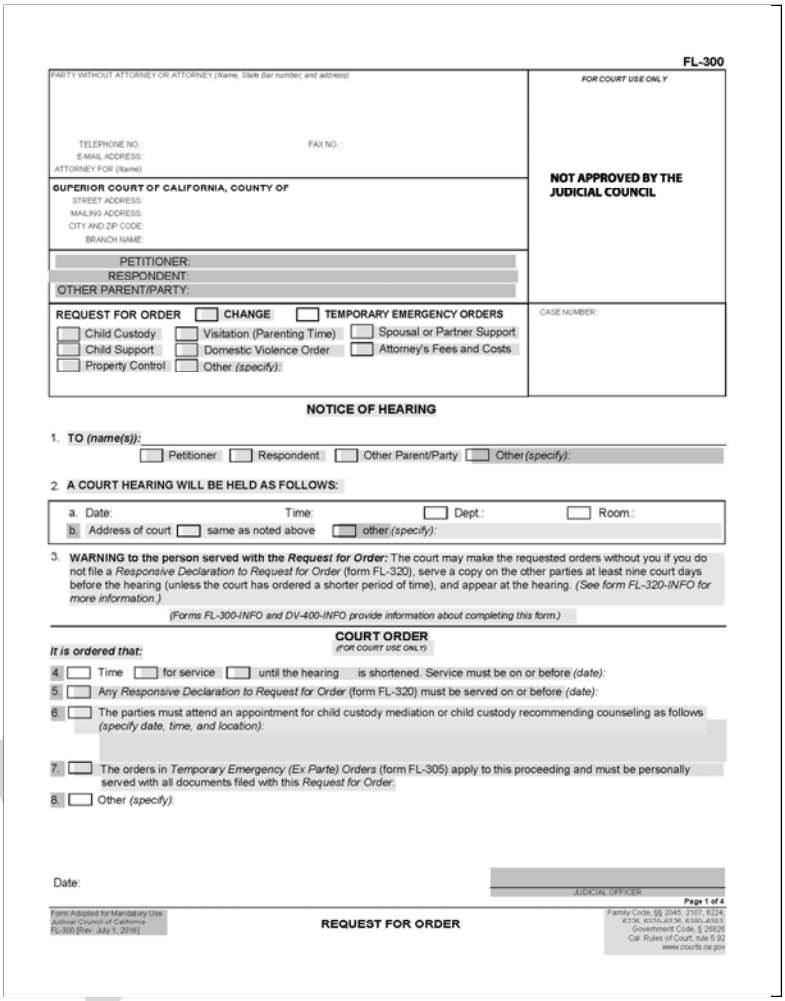
Items 4–5: Leave these blank. The court will complete them if it grants the order.

Item 6: In some counties, the court clerk will check item 6 and provide the details for your required child custody mediation or recommending counseling appointment. Other courts require the party or the party's attorney to make the appointment and then complete item 6 before filing form FL-300.

Ask your court's Family Law Facilitator or Self-Help Center to find out what your court requires.

Items 7–8: Leave these blank. The court will complete them if needed.

8 Complete form FL-300 (pages 2–4)



FL-300

PARTY WITHOUT ATTORNEY OR ATTORNEY (Name, State Bar number, and address):

FOR COURT USE ONLY

TELEPHONE NO.: FAX NO.:
E-MAIL ADDRESS:
ATTORNEY FOR (Name):

NOT APPROVED BY THE JUDICIAL COUNCIL

SUPERIOR COURT OF CALIFORNIA, COUNTY OF
STREET ADDRESS:
MAILING ADDRESS:
CITY AND ZIP CODE:
BRANCH NAME:

PETITIONER:
RESPONDENT:
OTHER PARENT/PARTY:

CASE NUMBER:

REQUEST FOR ORDER ☐ CHANGE ☐ TEMPORARY EMERGENCY ORDERS
☐ Child Custody ☐ Visitation (Parenting Time) ☐ Spousal or Partner Support
☐ Child Support ☐ Domestic Violence Order ☐ Attorney's Fees and Costs
☐ Property Control ☐ Other (specify):

NOTICE OF HEARING

1. TO (name(s)):
☐ Petitioner ☐ Respondent ☐ Other Parent/Party ☐ Other (specify):

2. A COURT HEARING WILL BE HELD AS FOLLOWS:
a. Date: Time: ☐ Dept.: ☐ Room.:
b. Address of court ☐ same as noted above ☐ other (specify):

3. **WARNING to the person served with the *Request for Order*:** The court may make the requested orders without you if you do not file a *Responsive Declaration to Request for Order* (form FL-320), serve a copy on the other parties at least nine court days before the hearing (unless the court has ordered a shorter period of time), and appear at the hearing. *(See form FL-320-INFO for more information.)*

(Forms FL-300-INFO and DV-400-INFO provide information about completing this form.)

COURT ORDER
(FOR COURT USE ONLY)

It is ordered that:

4. ☐ Time ☐ for service ☐ until the hearing is shortened. Service must be on or before *(date)*:
5. ☐ Any *Responsive Declaration to Request for Order* (form FL-320) must be served on or before *(date)*:
6. ☐ The parties must attend an appointment for child custody mediation or child custody recommending counseling as follows *(specify date, time, and location)*:
7. ☐ The orders in *Temporary Emergency (Ex Parte) Orders* (form FL-305) apply to this proceeding and must be personally served with all documents filed with this *Request for Order*.
8. ☐ Other *(specify)*:

Date: JUDICIAL OFFICER

Page 1 of 4

Form Adopted for Mandatory Use
Judicial Council of California
FL-300 [Rev. July 1, 2016]

REQUEST FOR ORDER

Family Code, §§ 2045, 2107, 6224, 6336, 6340-6343, 6360-6363; Government Code, § 26826; Cal. Rules of Court, rule 5.92
www.courts.ca.gov

9 Complete additional forms and make copies

Complete any additional forms that you need to give to the court clerk when you file the *Request for Order*. Make at least three copies of your full packet.

10 File your completed forms

Take them to the clerk's office in person, mail them, or e-file them (if available in your county). The clerk will keep the original and give you back the copies you made with a court date and time stamped on the first page of the *Request for Order*.

Note: To help schedule the hearing date, tell the clerk if the Protected Party is registered in the Safe at Home program. Extra time is needed for the Protected Party to receive notice after it is served on the Secretary of State.

11 Filing fee

Generally, there is no fee to file a request to change or end the orders included in *Restraining Order After Hearing* (form DV-130). However, after a restraining order is ended, the court may charge a fee if a party files a request to change the child custody, visitation, or support orders granted in form DV-130.

DV-400-INFO How Do I Ask to Change or End a Domestic Violence Restraining Order After Hearing?

12 Temporary Emergency (Ex Parte) Orders (nondomestic violence orders)

To address emergencies, courts can sometimes grant a party's request for temporary emergency orders with or without notice to the other party before the court hearing. The temporary orders last until the day of the hearing.

- *A request for temporary emergency orders must involve an immediate danger or irreparable harm to a party or children in the case, or an immediate loss or damage to property.*
- Ask your court's family law facilitator or self-help center to explain procedures for requesting temporary emergency orders at your court, and follow those procedures.
- By law, the court **CANNOT** grant a Restrained Party's request for temporary emergency orders to change or end the restraining orders before the noticed court hearing. However, the Restrained Party may seek a court order for a shorter time until the hearing or for a shorter time to serve the request on the Protected Party.

13 Serve the Request for Order documents

The other party must be "served" with a:

- Copy of the *Request for Order* and all the other forms and attachments filed with the court clerk.
- Copy of any temporary emergency orders granted.
- Blank form FL-320, *Responsive Declaration to Request for Order*.
- Blank form FL-150, *Income and Expense Declaration* (if you served form FL-150 or form FL-55).

14 General information about "service"

"Service" is the act of giving your legal papers to all persons named as parties in the case so that they know: what orders you are asking for; whether temporary emergency orders were made before the hearing; the date, time, and location of the hearing; and how to respond to your request.

NOTE: For questions about serving form FL-300, talk with a lawyer or contact your Family Law Facilitator or Self-Help Center *http://www.courts.ca.gov/1083.htm*.

15 Service deadlines

Unless the court orders a different deadline: Personal service (hand-delivery) must be completed at least *16 court days* before the hearing.

Service by mail must be completed at least *16 court days, PLUS five calendar days,* before the hearing if service is done within the state.

16 Who can "serve" the documents

The server must be 18 years of age or older and not be anyone protected or restrained by the orders.

You cannot serve the papers. The server can be a friend, a relative who is not involved in your case, a sheriff, or a professional process server. If serving by mail, the server must live or work in the county where the mailing took place.

17 When personal service is required

☑ A Restrained Party's request to change or end restraining orders must always be personally served (hand-delivered) on the Protected Party, unless the court allows another method.

☑ The court granted temporary emergency (ex parte orders) that start before the hearing date.

Note: Special procedures apply for personal service on a Protected Party who has a confidential address and a registration number with the Secretary of State's Safe at Home program. For more information, go to http://www.sos.ca.gov/registries/safe-home/about.

18 When service by mail is permitted

☑ A Protected Party's *Request for Order* to change or end the restraining orders in form DV-130 may be served on the restrained party by mail.

☑ Requests by either party only to change *temporary orders* in form DV-130 for child custody or visitation (parenting time), support, financial, or other orders (NOT protective orders), may be served by mail.

☑ Requests made by either party only to change "*permanent*" or "*final*" orders for child custody and visitation (parenting time), or child support in form DV-130 may be served by mail if an *Address Verification* is included (see form FL-334 at *courts.ca.gov/documents/fl334.pdf*).

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19 Server must complete a *Proof of Service*

After the forms are personally served, the server must complete a proof of personal service and give it to you. Form FL-330, *Proof of Personal Service* may be used for this purpose. Give the server form FL-330-INFO, *Information Sheet for Proof of Personal Service"* for instructions.

If service was by mail, the server may use form FL-335, *Proof of Service by Mail*. Give the server form FL-335-INFO, *Information Sheet for Proof of Service by Mail* for instructions.

20 File the *Proof of Service* before your hearing

Make three copies of the proof of service. Give the original and copies to the court clerk as soon as possible (or e-file them) **before your hearing.**

The clerk will keep the original and give you back the copies stamped "Filed." Bring a copy stamped "Filed" to your hearing. The filed *Proof of Service* shows the judge that the person received a copy of the *Request for Order* and all other documents or attachments.

21 Get ready for your hearing

Find more information about preparing for your hearing at http://www.courts.ca.gov/1094.htm.

22 Go to the court hearing

Take at least three copies of your filed forms to the hearing, including the proof of service. At the hearing, the judge will decide whether to change or end the restraining orders.

23 What if the judge changes or ends the restraining order at the hearing?

☑ If the judge *changes (amends)* the orders, fill out a new form DV-130, *Restraining Order After Hearing* that shows the changed orders orders.

Check the "Amended" box on the top of the form. The court will write the number of the amendment on the form. For example, if it is the first time the order is changed, the court will write "1st" before the word "Amended"

Give the cout three copies of the proposed amended order.

☑ If the judge *ends* the restraining order, give the court form DV-400, *Findings and Order to Terminate Restraining Order After Hearing.* Complete only items 1 and 2, and give the court three copies.

☑ After the judge signs the order, the clerk will file the original and and give you three stamped copies.

24 Serve the court order

Have the other party personally served with a copy of the filed orders made on form DV-130 or form DV-400, unless the court orders another method of service or the other party was served at the hearing,

25 File the *Proof of Service*

The server must complete a proof of personal service, such as form FL-330, *Proof of Personal Service*. Make three copies.

The original proof of personal service must then be filed with the court clerk. The clerk will file the original and give you back the copies you sent to the clerk stamped "Filed."

Keep one copy with you and another in a safe place in case you need to show it to the police.

26 Get the order entered into the statewide Restraining Order Registry

The court will send the filed, amended form DV-130 or form DV-400 and proof of service to law enforcement for you. That way police across the state and the nation will know the order has changed or ended.

27 Need more help?

Ask the court clerk about free or low-cost legal help.

For a referral to a local domestic violence or legal assistance program, call the National Domestic Violence Hotline at 1-800-799-7233 (TDD: 1-800- 787-3224). It's free and private. They can help in more than 100 languages.

28 *If you need protection in the future, you can always go back to court and ask for a restraining order.*

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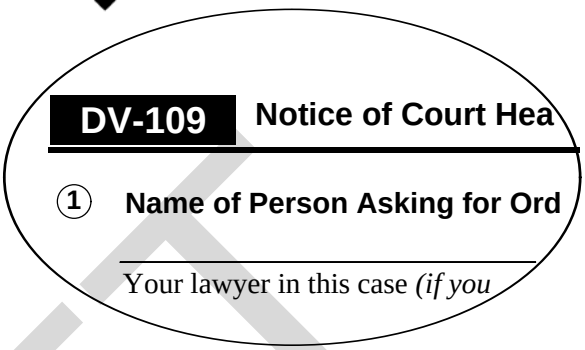
DV-505-INFO How Do I Ask For a Temporary Restraining Order?

1 **Use this form as a checklist.**
(Look at the numbers at the top of your forms.)

a. For a restraining order you need:

- ☐ DV-100 *Request for Domestic Violence Restraining Order*
- ☐ CLETS-001 *(Confidential CLETS Information)*
- ☐ DV-109 *Notice of Court Hearing*
- ☐ DV-110 *Temporary Restraining Order*



b. If you have children with the person you want protection from, you also need:

- ☐ DV-105 *Request for Child Custody and Visitation Orders*
- ☐ DV-140 *Child Custody and Visitation Order*

c. If you want child support or spousal support, you also need:

- ☐ FL-150* *Income and Expense Declaration* or
- ☐ FL-155* *Financial Statement (Simplified)*

* Read *Which Financial Form—FL-155 or FL-150?* (form DV-570) to know which one is right for you.

d. Ask the clerk if your county has special forms or rules.

e. There are other forms you will need later *(do not fill them out now):*

- ☐ DV-120 *Response to Request for Domestic Violence Restraining Order*
- ☐ DV-130 *Restraining Order After Hearing (Order of Protection)*
- ☐ DV-200 *Proof of Personal Service*

2 **Fill out the forms you need and take them to the court clerk.** The clerk will give your forms to the judge. The judge will look at them and decide whether to make ("grant") the temporary orders. Sometimes the judge will want to talk to you. If so, the clerk will tell you.

3 **Find out if the judge made the temporary restraining orders.** Ask the clerk when to come back to see if the judge signed the order (**form DV-110**). The judge must decide by the next business day. If the judge grants a temporary restraining order, check it carefully to see what the orders are. The judge might not order everything you requested. The court will set a hearing date on **form DV-109** whether or not the judge grants any temporary orders.

4 **"File" the judge's order.** The clerk will keep the original forms for the court and will file-stamp up to three copies for you. If you need more, you may make them yourself.

What to do with your copies:

- Keep one copy with you, always. You may need to show it to the police.
- Keep another copy in a safe place.
- Give a copy to anyone else protected by the order.
- Take copies to places where the restrained person is ordered not to go (school, work, child care, etc.)
- Give a copy to the security officers in your apartment building and workplace.

Restraining orders get entered into CLETS, a statewide computer system that lets police know about your order. The court will send the order to law enforcement or CLETS for you.

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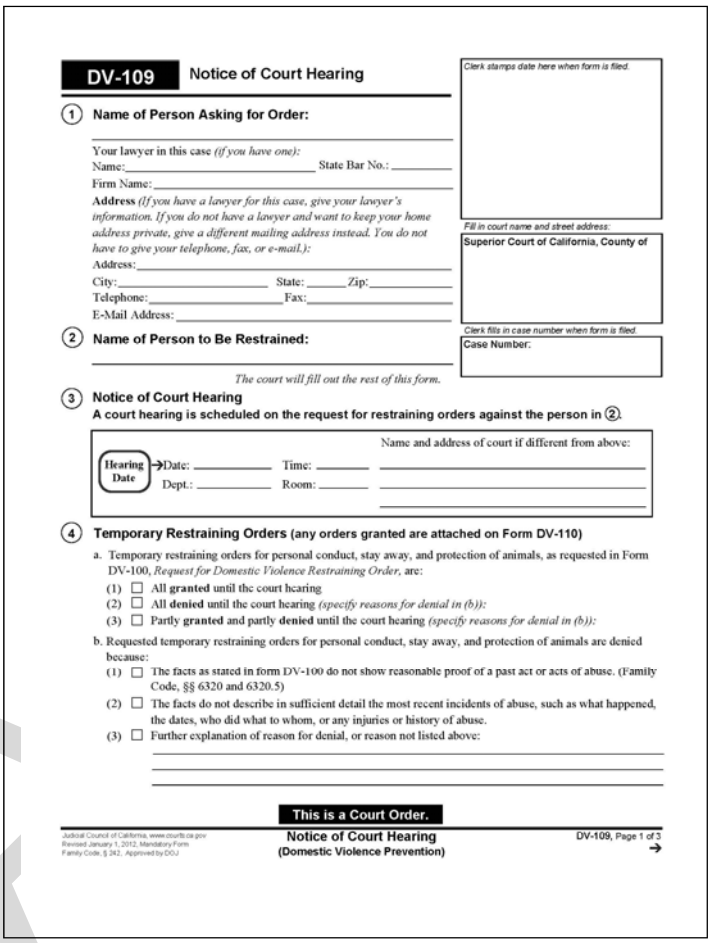
5 Know your hearing date: form DV-109

Look at form DV-109 for the date and time of your hearing. You ***must*** go to your hearing to get a permanent order.

The order you have now only lasts for about three weeks. Any orders made on form DV-110 *(Temporary Restraining Order)* will end on the hearing date.

You have the right to cancel the hearing. Read page 2 of form DV-109 for information.



DV-109 Notice of Court Hearing

Clerk stamps date here when form is filed.

1 Name of Person Asking for Order:

Your lawyer in this case *(if you have one)*:
Name: State Bar No.:
Firm Name:
Address *(If you have a lawyer for this case, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, give a different mailing address instead. You do not have to give your 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

2 Name of Person to Be Restrained:

Clerk fills in case number when form is filed.
Case Number:

The court will fill out the rest of this form.

3 Notice of Court Hearing
A court hearing is scheduled on the request for restraining orders against the person in 2.

Hearing Date → Date: Time: Dept.: Room:
Name and address of court if different from above:

4 Temporary Restraining Orders (any orders granted are attached on Form DV-110)

a. Temporary restraining orders for personal conduct, stay away, and protection of animals, as requested in Form DV-100, *Request for Domestic Violence Restraining Order*, are:
(1) ☐ All **granted** until the court hearing
(2) ☐ All **denied** until the court hearing *(specify reasons for denial in (b))*:
(3) ☐ Partly **granted** and partly **denied** until the court hearing *(specify reasons for denial in (b))*:

b. Requested temporary restraining orders for personal conduct, stay away, and protection of animals are denied because:
(1) ☐ The facts as stated in form DV-100 do not show reasonable proof of a past act or acts of abuse. (Family Code, §§ 6320 and 6320.5)
(2) ☐ The facts do not describe in sufficient detail the most recent incidents of abuse, such as what happened, the dates, who did what to whom, or any injuries or history of abuse.
(3) ☐ Further explanation of reason for denial, or reason not listed above:

This is a Court Order.

Judicial Council of California, www.courts.ca.gov
Revised January 1, 2012, Mandatory Form
Family Code, § 242. Approved by DOJ

Notice of Court Hearing
(Domestic Violence Prevention)

DV-109, Page 1 of 3

6 "Serve" the restrained person.

Ask someone you know, a process server, or law enforcement to personally "serve" (give) the restrained person a copy of the notice of hearing, the order, and other papers. You **cannot** serve the papers yourself. They **cannot** be sent by mail. The server must:

- Be 18 years of age or older
- Not be listed in item 1 or 3 of form DV-100, *Request for Domestic Violence Restraining Order*.

Law enforcement will serve the orders for **free**, but you have to ask.

A "process server" is a business you pay to deliver court forms. Look in the Yellow Pages under "Process Serving."

If law enforcement or the process server uses a different Proof of Service form, make sure the form lists all the forms served.

Don't serve it by mail!

7 File the *Proof of Personal Service* (form DV-200).

The *Proof of Personal Service* shows the judge and police that the restrained person got a copy of the request for orders. Make three copies of the completed *Proof of Personal Service*. Take the original and copies to the court clerk as soon as possible **before your hearing.** The clerk will keep the original and give you back the copies stamped "Filed." Bring a copy to your hearing.

Keep one copy with you and another in a safe place in case you need to show it to the police. Give the other copies out as you did in 4. The court will send your completed *Proof of Personal Service* to law enforcement or CLETS for you. CLETS is a statewide computer system that lets police know about your order.

- If the sheriff serves your order, he or she will send the *Proof of Personal Service* to the court and to CLETS for you.

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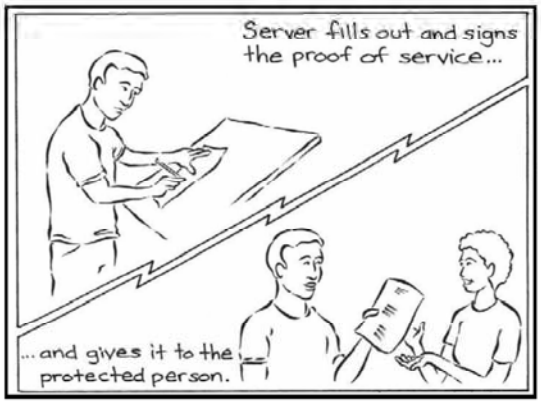
8 If the restrained person wasn't served . . .

The restrained person **must** be served before the hearing. If the restrained person wasn't served, fill out form DV-115 (*Request to Continue Hearing Date and Extend Temporary Restraining Order)* and the top of form DV-116 *(Order to Continue Hearing Date and Extend Temporary Restraining Order*) to ask the judge for a new hearing date. Do this **before** or **at** your hearing. (If you wait until after the hearing, you have to start from the beginning and complete all of the forms again.)

If the judge signs form DV-116, any restraining orders will last until the new hearing date.



- File the signed order (form DV-116) with the clerk. The clerk will send it to law enforcement or CLETS for you.
- Attach form DV-115 and form DV-116 to your other court papers and have the restrained person personally served.
- After serving the orders, the server fills out and signs form DV-200, *Proof of Personal Service,* and gives it to you.
- File the original form DV-200, *Proof of Personal Service,* and bring a copy to your hearing.
- Bring a copy of form DV-115 and form DV-116 to your hearing.

9 Need help?

The clerk has information sheets that can help you. Or you can get them at: www.courts.ca.gov/forms

- *Can a Domestic Violence Restraining Order Help Me?* (form DV-500-INFO)
- *What Is "Proof of Personal Service"?* (form DV-200-INFO)
- *Get Ready for the Court Hearing* (form DV-520-INFO)
- *How to Enforce Your Restraining Order* (form DV-530-INFO)
- *How Can I Respond to a Request for Domestic Violence Restraining Order?* (form DV-120-INFO)
- *How Do I Ask the Court to Renew My Restraining Order?* (form DV-700-INFO)
- *Which Financial Form—FL-155 or FL-150?* (form DV-570)

10 Need more help?

Ask the court clerk about free or low-cost legal help.
For a referral to a local domestic violence or legal assistance program, call the National Domestic Violence Hotline:

1-800-799-7233
TDD: 1-800-787-3224

It's free and private.
They can help you in more than 100 languages.

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PARTY WITHOUT ATTORNEY OR ATTORNEY *(Name, State Bar number, and address):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO. : E-MAIL ADDRESS: ATTORNEY FOR (*Name*):	**NOT APPROVED BY THE JUDICIAL COUNCIL**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	
REQUEST FOR ORDER ☐ **CHANGE** ☐ **TEMPORARY EMERGENCY ORDERS** ☐ Child Custody ☐ Visitation (Parenting Time) ☐ Spousal or Partner Support ☐ Child Support ☐ Domestic Violence Order ☐ Attorney's Fees and Costs ☐ Property Control ☐ Other *(specify):*	CASE NUMBER:

NOTICE OF HEARING

1. **TO *(name(s)):*** _____
   ☐ Petitioner ☐ Respondent ☐ Other Parent/Party ☐ Other *(specify):*

2. **A COURT HEARING WILL BE HELD AS FOLLOWS:**
   a. Date: Time: ☐ Dept.: ☐ Room.:
   b. Address of court ☐ same as noted above ☐ other *(specify):*

3. **WARNING to the person served with the *Request for Order:*** The court may make the requested orders without you if you do not file a *Responsive Declaration to Request for Order* (form FL-320), serve a copy on the other parties at least nine court days before the hearing (unless the court has ordered a shorter period of time), and appear at the hearing. *(See form FL-320-INFO for more information.)*

(Forms FL-300-INFO and DV-400-INFO provide information about completing this form.)

COURT ORDER
(FOR COURT USE ONLY)

It is ordered that:

4. ☐ Time ☐ for service ☐ until the hearing is shortened. Service must be on or before *(date):*
5. ☐ Any *Responsive Declaration to Request for Order* (form FL-320) must be served on or before *(date):*
6. ☐ The parties must attend an appointment for child custody mediation or child custody recommending counseling as follows *(specify date, time, and location):*
7. ☐ The orders in *Temporary Emergency (Ex Parte) Orders* (form FL-305) apply to this proceeding and must be personally served with all documents filed with this *Request for Order*.
8. ☐ Other *(specify)*:

Date:

JUDICIAL OFFICER

DRAFT

PETITIONER:	CASE NUMBER:
RESPONDENT:	
OTHER PARENT/PARTY:	

REQUEST FOR ORDER

Note: Place a mark [X] in front of the box that applies to your case or to your request. If you need more space, mark the box for "Attachment." For example, mark "Attachment 2a" to indicate that the list of children's names and birth dates continues on a paper attached to this form. Then, on a sheet of paper, list each attachment number followed by your request. At the top of the paper, write your name, case number, and "FL-300" as a title. (You may use *Attached Declaration* (form MC-031) for this purpose.)

1. ☐ RESTRAINING ORDER INFORMATION
   One or more domestic violence restraining/protective orders are now in effect between *(specify):*
   ☐ Petitioner ☐ Respondent ☐ Other Parent/Party *(Attach a copy of the orders if you have one.)*
   The orders are from the following court or courts *(specify county and state):*
   (1) ☐ Criminal: County/state *(specify):* Case No. *(if known)*:
   (2) ☐ Family: County/state *(specify):* Case No. *(if known)*:
   (3) ☐ Juvenile: County/state *(specify):* Case No. *(if known)*:
   (4) ☐ Other: County/state *(specify):* Case No. *(if known)*:

2. ☐ CHILD CUSTODY
   ☐ VISITATION (PARENTING TIME)
   ☐ I request temporary emergency orders
   a. I request that the court make orders about the following children *(specify):*

Child's Name	Date of Birth	☐ Legal Custody to *(person who decides: health, education, etc):*	☐ Physical Custody to *(person with whom child lives):*

   ☐ Attachment 2a.
   b. ☐ The orders I request for ☐ child custody ☐ visitation (parenting time) are:
      (1) ☐ Specified in the attached forms:
      ☐ Form FL-305 ☐ Form FL-311 ☐ Form FL-312 ☐ Form FL-341(C)
      ☐ Form FL-341(D) ☐ Form FL-341(E) ☐ Other *(specify):*
      (2) ☐ As follows *(specify):* ☐ Attachment 2b.
   c. The orders that I request are in the best interest of the children because *(specify):* ☐ Attachment 2c.
   d. ☐ This is a change from the current order for ☐ child custody ☐ visitation (parenting time).
      (1) ☐ The order for legal or physical custody was filed on *(date)*: . The court ordered *(specify):*
      (2) ☐ The visitation (parenting time) order was filed on *(date)*: . The court ordered *(specify):*
   ☐ Attachment 2d.

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PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:

3. ☐ CHILD SUPPORT
(Note: An earnings assignment may be issued. See Income Withholding for Support (form FL-195)
a. I request that the court order child support as follows:

Child's name and age	☐ I request support for each child based on the child support guidelines.	Monthly amount ($) requested (if not by guideline)

☐ Attachment 3a.

b. ☐ I want to change a current court order for child support filed on *(date):*
The court ordered child support as follows *(specify):*

c. I have completed and filed with this *Request for Order* a current *Income and Expense Declaration* (form FL-150) or, I filed a current *Financial Statement (Simplified)* (form FL-155) because I meet the requirements to file form FL-155.

d. The court should make or change the support orders because *(specify)*: ☐ Attachment 3d.

4. ☐ SPOUSAL OR DOMESTIC PARTNER SUPPORT
(Note: An *Earnings Assignment Order For Spousal or Partner Support* (form FL-435) may be issued.)
a. ☐ Amount requested *(monthly):* $
b. ☐ I want the court to ☐ change ☐ end the current support order filed on *(date):*
The court ordered $ per month for support.
c. ☐ This request is to modify (change) spousal or partner support after entry of a judgment.
I have completed and attached *Spousal or Partner Support Declaration Attachment* (form FL-157) or a declaration that addresses the same factors covered in form FL-157.
d. I have completed and filed a current *Income and Expense Declaration* (form FL-150) in support of my request.
e. The court should should make, change, or end the support orders because *(specify):* ☐ Attachment 4e.

5. ☐ PROPERTY CONTROL ☐ I request temporary emergency orders
a. The ☐ petitioner ☐ respondent ☐ other parent/party be given exclusive temporary use, possession, and control of the following property that we ☐ own or are buying ☐ lease or rent

b. The ☐ petitioner ☐ respondent ☐ other parent/party be ordered to make the following payments on debts and liens coming due while the order is in effect:

Pay to:	For:	Amount: $	Due date:
Pay to:	For:	Amount: $	Due date:
Pay to:	For:	Amount: $	Due date:
Pay to:	For:	Amount: $	Due date:

c. ☐ This is a change from the current order for property control filed on *(date):*
d. Specify in Attachment 5d the reasons why the court should make or change the property control orders.

DRAFT

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:

6. ☐ ATTORNEY'S FEES AND COSTS
I request attorney's fees and costs, which total *(specify amount):* $. I filed the following to support my request:
a. A current *Income and Expense Declaration* (form FL-150).
b. A *Request for Attorney's Fees and Costs Attachment* (form FL-319) or a declaration that addresses the factors covered in that form.
c. A *Supporting Declaration for Attorney's Fees and Costs Attachment* (form FL-158) or a declaration that addresses the factors covered in that form.

7. ☐ DOMESTIC VIOLENCE ORDER
- Do not use this form to ask for domestic violence restraining orders! Read form DV-505-INFO, *How Do I Ask for a Temporary Restraining Order,* for forms and information you need to ask for domestic violence restraining orders.
- Read form DV-400-INFO, *How to Change or End a Domestic Violence Restraining Order* for more information.

a. The *Restraining Order After Hearing* (form DV-130) was filed on *(date):*
b. I request that the court ☐ change ☐ end the personal conduct, stay-away, move-out orders, or other protective orders made in *Restraining Order After Hearing* (form DV-130). (*If you want to change the orders, complete 7c.)*
c. ☐ I request that the court make the following changes to the restraining orders *(specify):* ☐ Attachment 7c.

d. I want the court to change or end the orders because (*specify)*: ☐ Attachment 7d.

8. ☐ OTHER ORDERS REQUESTED *(specify):* ☐ Attachment 8.

9. ☐ TIME FOR SERVICE / TIME UNTIL HEARING I urgently need*:*
a. ☐ To serve the *Request for Order* no less than (*number):* court days before the hearing.
b. ☐ The hearing date and service of the the *Request for Order* to be sooner.
c. I need the order because *(specify):* ☐ Attachment 9c.

10. ☐ FACTS TO SUPPORT the orders I request are listed below. The facts that I write in support and attach to this request cannot be longer than 10 pages, unless the court gives me permission. ☐ Attachment 10.

I declare under penalty of perjury under the laws of the State of California that the information provided in this form and all attachments is true and correct.
Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF APPLICANT)

Requests for Accommodations
Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the proceeding. Contact the clerk's office or go to *www.courts.ca.gov/forms* for *Request for Accommodations by Persons With Disabilities and Response* (form MC-410). (Civ. Code, § 54.8.)

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FL-300-INFO Information Sheet for Request for Order

1 USE *Request for Order* (form FL-300):

- To schedule a court hearing and ask the court to make new orders or to change orders in your case. The request can be about child custody, visitation (parenting time), child support, spousal or partner support, property, finances, attorney's fees and costs, or other matters.
- To change or end the domestic violence restraining orders granted by the court in *Restraining Order After Hearing* (form DV-130). See *How Do I Ask to Change or End a Domestic Violence Restraining Order* (form DV-400-INFO) for more information.

2 DO NOT USE *Request for Order* (form FL-300):

- Before you have filed a Petition to start your case (form FL-300 may be filed with the Petition).
- If you and the other party have an agreement. For information about how to write up your agreement, get it approved by the court, and filed in your case, see http://www.courts.ca.gov/selfhelp-agreeFL.htm, speak with an attorney, or get help at your court's Self-Help Center or Family Law Facilitator's Office.
- When specific Judicial Council forms must be used to ask the court for orders. For example, to ask:
  –For a domestic violence restraining order, use forms DV-100, DV-109, and DV-110.
  –For an order for contempt, use form FL-410.
  –To set aside a child support order, use form FL-361 or form FL-640.
  –To set aside a volunteer declaration of paternity, use form FL-280.

3 Forms checklist

a. Form FL-300, *Request for Order*, is the basic form you need to file with the court. Depending on your request, you may need these additional forms:

b. To request child custody or visitation (parenting time) orders, you may need to complete some of these forms:
- ☐ FL-105, *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act*
- ☐ FL-311, *Child Custody and Visitation (Parenting Time) Application Attachment*
- ☐ FL-312, *Request for Child Abduction Prevention Orders*
- ☐ FL-341(C), *Children's Holiday Schedule Attachment*
- ☐ FL-341(D), *Additional Provisions—Physical Custody Attachment*
- ☐ FL-341(E), *Joint Legal Custody Attachment*

c. If you want child support, you need this form:
- ☐ A current FL-150, *Income and Expense Declaration*. You may use form FL-155, *Financial Statement (Simplified)* instead of form FL-150 if you meet the requirements listed on page 2 of form FL-155.

d. If you want spousal or partner support or orders about your finances, you need these forms:
- ☐ A current FL-150, *Income and Expense Declaration*
- ☐ FL-157, *Spousal or Partner Support Declaration Attachment* (or provide the information in a declaration)

e. If you want attorney's fees and costs, you need theses forms:
- ☐ A current FL-150, *Income and Expense Declaration*
- ☐ FL-319, *Request for Attorney's Fees and Costs Attachment* (or provide the information in a declaration)
- ☐ FL-158, *Supporting Declaration for Attorney's Fees and Costs* (or provide the information in a declaration)

f. To request temporary emergency (ex parte) orders, you need:
- ☐ FL-305, *Temporary Emergency Orders* to serve as the proposed temporary emergency orders.
- ☐ Your declaration describing how and when you gave notice about the request for temporary emergency orders. You may use form FL-303, *Declaration Regarding Notice and Service of Request for Temporary Emergency (Ex Parte) Orders*.
- ☐ Other forms required by local courts. See item 9 on page 3 of this form for more information.

g. If you plan to have witnesses testify at the hearing, you need form:
- ☐ FL-321, *Witness List*

h. If you want to request a separate trial (bifurcation) on an issue, you need form:
- ☐ FL-315, *Request or Response to Request for Separate Trial*

DRAFT

FL-300-INFO Information Sheet for Request for Order

4 Complete form FL-300 (Page 1)

Caption: Complete the top portion with your name, address, and telephone number, and the court address. Next, write the name of the Petitioner, Respondent, or Other Parent/Party (You must use the party names as they appear in the petition that was originally filed with the court). Then, write the case number.

In the next section, check "CHANGE" if you want to change an existing order. Check "TEMPORARY EMERGENCY (EX PARTE) ORDER" if you are asking that the court make emergency orders that will be effective until the hearing date. Then, check all the boxes that apply to the orders you are requesting.

Item 1: List the name(s) of the other person(s) in your case who will receive your request. In some cases, this might include a grandparent who is joined as a party in the case, a local child support agency, or a lawyer who represents a child in the case.

Item 2: Leave this blank. The court clerk will fill in the date, time, and location of the hearing.

Item 3: This is a notice to all other parties.

Items 4–5: Leave these blank. The court will complete them if the orders are granted.

Item 6: In some counties, the court clerk will check item 6 and provide the details for your required child custody mediation or recommending counseling appointment. Other courts require the party or the party's lawyer to make the appointment and then complete item 6 before filing form FL-300.

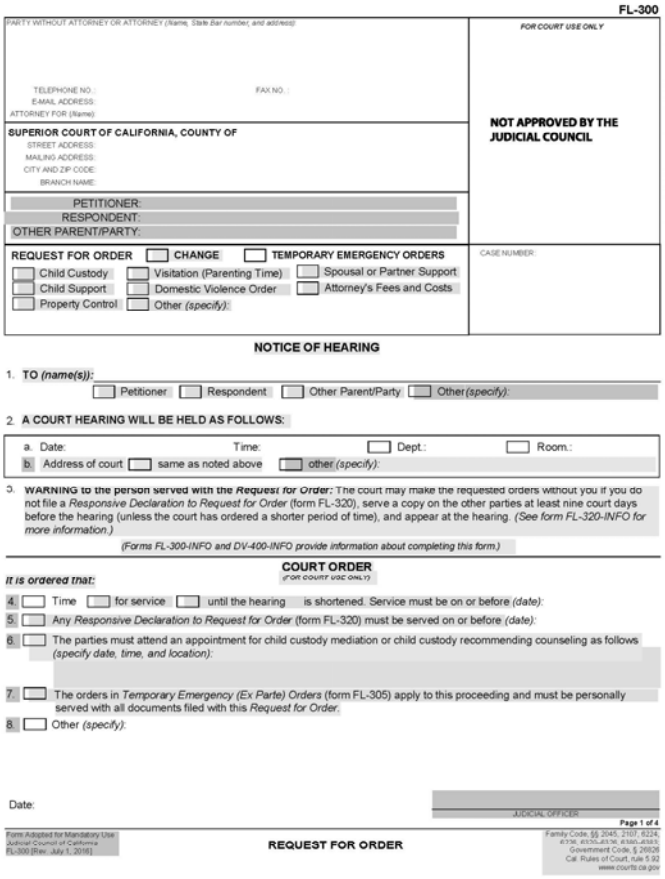
Ask your court's Family Law Facilitator or Self-Help Center to find out what your court requires

Items: 7–8: Leave these blank. The court will complete them, if needed.

5 Complete form FL-300 (pages 2–4)

6 Complete additional forms and make copies

Complete any additional forms that you need to file with the *Request for Order*. Make at least two copies of your full packet.



FL-300

PARTY WITHOUT ATTORNEY OR ATTORNEY (Name, State Bar number, and address):

TELEPHONE NO.: FAX NO.:
E-MAIL ADDRESS:
ATTORNEY FOR (Name):

FOR COURT USE ONLY

NOT APPROVED BY THE JUDICIAL COUNCIL

SUPERIOR COURT OF CALIFORNIA, COUNTY OF
STREET ADDRESS:
MAILING ADDRESS:
CITY AND ZIP CODE:
BRANCH NAME:

PETITIONER:
RESPONDENT:
OTHER PARENT/PARTY:

REQUEST FOR ORDER ☐ CHANGE ☐ TEMPORARY EMERGENCY ORDERS
☐ Child Custody ☐ Visitation (Parenting Time) ☐ Spousal or Partner Support
☐ Child Support ☐ Domestic Violence Order ☐ Attorney's Fees and Costs
☐ Property Control ☐ Other (specify):

CASE NUMBER:

NOTICE OF HEARING

1. TO (name(s)):
☐ Petitioner ☐ Respondent ☐ Other Parent/Party ☐ Other (specify):

2. A COURT HEARING WILL BE HELD AS FOLLOWS:
a. Date: Time: ☐ Dept.: ☐ Room.:
b. Address of court ☐ same as noted above ☐ other (specify):

3. WARNING to the person served with the *Request for Order*: The court may make the requested orders without you if you do not file a *Responsive Declaration to Request for Order* (form FL-320), serve a copy on the other parties at least nine court days before the hearing (unless the court has ordered a shorter period of time), and appear at the hearing. *(See form FL-320-INFO for more information.)*

(Forms FL-300-INFO and DV-400-INFO provide information about completing this form.)

COURT ORDER
(FOR COURT USE ONLY)

It is ordered that:

4. ☐ Time ☐ for service ☐ until the hearing is shortened. Service must be on or before *(date)*:
5. ☐ Any *Responsive Declaration to Request for Order* (form FL-320) must be served on or before *(date)*:
6. ☐ The parties must attend an appointment for child custody mediation or child custody recommending counseling as follows *(specify date, time, and location)*:
7. ☐ The orders in *Temporary Emergency (Ex Parte) Orders* (form FL-305) apply to this proceeding and must be personally served with all documents filed with this *Request for Order*.
8. ☐ Other *(specify)*:

Date:

JUDICIAL OFFICER

Page 1 of 4

Form Adopted for Mandatory Use
Judicial Council of California
FL-300 [Rev. July 1, 2016]

REQUEST FOR ORDER

Family Code, §§ 2045, 2107, 6224, 6226, 6320-6326, 6380-6383; Government Code, § 26826
Cal. Rules of Court, rule 5.92
www.courts.ca.gov

Note: You may file one form FL-150 to respond to items 3, 4, and 6.

7 File your documents

Give your paperwork and the copies you made to the court clerk to process. You may take them to the clerk's office in person, mail them, or, in some counties, you can e-file them.

The clerk will keep the original and give you back the copies you made with a court date and time stamped on the first page of the *Request for Order*. The procedure may be different in some courts if you are requesting temporary emergency orders.

8 Pay filing fees

A fee is due at the time of filing.

If you cannot afford to pay the filing fee, and you do not already have a valid fee waiver order in this case, you can ask the court to waive the fee by completing and filing form FW-001, *Request to Waive Court Fees* and form FW-003, *Order on Court Fee Waiver*.

FL-300-INFO Information Sheet for Request for Order

9 Temporary Emergency (Ex Parte) Orders

(nondomestic violence orders)

Courts can make temporary orders in your family law case to respond to emergencies that cannot wait to be heard on the court's regular hearing calendar.

The emergency must involve an immediate danger or irreparable harm to a party or children in the case, or an immediate loss or damage to property.

To request these orders:

- Complete form FL-300. Describe the emergency and explain why you need the temporary emergency orders before the hearing.
- Complete form FL-305 to serve as your proposed temporary orders.
- Include a declaration describing how and when you notified the other parties (or why you could not give notice) about your request and the hearing (see form FL-303).
- Complete other forms if required by your local court rules.
- Follow your court's local procedures for reserving the day for the hearing, submitting your paperwork, and paying filing fees.

10 General information about "service"

"Service" is the act of giving your legal papers to all persons named as parties in the case so that they know what orders you are asking for and have information about the hearing.

If the other parties are NOT properly served, the judge cannot make the orders you requested on the date of the hearing.

11 Serve the Request for Order and blank forms

The other party must be "served" with a:

- Copy of the *Request for Order* and all the other forms and attachments filed with the court clerk.
- Copy of any temporary emergency orders granted.
- Blank form FL-320, *Responsive Declaration to Request for Order*.
- Blank form FL-150, *Income and Expense Declaration* (if you served form FL-150 or form FL-155).

12 Who can be a "server"

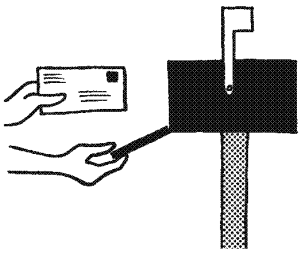
You cannot serve the papers. Have someone else (who is at least 18 years old) do it. The "server" can be a friend, a relative who is not involved in your case, a sheriff, or a professional process server.

13 "Personal Service"

Personal service means that your "server" walks up to each person to be served, makes sure he or she is the right person, and then hand-delivers a copy of all the papers (and the blank forms) to him or her. The server may leave the papers near the person if he or she will not take them.

Note: Sometimes the papers may be personally served on the other party's lawyer (if he or she has one) in the family law case.

14 "Service by mail"



means that your "server" places copies of all the documents (and blank forms) in a sealed envelope and mails them to the address of each party being served (or to the party's lawyer, if he or she has one).

The server must be 18 years of age or over and live or work in the county where the mailing took place.

Important! For questions about personal service or service by mail, talk with a lawyer or check with your court's Family Law Facilitator or Self-Help Center at ***http://www.courts.ca.gov/1083.htm***.

DRAFT

FL-300-INFO Information Sheet for Request for Order

15 When to use personal service or service by mail

Personal Service

Personal service is the best way to make sure the other adults in your case are correctly served. Sometimes you **must** use personal service.

You **must** use personal service when the court:

- ☑ Ordered personal service;
- ☑ Granted temporary emergency orders;
- ☑ Does not yet have the power to make orders that apply to the other party because he or she has either NOT previously:
  - Been served with a *Summons* and *Petition;**

    OR
  - Appeared in the case by filing a:
    a. *Response* to a *Petition*;
    b. *Appearance, Stipulations, and Waivers;*
    c. Written notice of appearance;
    d. Request to strike all or part of the *Petition;* or
    e. Request to transfer the case.

*Note: A *Request for Order* may be served at the same time as the family law *Summons* and *Petition.*

1. After serving, the server must fill out a *Proof of Personal Service* (form FL-330) and give it to you. If the server needs instructions, give him or her form FL-330-INFO, *Information Sheet for Proof of Personal Service.*
2. Take the completed *Proof of Personal Service* form to the clerk's office (or e-file it, if available in your court) at least 5 court days before your hearing.

Deadline: The deadline for personal service is **16 court days** before the hearing date, unless the court orders a different deadline.

Service by Mail

If you are not required to use personal service, you may use service by mail.

Important! Check with your court's Family Law Facilitator's Office or Self-Help Center, or ask a lawyer to be sure you are allowed to use service by mail in your case.

A *Request for Order* to change a judgment or final order on the issue of child custody, visitation (parenting time), or child support may be served by mail if:

- ☑ The documents do not include temporary emergency orders;
- ☑ The court did not order personal service; and
- ☑ You have verified the other party's current residence or office address. (You may use *Address Verification* (form FL-334).)

To change a judgment or final order on any other issue, including spousal or domestic partner support, the *Request for Order* may need to be personally served on the other party.

1. After serving, the server must fill out a *Proof of Service by Mail* (form FL-335) and give it to you. If the server needs instructions, give him or her an *Information Sheet for Proof of Service by Mail* (form FL-335-INFO).
2. Take the completed *Proof of Personal Service* form to the clerk's office (or e-file it, if available in your court) at least 5 court days before your hearing.

Deadline: Unless the court orders a different time, service by mail must be completed at least **16 court days *PLUS* 5 calendar days** before the hearing date (if service is in California). Other time lines apply for service outside of California.

16 Get ready for your hearing

- Take at least two copies of your documents and filed forms to the hearing. Include a filed *Proof of Service* form
- Find more information about preparing for your hearing at *http://www.courts.ca.gov/1094.htm.*
- For information about having the other party testify in court, go to URL to be determined.

17 After the hearing the court orders made on form FL-340, *Findings and Order After Hearing,* must be filed and served.

18 Do you have questions or need help?

- Find a lawyer through your local bar association, the State Bar of California at *http://calbar.ca.gov*, or the Lawyer Referral Service at 1-866-442-2529.
- For free and low-cost legal help (if you qualify), go to *http://www.lawhelpca.org*.
- Contact the Family Law Facilitator or Self-Help Center for information and assistance, and referrals to local legal services providers. Go to *http://www.courts.ca.gov/selfhelp-courtresources.htm*.

DRAFT

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*):	DRAFT - NOT APPROVED BY THE JUDICIAL COUNCIL
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	
DECLARATION REGARDING NOTICE AND SERVICE OF REQUEST FOR TEMPORARY EMERGENCY (EX PARTE) ORDERS	CASE NUMBER:

NOTICE: Do not use this form to ask for a domestic violence restraining order. File this completed form with the court clerk at the same time that the request for temporary emergency orders is filed in a family law case. Local court procedures for a hearing on the request for temporary emergency orders may vary. Check your court's local rules for the procedures at courts.ca.gov/3027.htm.

1. I am *(specify):* ☐ attorney for ☐ petitioner ☐ respondent ☐ other parent/party in the case.
   ☐ not a party in the case *(specify):*

2. **NOTICE** (*Complete either a, b, or c)*

   a. ☐ **Before the request for temporary emergency orders was filed, I gave notice as described in items (1) through (5):**

   (1) I gave notice to *(specify):*
   ☐ Petitioner ☐ Petitioner's Attorney ☐ Other Parent/Party ☐ Other Parent/Party's Attorney
   ☐ Respondent ☐ Respondent's Attorney ☐ Child's Attorney
   ☐ Other *(specify):*

   (2) I notified the person in 2a(1) that on *(date):* at *(time):* ☐ a.m. ☐ p.m.
   at this location *(specify):*
   ☐ There will be an emergency court hearing. ☐ Papers will be filed to ask for temporary emergency orders.

   (3) I gave notice by this method:
   ☐ personally on *(date):* at *(location):* , California; at ☐ a.m. ☐ p.m.
   ☐ telephone on *(date):* telephone no.: at ☐ a.m. ☐ p.m.
   ☐ voicemail on *(date):* voicemail no.: at ☐ a.m. ☐ p.m.
   ☐ fax machine on *(date):* fax no.: at ☐ a.m. ☐ p.m.

   (4) The time I gave notice *(specify):*
   ☐ By 10 a.m. the court day before this emergency hearing.
   ☐ After 10 a.m. the court day before this emergency hearing because of the following exceptional circumstances *(specify):*

   (5) I notified the person in 2a(1) that the following temporary emergency orders are being requested *(specify):*

   (6) The person in 2a(1) responded as follows: ☐ Attachment 2a(6)

   (7) I ☐ do ☐ do not believe that the person in 2a(1) will oppose the request for temporary emergency orders.

DRAFT

Form Approved for Optional Use
Judicial Council of California
FL-303 [New July 1, 2016]

Family Code, §§ 2045, 3062–3064, 4620, 6200, 6300, 7710
Cal. Rules of Court, rules 5.151–5.169
www.courts.ca.gov

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:

2. **NOTICE** (continued)

b. ☐ **I did not give notice** about the request for temporary emergency orders. I request that the court waive notice to the other party due to the following exceptional circumstances *(check all that apply):*

(1) ☐ To help prevent an immediate danger or irreparable harm to myself (or my client) or to the children in the case.

(2) ☐ There is an immediate risk that the children in the case will be removed from the state of California.

(3) ☐ To help prevent immediate loss or damage to property subject to disposition in the case.

(4) ☐ Other exceptional circumstances *(specify):*

(5) Facts in support of the request to waive notice *(specify):* ☐ Attachment 2b(5)

c. ☐ **I did not give notice** about the request for temporary emergency orders. 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 2c

3. ☐ **SERVICE**

a. An unfiled copy of *Request for Order* (form FL-300) for temporary emergency orders, *Temporary Emergency (Ex Parte) Orders* (form FL-305), and related documents were served on:

☐ Petitioner ☐ Petitioner's Attorney ☐ Other Parent/Party ☐ Other Parent/Party's Attorney
☐ Respondent ☐ Respondent's Attorney ☐ Child's Attorney
☐ Other *(specify):*

b. Method of service:

☐ personal service on *(date):* at *(location):* , California; at ☐ a.m. ☐ p.m.
☐ fax machine on *(date):* fax no.: at ☐ a.m. ☐ p.m.
☐ Overnight mail or other overnight carrier

c. ☐ **Documents were not served on the opposing party** due to the following exceptional circumstances *(specify facts in support of the request to waive service of the documents)*. ☐ Attachment 3c

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)

DRAFT

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*):	DRAFT - NOT APPROVED BY THE JUDICIAL COUNCIL
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	
TEMPORARY EMERGENCY (EX PARTE) ORDERS ☐ Child Custody ☐ Visitation (Parenting Time) ☐ Property Control ☐ Other *(specify):*	CASE NUMBER:

1. **TO *(name(s)):*** _____
   ☐ Petitioner ☐ Respondent ☐ Other Parent/Party ☐ Other *(specify):*

   A court hearing will be held on the *Request for Order* (form FL-300) served with this order, as follows:

   a. Date: Time: ☐ Dept.: ☐ Room:

   b. Address of court ☐ same as noted above ☐ other *(specify):*

2. **Findings:** Temporary emergency (ex parte) orders are needed to: (a) help prevent an immediate loss or irreparable harm to a party or to children in the case, (b) help prevent immediate loss or damage to property subject to disposition in the case, or (c) set or change procedures for a hearing or trial.

COURT ORDERS: The following temporary emergency orders expire on the date and time of the hearing scheduled in (1), unless extended by court order:

3. ☐ **CHILD CUSTODY**

   a. Child's name | Date of Birth | Temporary physical custody, care, and control to: Petitioner | Respondent | Other Party/Parent

Child's name	Date of Birth	Petitioner	Respondent	Other Party/Parent
		☐	☐	☐
		☐	☐	☐
		☐	☐	☐
		☐	☐	☐
		☐	☐	☐

   ☐ continued on Attachment 3(a)

   b. ☐ **Visitation (Parenting Time)** The temporary orders for physical custody, care, and control of the minor children in (3) are subject to the other party's or parties' rights of visitation (parenting time) as follows *(specify):* ☐ See Attachment 3(b)

DRAFT

PETITIONER:	CASE NUMBER:
RESPONDENT:	
OTHER PARENT/PARTY:	

3. ☐ **CHILD CUSTODY (continued)**

c. **Travel restrictions**

(1) The party or parties with temporary physical custody, care, and control of minor children **must not remove the minor children from the state of California unless the court allows it after a noticed hearing.**

(2) ☐ Petitioner ☐ Respondent ☐ Other Parent/Party must not remove their minor children *(specify):*

(a) ☐ from the state of California.

(b) ☐ from the following counties *(specify):*

(c) ☐ other *(specify):*

d. ☐ **Child abduction prevention orders** are attached (see form FL-341(B)).

e. (1) **Jurisdiction:** This court has jurisdiction to make child custody orders in this case under the Uniform Child Custody Jurisdiction and Enforcement Act (part 3 of the California Family Code, commencing with section 3400).

(2) **Notice and opportunity to be heard:** The responding party was given notice and an opportunity to be heard as provided by the laws of the State of California.

(3) **Country of habitual residence:** The country of habitual residence of the child or children is *(specify):*

☐ The United States of America ☐ Other *(specify):*

(4) **If you violate this order, you may be subject to civil or criminal penalties, or both.**

4. ☐ **PROPERTY CONTROL**

a. ☐ Petitioner ☐ Respondent ☐ Other Parent/Party is given exclusive temporary use, possession, and control of the following property that the parties ☐ own or are buying ☐ lease or rent

b. ☐ Petitioner ☐ Respondent ☐ Other Parent/Party is ordered to make the following payments on the liens and encumbrances coming due while the order is in effect:

Pay to: _____ For: _____ Amount: $ _____ Due date: _____
Pay to: _____ For: _____ Amount: $ _____ Due date: _____
Pay to: _____ For: _____ Amount: $ _____ Due date: _____
Pay to: _____ For: _____ Amount: $ _____ Due date: _____

5. ☐ All other existing orders, not in conflict with these temporary emergency orders, remain in full force and effect.

6. ☐ **OTHER ORDERS** *(specify):* ☐ Additional orders are listed in Attachment 6.

DRAFT

Date:

JUDGE OF THE SUPERIOR COURT

THIS IS A COURT ORDER.

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO. *(Optional):* 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: RESPONDENT: OTHER PARENT/PARTY:	
REQUEST AND ORDER TO CONTINUE HEARING DATE AND EXTEND TEMPORARY EMERGENCY (EX PARTE) ORDERS	CASE NUMBER:

REQUEST

1. Name of person making this request:
2. a. The temporary emergency (ex parte) orders were originally issued on *(date):*
   b. The last scheduled hearing date was *(date):*
   c. Number of times the *Request for Order* (form FL-300) was continued and the temporary emergency orders extended:
3. I request that the court continue the hearing date of the *Request for Order* and *(check all that apply):*
   a. ☐ Extend the expiration date of the temporary emergency (ex parte) orders granted on the *Request for Order* (form FL-300).
   b. ☐ Extend the expiration date of the orders granted on *Temporary Emergency (Ex Parte) Orders* (form FL-305).
   c. ☐ Extend the order to shorten time for service or shorten time until the hearing.
   d. ☐ Change the temporary emergency (ex parte) orders (see attached proposed changed order).
   e. ☐ Other *(specify):*
4. I make this request because *(specify):*
   a. ☐ The papers could not be served as require before the hearing date on *(specify):* ☐ Petitioner ☐ Respondent ☐ Other Parent/Party ☐ Other *(specify):*
   b. ☐ The hearing was continued for the parties to meet with a child custody mediator or child custody recommending counselor.
   c. ☐ Other *(specify):*

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

COURT ORDER

FOR COURT USE ONLY

5. The hearing date for the *Request for Order* (form FL-300) is continued as follows:

Date:	Time:	Dept.:	Room:
at the street address of the court shown above.			

6. The temporary emergency orders remain in effect until: ☐ the end of the new hearing date in 5. ☐ *(date):*
7. ☐ The temporary emergency (ex parte) orders are changed and remain in effect until the end of the hearing in 5.
8. ☐ Time ☐ for service ☐ until the hearing is shortened. Service must be on or before *(date):*
9. A filed copy of this order must be attached as the cover page of the *Request for Order* and temporary orders, and then served.
10. ☐ A *Responsive Declaration to Request for Order* (form FL-320) must be served on or before *(date):*
11. ☐ Other *(specify):*

Date:

JUDICIAL OFFICER

Form Adopted for Mandatory Use
Judicial Council of California
FL-306 [Rev. July 1, 2016]

REQUEST AND ORDER TO CONTINUE HEARING DATE AND EXTEND TEMPORARY EMERGENCY (EX PARTE) ORDERS
(Family Law—Governmental—Uniform Parentage—Custody and Support)

Family Code, § 245
Cal. Rules of Court, rule 5.94
www.courts.ca.gov

PETITIONER:	CASE NUMBER:
RESPONDENT:	
OTHER PARENT/PARTY:	

CHILD CUSTODY AND VISITATION (PARENTING TIME) APPLICATION ATTACHMENT

—This is not a court order—

TO ☐ **Petition** ☐ **Response** ☐ **Request for Order** ☐ **Responsive Declaration to Request for Order**
☐ Other *(specify):*

1. ☐ **Custody.** Custody of the minor children of the parties is requested as follows:

Child's Name	Date of Birth	Legal Custody to *(person who decides about health, education, etc.)*	Physical Custody to *(person with whom the child lives)*

2. ☐ **Visitation (Parenting Time).**

Note: Unless specifically ordered, a child's holiday schedule order has priority over the regular parenting time.

a. ☐ Reasonable right of parenting time (visitation) to the party without physical custody **(not appropriate in cases involving domestic violence)**.

b. ☐ See the attached _____ -page document dated *(specify date):*

c. ☐ The parties will go to child custody mediation or child custody recommending counseling at *(specify date, time, and location):*

d. ☐ No visitation (parenting time).

e. ☐ Visitation (parenting time). *(Specify start and ending date and time. If applicable, check "start of" OR "after school.")*

☐ **Petitioner's** ☐ **Respondent's** ☐ **Other Parent's/Party's** parenting time (visitation) will be as follows:

(1) ☐ **Weekends starting** *(date):*

(Note: The first weekend of the month is the first weekend with a Saturday.)

☐ 1st ☐ 2nd ☐ 3rd ☐ 4th ☐ 5th weekend of the month

from _____ *(day of week)* at _____ *(time)* ☐ a.m. ☐ p.m./ If applicable, specify: ☐ start of school ☐ after school

to _____ *(day of week)* at _____ *(time)* ☐ a.m. ☐ p.m./ If applicable, specify: ☐ start of school ☐ after school

(a) ☐ The parties will alternate the fifth weekends, with the ☐ petitioner ☐ respondent ☐ other parent/party having the initial fifth weekend, which starts *(date):*

(b) ☐ The ☐ petitioner ☐ respondent ☐ other parent/party will have the fifth weekend in ☐ odd ☐ even numbered months.

(2) ☐ **Alternate weekends starting** *(date):*

from _____ *(day of week)* at _____ *(time)* ☐ a.m. ☐ p.m./ If applicable, specify: ☐ start of school ☐ after school

to _____ *(day of week)* at _____ *(time)* ☐ a.m. ☐ p.m./ If applicable, specify: ☐ start of school ☐ after school

(3) ☐ **Weekdays starting** *(date):*

from _____ *(day of week)* at _____ *(time)* ☐ a.m. ☐ p.m./ If applicable, specify: ☐ start of school ☐ after school

to _____ *(day of week)* at _____ *(time)* ☐ a.m. ☐ p.m./ If applicable, specify: ☐ start of school ☐ after school

(4) ☐ Other visitation (parenting time) days and restrictions are: ☐ listed in Attachment 2e(4) ☐ as follows:

DRAFT

PETITIONER:	CASE NUMBER:
RESPONDENT:	
OTHER PARENT/PARTY:	

3. ☐ **Supervised visitation (parenting time).**
   a. **If item 3 is checked, you must attach a declaration that shows why unsupervised visitation (parenting time) would be bad for your children. The judge is required to consider supervised visitation if one parent or party is alleging domestic violence and is protected by a restraining order.**
   b. ☐ The person who supervises the visitation (parenting time) must meet the requirements listed in *Declaration of Supervised Visitation Provider* (form FL-324).
   c. I request that *(name):* have supervised visitation (parenting time) with the minor children according to the schedule set out on page 1.
   d. I request that the visitation (parenting time) be supervised by *(name):*
      who is a ☐ professional ☐ nonprofessional supervisor.
      The supervisor's phone number is *(specify):*
   e. I request that any costs of supervision be paid as follows: petitioner: percent; respondent: percent; other parent/party: percent.

4. ☐ **Transportation for visitation (parenting time) and place of exchange.**
   a. The children will be driven only by a licensed and insured driver. The car or truck must have legal child restraint devices.
   b. ☐ Transportation **to** begin the visits will be provided by *(name):*
   c. ☐ Transportation **from** the visits will be provided by *(name):*
   d. ☐ The exchange point at the beginning of the visit will be *(address):*
   e. ☐ The exchange point at the end of the visit will be *(address):*
   f. ☐ During the exchanges, the party driving the children will wait in the car and the other party will wait in his or her home (or exchange location) while the children go between the car and the home (or exchange location).
   g. ☐ Other *(specify):*

5. ☐ **Travel with children.** The ☐ petitioner ☐ respondent ☐ other parent/party **must** have written permission from the other parent or party, or a court order, to take the children out of the following places:
   a. ☐ the state of California.
   b. ☐ the following counties *(specify):*
   c. ☐ other places *(specify):*

6. ☐ **Child abduction prevention.** There is a risk that one of the parties will take the children out of California without the other party's permission. I request the orders set out on attached form FL-312.

7. ☐ **Children's holiday schedule.** I request the holiday and vacation schedule set out on the attached ☐ form FL-341(C)
   ☐ Other *(specify):*

8. ☐ **Additional custody provisions.** I request the additional orders regarding custody set out on the attached
   ☐ form FL-341(D) ☐ Other *(specify):*

9. ☐ **Joint legal custody provisions.** I request joint legal custody and want the additional orders set out on the attached
   ☐ form FL-341(E) ☐ Other *(specify):*

10. ☐ **Other.** I request the following additional orders *(specify):*

DRAFT

PETITIONER:	CASE NUMBER:
RESPONDENT:	
OTHER PARENT/PARTY:	

REQUEST FOR CHILD ABDUCTION PREVENTION ORDERS

—This is not a court order—

TO ☐ **Petition** ☐ **Response** ☐ **Request for Order** ☐ **Responsive Declaration to Request for Order**
☐ Other *(specify):*

1. Your name:
2. **I request orders to prevent child abduction by *(specify):*** ☐ **Petitioner** ☐ **Respondent** ☐ **Other Parent/Party**
3. **I think that he or she might take the children without my permission to *(check all that apply):***
   a. ☐ another county in California *(specify the county):*
   b. ☐ another state *(specify the state):*
   c. ☐ a foreign country *(specify the foreign country):*
      (1) ☐ He or she is a citizen of that country.
      (2) ☐ He or she has family or emotional ties to that country *(explain)*:
4. **I think that he or she might take the children without my permission because he or she *(check all that apply):***
   a. ☐ has violated—or threatened to violate—a custody or visitation (parenting time) order in the past.
   Explain:
   b. ☐ does not have strong ties to California.
   Explain any work, financial, social, or family situation that makes it easy for the party to leave California.
   c. ☐ has recently done things that make it easy for him or her to take the children away without permission. He or she has *(check all that apply):*
      ☐ quit his or her job. ☐ sold his or her home.
      ☐ closed a bank account. ☐ ended a lease.
      ☐ sold or gotten rid of assets. ☐ hidden or destroyed documents.
      ☐ applied for a passport, birth certificate, or school or medical records.
      ☐ Other *(specify):*
   d. ☐ has a history of *(check all that apply and explain your answers in the space provided in this section):*
      ☐ domestic violence. ☐ child abuse. ☐ not cooperating with me in parenting.
      ☐ taking the children without my permission.
      Explain your answers to item d.
   e. ☐ has a criminal record. *Explain:*

DRAFT

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:

I REQUEST THE FOLLOWING ORDERS AGAINST *(specify)*: ☐ **Petitioner** ☐ **Respondent** ☐ **Other Parent/Party**

5. ☐ **Supervised Visitation (Parenting Time)**
I ask the court to order supervised visitation (parenting time). I understand that the person I request to supervise the visits must meet the qualifications listed in *Declaration of Supervised Visitation Provider* (form FL-324).
The specific terms are attached *(check one):* ☐ form FL-311 ☐ as follows:

6. ☐ **Post a Bond**
I ask the court to order the posting of a bond for $ _____. If the party takes the children without my permission, I can use this money to bring the children back.

7. ☐ **Do Not Move Without My Permission or Court Order**
I ask for a court order preventing the party from moving with the children, without my written permission or a court order.

8. ☐ **No Travel Without My Permission or Court Order**
I ask for a court order preventing the party from traveling with the children outside *(check all that apply):*
☐ this county ☐ the United States
☐ California ☐ Other *(specify):*
without my written permission or a court order.

9. ☐ **Notify Other State of Travel Restrictions**
I ask the court to order the party to register this order in the state of _____ and provide the court with proof of the registration before the children can travel to that state for visitation (parenting time).

10. ☐ **Turn In and Do Not Apply for Passports or Other Vital Documents**
I ask for a court order *(check all that apply):*
☐ requiring the party to turn in all the children's passports and other documents (such as visas, birth certificates, and other documents used for travel) that are in his or her possession and control.
☐ preventing the party from applying for passports or other documents (such as visas or birth certificates) that can be used to travel with the children.

11. ☐ **Provide Itinerary and Other Travel Documents**
If the party is allowed to travel with the children, I ask the court to order the party to give me before leaving *(specify):*
☐ the children's travel itinerary.
☐ copies of round-trip airline tickets.
☐ addresses and telephone numbers where the children can be reached.
☐ an open airline ticket for me in case the children are not returned.
☐ other *(specify):*

12. ☐ **Notify Foreign Embassy or Consulate of Passport Restrictions**
I ask the court to order the party to notify the embassy or consulate of _____ of this order and to provide the court with proof of that notification within _____ calendar days.

13. ☐ **Foreign Custody and Visitation Order**
I ask the court to order the party to get a custody and visitation (parenting time) order in a foreign country equal to the most recent United States order before the children can travel to that country for visits. I understand that foreign orders may be changed or enforced depending on the laws of that country.

14. ☐ **Other** *(specify):*

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)

DRAFT

PARTY WITHOUT ATTORNEY OR ATTORNEY *(Name, State Bar number, and address):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO. *(optional):* 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: **RESPONDENT:** **OTHER PARENT/PARTY:**	
RESPONSIVE DECLARATION TO REQUEST FOR ORDER	CASE NUMBER:
HEARING DATE: TIME: DEPARTMENT OR ROOM:	

Read *Information Sheet: Responsive Declaration to Request for Order (form FL-320-INFO)* for more information about this form.

1. ☐ RESTRAINING ORDER INFORMATION
   a. ☐ No domestic violence restraining/protective orders are now in effect between the parties in this case.
   b. ☐ I agree that one or more domestic violence restraining/ protective orders are now in effect between the parties in this case.
2. ☐ CHILD CUSTODY
   ☐ VISITATION (PARENTING TIME)
   a. ☐ I consent to the order requested for child custody (legal and physical custody)
   b. ☐ I consent to the order requested for visitation (parenting time).
   c. ☐ I do not consent to the order requested for ☐ child custody ☐ visitation (parenting time) ☐ but I consent to the following order:
3. ☐ CHILD SUPPORT
   a. I have completed and filed a current *Income and Expense Declaration* (form FL-150) or, if eligible, a current *Financial Statement (Simplified)* (form FL-155) to support my responsive declaration.
   b. ☐ I consent to the order requested.
   c. ☐ I consent to guideline support.
   d. ☐ I do not consent to the order requested ☐ but I consent to the following order:
4. ☐ SPOUSAL OR DOMESTIC PARTNER SUPPORT
   a. I have completed and filed a current *Income and Expense Declaration* (form FL-150) to support my responsive declaration.
   b. ☐ I consent to the order requested.
   c. ☐ I do not consent to the order requested ☐ but I consent to the following order:

DRAFT

Form Adopted for Mandatory Use
Judicial Council of California
FL-320 [Rev. July 1, 2016]

Code of Civil Procedure, § 1005
Cal. Rules of Court, rule 5.92
www.courts.ca.gov

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:

5. ☐ PROPERTY CONTROL
   a. ☐ I consent to the order requested.
   b. ☐ I do not consent to the order requested ☐ but I consent to the following order:

6. ☐ ATTORNEY'S FEES AND COSTS
   a. I have completed and filed a current *Income and Expense Declaration* (form FL-150) to support my responsive declaration.
   b. I have completed and filed with this form a *Supporting Declaration for Attorney's Fees and Costs Attachment* (form FL-158) or a declaration that addresses the factors covered in that form.
   c. ☐ I consent to the order requested.
   d. ☐ I do not consent to the order requested ☐ but I consent to the following order:

7. ☐ DOMESTIC VIOLENCE ORDER
   a. ☐ I consent to the order requested.
   b. ☐ I do not consent to the order requested ☐ but I consent to the following order:

8. ☐ OTHER ORDERS REQUESTED
   a. ☐ I consent to the order requested.
   b. ☐ I do not consent to the order requested ☐ but I consent to the following order:

9. ☐ TIME FOR SERVICE / TIME UNTIL HEARING
   a. ☐ I consent to the order requested.
   b. ☐ I do not consent to the order requested ☐ but I consent to the following order:

10. ☐ FACTS TO SUPPORT my responsive declaration are listed below. The facts that I write and attach to this form cannot be longer than 10 pages, unless the court gives me permission. ☐ Attachment 10.

DRAFT

I declare under penalty of perjury under the laws of the State of California that the information provided in this form and all attachments is true and correct.

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF DECLARANT)

Draft not approved by the Judicial Council

FL-320-INFO Information Sheet: Responsive Declaration to Request for Order

1 If you received a *Request for Order* (form FL-300),

- Carefully read the papers you received to make sure you understand what orders are being requested.
- Note the date, time, and location of the court hearing.
- Check to see if the court ordered a specific date for filing and serving your *Responsive Declaration to Request for Order (*form FL-320).
- If you need more time before the hearing to prepare a responsive declaration or talk to a lawyer, you may ask the court to continue the hearing date. For more information, consult with a lawyer or contact the Family Law Facilitator or Self-Help Center in your court (see item **15**).

2 USE *Responsive Declaration to Request for Order* (form FL-320)

Use form FL-320 to let the court and the other party know that you agree or disagree with the each of the requests made in the *Request for Order* (form FL-300).

- If you disagree, use form FL-320 to describe the orders you would like the court to make.
- If you do not file and serve form FL-320, the court can still make orders without your input.

3 DO NOT USE *Responsive Declaration to Request for Order* (form FL-320) to:

- Ask for court orders that were not requested in the *Request for Order* (form FL-300). Instead, file and serve your own *Request for Order* (form FL-300) to ask for orders about other issues.
- Respond to *Request for Domestic Violence Restraining Order* (form DV-100). Instead, you must use *Response to Request for Domestic Restraining Order* (form DV-120).

4 Forms checklist

a. Form FL-320, *Responsive Declaration to Request for Order* is the basic form you need. Depending on the requests made in the *Request for Order* (form FL-300), you may need other forms.

b. For child custody or visitation (parenting time) orders, you may need to complete some of these forms:
- ☐ FL-105, *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act*
- ☐ FL-311, *Child Custody and Visitation (Parenting Time) Application Attachment*
- ☐ FL-312, *Request for Child Abduction Prevention Orders*
- ☐ FL-341(C), *Children's Holiday Schedule Attachment*
- ☐ FL-341(D), *Additional Provisions—Physical Custody Attachment*
- ☐ FL-341(E), *Joint Legal Custody Attachment*

c. For child support, you need:
- ☐ A current form FL-150, *Income and Expense Declaration.* You may use form FL-155, *Financial Statement (Simplified)* instead of form FL-150 if you meet the requirements listed on page 2 of form FL-155.

Notice:
- The court will order child support based on the income of the parents.
- Child support normally continues until the child is 18 years and has graduated from high school.
- You must give the court information about your finances. If you do not, the child support order will be based on information about your income that the court receives from other sources.

d. For spousal or domestic partner support or orders about your finances, you need these forms:
- ☐ FL-150, *Income and Expense Declaration*
- ☐ FL-157, *Spousal or Partner Support Declaration Attachment* (if the request is to change a support judgment)

e. For attorney's fees and costs, you need these forms:
- ☐ FL-150, *Income and Expense Declaration*
- ☐ FL-158, *Supporting Declaration for Attorney's Fees and Costs* (or provide the information in a declaration)
- ☐ FL-319, *Request for Attorney's Fees and Costs Attachment* (or provide the information in a declaration)

f. If you plan on having witnesses testify at the hearing, you need this form:
- ☐ FL-321, *Witness List*

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FL-320-INFO Information Sheet: Responsive Declaration to Request for Order

To respond to a *Request for Order*, you must:

5 Complete caption of the form

Complete the top portion including your name, address, and telephone number, the court address, the name of all the parties in the case, and the case number. Also, print or type the same hearing date, time, and department that appears on the *Request for Order* (form FL-300).

6 Specify a response to orders requested

Items 1–9: Each item on the form matches the item numbers on the *Request for Order* (form FL-300). Complete item 1. Next, mark the same box that is marked on form FL-300. Then, specify if you consent (agree) or do not consent to (disagree with) the orders requested. If you disagree, describe the order you would like the court to make. *Note: you may file one form FL-150 to respond to items 3, 4, and 6.*

Item 10: Use the space to explain your responses to items 1–9. Include the reasons why you do not agree with the orders requested by the other party and why the court should make the orders you described. If you need more space, write your responses on a separate sheet of paper and attach it to the form (*Attached Declaration* (form MC-031) may be used for this purpose).

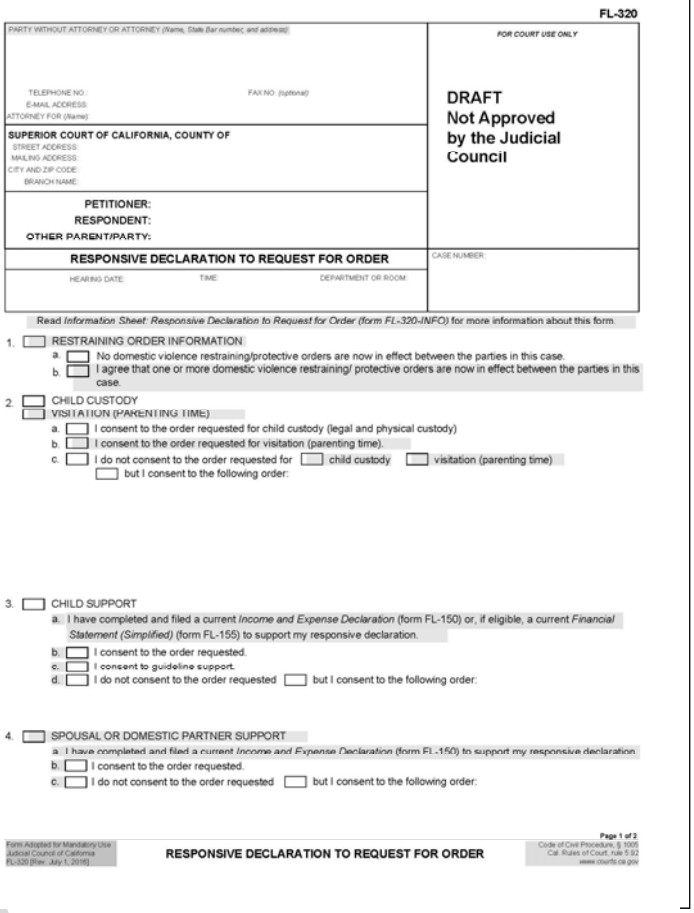
Sign and date: Print your name, sign, and write the date you signed form FL-320.

7 Next steps: file or serve your paperwork

You must file your paperwork with the court clerk at least 9 court days before the hearing. If the court orders a shorter time to file your papers, file them by the date specified in the order.

Make 2 copies of your original paperwork. Then, do one of the following before the filing deadline:

- Take your paperwork and copies to the court clerk to process (or e-file them, if available in your county). The clerk will keep the original and give you back copies with a court stamp on them. Have a stamped copy served; or
- Have an unstamped copy of your paperwork served *before* you take (or e-file) the originals and copies to the court clerk to file. Be sure the original documents are not served.



FL-320

PARTY WITHOUT ATTORNEY OR ATTORNEY (Name, State Bar number, and address):

FOR COURT USE ONLY

DRAFT
Not Approved
by the Judicial
Council

TELEPHONE NO.: FAX NO. (Optional):
E-MAIL ADDRESS:
ATTORNEY FOR (Name):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF
STREET ADDRESS:
MAILING ADDRESS:
CITY AND ZIP CODE:
BRANCH NAME:

PETITIONER:
RESPONDENT:
OTHER PARENT/PARTY:

RESPONSIVE DECLARATION TO REQUEST FOR ORDER

CASE NUMBER:

HEARING DATE: TIME: DEPARTMENT OR ROOM:

Read *Information Sheet: Responsive Declaration to Request for Order (form FL-320-INFO)* for more information about this form.

1. ☐ RESTRAINING ORDER INFORMATION
   a. ☐ No domestic violence restraining/protective orders are now in effect between the parties in this case.
   b. ☐ I agree that one or more domestic violence restraining/ protective orders are now in effect between the parties in this case.
2. ☐ CHILD CUSTODY
   ☐ VISITATION (PARENTING TIME)
   a. ☐ I consent to the order requested for child custody (legal and physical custody)
   b. ☐ I consent to the order requested for visitation (parenting time).
   c. ☐ I do not consent to the order requested for ☐ child custody ☐ visitation (parenting time)
      ☐ but I consent to the following order:
3. ☐ CHILD SUPPORT
   a. I have completed and filed a current *Income and Expense Declaration* (form FL-150) or, if eligible, a current *Financial Statement (Simplified)* (form FL-155) to support my responsive declaration.
   b. ☐ I consent to the order requested.
   c. ☐ I consent to guideline support.
   d. ☐ I do not consent to the order requested ☐ but I consent to the following order:
4. ☐ SPOUSAL OR DOMESTIC PARTNER SUPPORT
   a. I have completed and filed a current *Income and Expense Declaration* (form FL-150) to support my responsive declaration.
   b. ☐ I consent to the order requested.
   c. ☐ I do not consent to the order requested ☐ but I consent to the following order:

Page 1 of 2

Form Adopted for Mandatory Use
Judicial Council of California
FL-320 [Rev. July 1, 2016]

RESPONSIVE DECLARATION TO REQUEST FOR ORDER

Code of Civil Procedure, § 1005
Cal. Rules of Court, rule 5.92
www.courts.ca.gov

8 Pay filing fees

Generally, you do not have to pay a fee to file the *Responsive Declaration.* However, if you have never filed any papers in the case, you may have to pay a "first appearance fee," which, in general, everyone has to pay when filing court papers in a case for the first time.

If you cannot afford to pay the filing fee, you can ask the court to waive the fees. To do so, complete and file form FW-001, *Request to Waive Court Fees* and form FW-003, *Order on Court Fee Waiver*.

9 Serve your papers on the other party

"Service" is the act of giving your legal papers to all persons named as parties in the case so that they know what orders you want the court to make. Note: If a party has a lawyer in the case, the papers should be served on that party's lawyer.

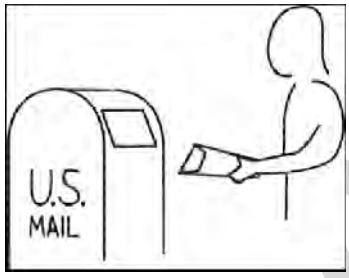
FL-320-INFO Information Sheet: Responsive Declaration to Request for Order

9 How to "serve"

Server. You cannot serve the papers. Have someone else (who is at least 18 years old) do it. The "server" can be a friend, a relative who is not involved in your case, a county sheriff, or a professional process server.

Personal service. Your papers may be served by "personal service." "Personal service" means that your "server" walks up to each person to be served, makes sure he or she is the right person, and then gives a copy of all the papers to him or her.

Service by mail. "Service by mail" means that your "server" places copies of all the documents in a sealed envelope and mails them to the address of each party being served (or to the party's lawyer, if he or she has one.) The server must be 18 years of age or over and must live or work in the county where the mailing took place.



10 Deadline for service

Personal service or service by mail on the other party must be completed at least *9 court days* before the court hearing. If the court has ordered a shorter time to serve your responsive papers, be sure to have them served by the date specified in the court order.

11 Server must complete a *Proof of Service*

After personal service, the server should complete a form FL-330, *Proof of Personal Service*. Form FL-330-INFO, *Information Sheet for Proof of Personal Service* has instructions to help the person complete the form.

After service by mail, the server should complete form FL-335, *Proof of Service by Mail*. Form FL-335-INFO, *Information Sheet for Proof of Service by Mail* has instructions to help the person complete the form.

12 File the *Proof of Service* before your hearing date

The *Proof of Service* shows the judge that the person received a copy of your *Responsive Declaration to Request for Order*. Make three copies of the completed *Proof of Service*. Take the original and copies to the court clerk as soon as possible **before your hearing.**

The clerk will keep the original and give you back the copies stamped "Filed." Bring a copy stamped "Filed" to your hearing. (If unstamped copies of your paperwork were served, you can file the completed *Proof of Service* when you file the original *Responsive Declaration*.)

13 Participate in child custody mediation or child custody recommending counseling

If the *Request for Order* includes a court order for you to attend mediation or child custody recommending counseling, the date, time, and location is found on page 1 of the *Request for Order*. For more information, read *Child Custody Information Sheet* (form FL-313-INFO or form FL-314-INFO).

14 Get ready for your hearing

- Take at least two copies of your documents and filed forms to the hearing. Include a filed *Proof of Service* form.
- Find more information about preparing for the hearing at *www.courts.ca.gov/1094.htm.*

15 Still have questions or need help?

- Contact the Family Law Facilitator or Self-Help Center for information, local rules, and referrals to local legal services providers. Go to *http://www.courts.ca.gov/1083.htm/.*
- Talk to a lawyer if you want legal advice, someone to go to court with you, or other legal help. Find an attorney through your local bar association, the State Bar of California at *calbar.ca.gov*, or the Lawyer Referral Service at 1-866-442-2529.
- For free and low-cost legal help (if you qualify), go to *lawhelpcalifornia.org*.

DRAFT

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO. *(optional):* 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: **RESPONDENT:** **OTHER PARENT/PARTY:**	
ORDER TO PAY WAIVED COURT FEES AND COSTS (Superior Court)	CASE NUMBER:

1. This proceeding was heard as follows: ☐ Default or uncontested ☐ By declaration under Family Code section 2336
   ☐ Contested or Trial ☐ On the *Request for Order* filed *(date):* by *(party):*
   ☐ Other *(specify):*
   on *(date):* at *(time):* in Dept.: Room:
   a. by Judge *(name):* ☐ Temporary Judge
   b. ☐ Petitioner/Plaintiff present ☐ Attorney present *(name):*
   c. ☐ Respondent/Defendant present ☐ Attorney present *(name):*
   d. ☐ Other present ☐ Attorney present *(name):*

2. **THE COURT FINDS**
   a. The court made an order waiving court fees and costs for ☐ Petitioner ☐ Respondent ☐ Other Parent/Party in this matter on *(date):*
   b. ☐ The court made an order for support payable by ☐ Petitioner ☐ Respondent ☐ Other Parent/Party to ☐ Petitioner ☐ Respondent ☐ Other Parent/Party on *(date):*
   c. ☐ The court entered a Judgment for support in the case on *(date):*
   d. After considering information in the court file and other evidence, ☐ Petitioner ☐ Respondent ☐ Other Parent/Party has the ability to pay all or part of the waived court fees and costs.

3. **THE COURT ORDERS**
   a. ☐ Petitioner ☐ Respondent ☐ Other Parent/Party must pay ☐ his or her own ☐ Petitioner's ☐ Respondent's ☐ Other Parent's/Party's previously waived court fees and costs totalling *(specify):*
   b. Payment be made:
      (1) $ per month until paid in full, beginning *(date):*
      (2) ☐ Within 10 days from the date of service of this *Order to Pay Waived Court Fees and Costs (see attached Proof of Service).*
      (3) After all current support and accrued support arrears have been paid (if ordered to pay the other party's waived court fees). (Gov. Code, § 68637(d).)
      (4) ☐ Other *(specify):*
   c. Payment be sent to *(specify):*

DRAFT

Form Adopted for Mandatory Use
Judicial Council of California
FL-336 [Rev. July 1, 2016]

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:

4. ☐ **NOTICE TO THE PERSON ORDERED TO PAY WAIVED COURT FEES AND COSTS** *(specify):*
   ☐ Petitioner ☐ Respondent ☐ Other Parent/Party *(name):*
   a. You are receiving this notice because the court ordered you to pay the initial fee waiver recipient's previously waived court fees and costs described on page 1 AND you were not present in court at the time the order was made or the judgment was entered.
   b. You have the right to request a hearing to ask that the court set aside the order:

YOU HAVE AN OPPORTUNITY FOR A HEARING TO REQUEST THAT THE COURT SET ASIDE THE ORDER TO PAY WAIVED COURT FEES AND COSTS

To request a hearing, complete and file with the court clerk:
(1) *Request for Order* (form FL-300); and
(2) *Application to Set Aside Order to Pay Waived Court Fees—Attachment* (form FL-337).

The forms specified in item a must be completed and filed with the court clerk **within 30 days** from the date of service of this *Order to Pay Waived Court Fees and Costs* (see attached Proof of Service).

In addition, the party requesting the hearing must serve the other party with:
(1) Copies of the documents in item a filed with the court; and
(2) A **blank** *Responsive Declaration to Request for Order* (form FL-320).

You can obtain these forms from the clerk of the court, your county law library, or online at *www.courts.ca.gov/forms*.

5. If your request for hearing to set aside the order is filed with the court clerk within 30 days from the date you were served with this *Order to Pay Waived Court Fees and Costs*, the order will not be enforced until after the hearing.

WARNING: The court has ordered that you pay court fees and costs. If you do not pay the court fees and costs, the court can institute collection proceedings and charge you interest and a collection fee.

Date:

JUDICIAL OFFICER

DRAFT

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:

APPLICATION TO SET ASIDE ORDER TO PAY WAIVED COURT FEES—ATTACHMENT
Attachment to *Request for Order* (form FL-300)

1. I am the ☐ petitioner ☐ respondent ☐ other parent/party. I request that the court set aside the *Order to Pay Waived Court Fees and Costs* (form FL-336).

2. In making this request, I ask the court to consider the information in the court's case file, the information attached to this application, the information specified in the supporting declaration, and the evidence presented at the hearing.

NOTICE

To request a hearing, the party must complete and file with the court clerk the following: (1) *Request for Order* (form FL-300) and (2) *Application to Set Aside Order to Pay Waived Court Fees—Attachment (Family Law)* (form FL-337). These forms must be completed and filed with the court clerk within 30 days from the date of personal service of the *Order to Pay Waived Court Fees and Costs* (form FL-336) *OR* within 35 days from the date the O*rder to Pay Waived Court Fees and Costs* (form FL-336) was served by mail.

In addition, the party requesting the hearing must serve the other party with (1) copies of the above-listed documents filed with the court and (2) a **blank** *Responsive Declaration to Request for Order* (form FL-320). You may obtain Judicial Council forms from the clerk of the court, your county law library, or *www.courts.ca.gov/forms.*

If the request for hearing is filed with the court clerk within this time, the *Order to Pay Waived Court Fees and Costs* (form FL-336) will not be enforced until after the hearing.

3. The reasons in support of this request are *(specify below):*
   ☐ Complete supporting declaration attached. You may use *Attached Declaration* (form MC-031).

DRAFT

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-337 [Rev. July 1, 2016]

Government Code, § 68637
www.courts.ca.gov

FL-341

PETITIONER:	CASE NUMBER:
RESPONDENT:	
OTHER PARENT/PARTY:	

CHILD CUSTODY AND VISITATION (PARENTING TIME) ORDER ATTACHMENT

TO ☐ ***Findings and Order After Hearing*** **(form FL-340)** ☐ ***Judgment*** **(form FL-180)** ☐ ***Judgment*** **(form FL-250)**
☐ ***Stipulation and Order fo Custody and/or Visitation of Children*** **(form FL-355)**
☐ Other *(specify):*

1. **Jurisdiction.** This court has jurisdiction to make child custody orders in this case under the Uniform Child Custody Jurisdiction and Enforcement Act (Fam. Code, §§ 3400–3465).

2. **Notice and opportunity to be heard.** The responding party was given notice and an opportunity to be heard, as provided by the laws of the State of California.

3. **Country of habitual residence.** The country of habitual residence of the child or children in this case is
☐ the United States ☐ Other *(specify):*

4. **Penalties for violating this order.** If you violate this order, you may be subject to civil or criminal penalties, or both.

5. ☐ **Child Custody**. Custody of the minor children of the parties is awarded as follows:

Child's Name	Birth Date	Legal custody to: *(person who makes decisions about health, education, etc.)*	Physical custody to: *(person with whom child lives)*

6. ☐ **Child abduction prevention**. There is a risk that one of the parties will take the children out of California without the other party's permission. (*Child Abduction Prevention Orders Attachment* (form FL-341(B)) must be attached and must be obeyed.)

7. ☐ **Visitation (Parenting Time)**
   a. ☐ Reasonable right of visitation to the party without physical custody **(not appropriate in cases involving domestic violence)**
   b. ☐ See the attached _____ -page document.
   c. ☐ The parties will go to child custody mediation or child custody recommending counseling at *(specify date, time, and location):*
   d. ☐ No Visitation (Parenting Time)
   e. ☐ Visitation (Parenting Time) for the ☐ petitioner ☐ respondent ☐ other (name): will be as follows:
      (1) ☐ **Weekends starting** *(date):*
      (Note: The first weekend of the month is the first weekend with a Saturday.)
      ☐ 1st ☐ 2nd ☐ 3rd ☐ 4th ☐ 5th weekend of the month
      from _____ *(day of week)* at _____ *(time)* ☐ a.m. ☐ p.m./ if applicable, specify: ☐ start of school ☐ after school
      to _____ *(day of week)* at _____ *(time)* ☐ a.m. ☐ p.m./ if applicable, specify: ☐ start of school ☐ after school
      (a) ☐ The parties will alternate the fifth weekends, with the ☐ petitioner ☐ respondent ☐ other parent/party having the initial fifth weekend, which starts *(date):*
      (b) ☐ The ☐ petitioner ☐ respondent ☐ other parent/party will have the fifth weekend in ☐ odd ☐ even numbered months.

THIS IS A COURT ORDER.

Form Approved for Optional Use
Judicial Council of California
FL-341 [Rev. July 1, 2016]

CHILD CUSTODY AND VISITATION (PARENTING TIME) ORDER ATTACHMENT

Family Code, §§ 3020, 3022, 3025, 3040–3043, 3048, 3100, 6340, 7604
www.courts.ca.gov

PETITIONER:	CASE NUMBER:
RESPONDENT:	
OTHER PARENT/PARTY:	

7. **Visitation (Parenting Time)** (continued)

e. (2) ☐ **Alternate weekends starting** *(date):*

from _____ *(day of week)* at _____ *(time)* ☐ a.m. ☐ p.m./ if applicable, specify: ☐ start of school ☐ after school

to _____ *(day of week)* at _____ *(time)* ☐ a.m. ☐ p.m./ if applicable, specify: ☐ start of school ☐ after school

(3) ☐ **Weekdays starting** *(date):*

from _____ *(day of week)* at _____ *(time)* ☐ a.m. ☐ p.m./ if applicable, specify: ☐ start of school ☐ after school

to _____ *(day of week)* at _____ *(time)* ☐ a.m. ☐ p.m./ if applicable, specify: ☐ start of school ☐ after school

(4) ☐ **Other visitation (parenting time) days and restrictions are:** ☐ listed in Attachment 7e(4) *(form MC-031 may be used for this purpose)* ☐ as follows:

8. ☐ **Supervised visitation (parenting time).** Until ☐ further order of the court ☐ other *(specify):*

The ☐ petitioner ☐ respondent ☐ other *(name):*

will have supervised visitation (parenting time) with the minor children according to the schedule set forth on page 1.

(You must attach *Supervised Visitation Order* (form FL-341(A).)

9. ☐ **Transportation for visitation (parenting time)**

a. The children must be driven only by a licensed and insured driver. The car or truck must have legal child restraint devices.

b. ☐ Transportation **to** the visits will be provided by the ☐ petitioner ☐ respondent ☐ other *(specify):*

c. ☐ Transportation **from** the visits will be provided by the ☐ petitioner ☐ respondent ☐ other *(specify):*

d. ☐ The exchange point at the beginning of the visit will be at *(address):*

e. ☐ The exchange point at the end of the visit will be at *(address):*

f. ☐ During the exchanges, the party driving the children will wait in the car and the other party will wait in his or her home (or exchange location) while the children go between the car and the home (or exchange location).

g. ☐ Other *(specify):*

10. ☐ **Travel with children**. The ☐ petitioner ☐ respondent ☐ other parent/party *(name):*

must have written permission from the other parent or a court order to take the children out of

a. ☐ the state of California.

b. ☐ the following counties *(specify):*

c. ☐ other places *(specify):*

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PETITIONER:	CASE NUMBER:
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OTHER PARENT/PARTY:	

11. ☐ **Holiday schedule**. The children will spend holiday time as listed ☐ below ☐ in the attached schedule (*Children's Holiday Schedule Attachment* (form FL-341(C)) may be used for this purpose.)

12. ☐ **Additional custody provisions**. The parties will follow the additional custody provisions listed ☐ below ☐ in the attached schedule. (*Additional Provisions—Physical Custody Attachment* (form FL-341(D)) may be used for this purpose.)

13. ☐ **Joint legal custody**. The parties will share joint legal custody as listed ☐ below ☐ in the attached schedule. (*Joint Legal Custody Attachment* (form FL-341(E)) may be used for this purpose.)

14. **Access to children's records**. Both the custodial and noncustodial parent have the right to access records and information about their minor children (including medical, dental, and school records).

15. ☐ **Other** *(specify):*

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FL-341(B)

PETITIONER:	CASE NUMBER:
RESPONDENT:	
OTHER PARENT/PARTY:	

CHILD ABDUCTION PREVENTION ORDER ATTACHMENT

TO ☐ ***Child Custody and Visitation (Parenting Time) Order Attachment*** **(form FL-341)**
☐ ***Custody Order—Juvenile—Final Judgment*** **(form JV-200)**
☐ Other ***(specify):***

1. **The court finds there is a risk that** *(specify name of party):* **will take the child without permission because that party** *(check all that apply):*
   a. ☐ has violated—or threatened to violate—a custody or visitation (parenting time) order in the past.
   b. ☐ does not have strong ties to California.
   c. ☐ has done things that make it easy for him or her to take the children away without any permission, such as *(check all that apply):*
      ☐ quit a job. ☐ sold his or her home.
      ☐ closed a bank account. ☐ ended a lease.
      ☐ sold or gotten rid of assets. ☐ hidden or destroyed documents.
      ☐ applied for a passport, birth certificate, or school or medical records.
      ☐ Other *(specify):*
   d. ☐ has a history of *(check all that apply):*
      ☐ domestic violence.
      ☐ child abuse.
      ☐ not cooperating with the other parent or party in parenting.
   e. ☐ has a criminal record.
   f. ☐ has family or emotional ties to another county, state, or foreign country.
      (NOTE: If item "f" is checked, at least one other factor must be checked, too.)

THE COURT ORDERS, to prevent the party in item 1 from taking the children without permission:

2. ☐ **Supervised visitation (parenting time)**. The terms are *(check one):*
   ☐ as specified on attached form FL-341(A) ☐ as follows:

3. ☐ T**he part**y in item 1 must post a bond for $. The terms of the bond are *(specify):*

4. ☐ **The party in item 1 must not move from the following locations with the children** without permission in writing from the other parent or party or a court order:
   ☐ Current residence ☐ Current school district *(specify):*
   ☐ This county ☐ Other *(specify):*

5. ☐ **The party in item 1 must not travel with the children** out of *(check all that apply):*
   ☐ this county. ☐ the United States.
   ☐ California. ☐ Other *(specify):*

6. ☐ **The party in item 1 must register this order** in the state of *(specify):* before the children can travel to that state for visits.

7. ☐ **The party in item 1 must not apply for a passport or any other vital document**, such as a visa or birth certificate, that can be used for travel.

THIS IS A COURT ORDER.

Form Adopted for Mandatory Use
Judicial Council of California
FL-341(B) [Rev. July 1, 2016]

Family Code, § 3048; 42 U.S.C. § 11601
www.courts.ca.gov

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PETITIONER:	CASE NUMBER:
RESPONDENT:	
OTHER PARENT/PARTY:	

8. ☐ **The party in item 1 must turn in all the children's passports and other vital documents in the party's possession or control as specified below** *(List the documents that must be turned in. Include the details for turning in the documents to the court, one of the attorneys, the other party, or another person):*

9. ☐ **The party in item 1 must give the other parent or party the following *before* traveling with the children:**
   - ☐ The children's travel itinerary
   - ☐ Copies of round-trip airline tickets
   - ☐ Addresses and telephone numbers where the children can be reached at all times
   - ☐ An open airline ticket for the other parent in case the children are not returned
   - ☐ Other *(specify):*

10. ☐ **The party in item 1 must notify the embassy or consulate** of *(specify country):* about this order and provide the court with proof of that notification within *specify number):* days.

11. ☐ **The party in item 1 must get a custody and visitation (parenting time) order** equivalent to the most recent U.S. order before the children may travel to that country for visits. The court recognizes that foreign orders may be changed or enforced according to the laws of that country.

12. ☐ **Enforcing the order.** The court authorizes any law enforcement officer to enforce this order. In this county, contact the Child Abduction Unit of the Office of the District Attorney at *(phone number and address):*

13. ☐ **Other orders** *(specify):*

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14. This order is valid in other states and in any country that has signed the Hague Convention on Child Abduction.

NOTICE TO AUTHORITIES IN OTHER STATES AND COUNTRIES

This court has jurisdiction to make child custody orders under California's Uniform Child Custody Jurisdiction and Enforcement Act (Fam. Code, § 3400 et seq.) and the Hague Convention on Civil Aspects of International Child Abduction (42 U.S.C. § 11601 et seq.). If jurisdiction is based on other factors, they are listed above in item 13..

Date:

JUDICIAL OFFICER

THIS IS A COURT ORDER.

FL-341(C)

PETITIONER:	CASE NUMBER:
RESPONDENT:	
OTHER PARENT/PARTY:	

CHILDREN'S HOLIDAY SCHEDULE ATTACHMENT

TO ☐ **Petition** ☐ **Response** ☐ **Request for Order** ☐ **Responsive Declaration to Request for Order**
☐ **Stipulation and Order for Custody and/or Visitation of Children** ☐ **Findings and Order After Hearing or Judgment**
☐ **Visitation Order—Juvenile** ☐ **Other *(specify):***

1. **Holiday parenting.** The following table shows the holiday parenting schedules. Write "Petitioner," "Respondent," "Other Parent," or "Other Party" to specify each parent's (or party's) years—odd or even numbered years or both ("every year")—and under "Times," specify the starting and ending days and times.
Note: Unless specifically ordered, a child's holiday schedule order has priority over the regular parenting time.

Holidays	**Times (from when to when)** *(Unless noted below, all single-day holidays start at ____ a.m. and end at ____ p.m.)*	**Every Year** *Petitioner/ Respondent/ Other Parent/Party*	**Even Numbered Years** *Petitioner/ Respondent/ Other Parent/Party*	**Odd Numbered Years** *Petitioner/ Respondent/ Other Parent/Party*
December 31 (New Year's Eve)				
January 1 (New Year's Day)				
Martin Luther King's Birthday (weekend)				
February 12 (Lincoln's Birthday)				
President's Day (Weekend)				
President's Week Recess, first half				
President's Week Recess, second half				
Spring Break, first half				
Spring Break, second half				
Mother's Day				
Memorial Day (weekend)				
Father's Day				
July 4th				
Summer Break				
Labor Day (weekend)				
Columbus Day (weekend)				
Halloween				
November 11 (Veterans Day)				
Thanksgiving Day				
Thanksgiving weekend				
December/January School Break				
Child's birthday *(date):*				
Child's birthday *(date):*				
Child's birthday *(date):*				
Mother's birthday *(date):*				
Father's birthday *(date):*				
Other Parent/Party's birthday *(date):*				
Breaks for year-round schools				

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PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:

1. **Holiday parenting *(continued)***

Other Holidays	**Times (from when to when)** *(Unless noted below, all single-day holidays start at ___ a.m. and end at ___ p.m.)*	**Every Year** *Petitioner/ Respondent/ Other Parent/Party*	**Even Numbered Years** *Petitioner/ Respondent/ Other Parent/Party*	**Odd Numbered Years** *Petitioner/ Respondent/ Other Parent/Party*

☐ Any three-day weekend not specified in item 1 will be spent with the parent or party who would normally have that weekend.
☐ Other *(specify):*

2. **Vacations**

The ☐ Petitioner ☐ Respondent ☐ Other Parent/Party:

a. May take vacation with the children of up to (*specify number)*: ☐ days ☐ weeks the following number of times per year *(specify):*

b. Must notify the other parent or party in writing of vacation plans a minimum of *(specify number):* days in advance and provide the other parent or party with a basic itinerary that includes dates of leaving and returning, destinations, flight information, and telephone numbers for emergency purposes.

(1) ☐ The other parent or party has *(number):* days to respond if there is a problem with the vacation schedule.

(2) ☐ If the parties cannot agree on the vacation plans (*check all that apply):*

(A) ☐ They must confer to try to resolve any disagreement before filing for a court hearing.

(B) ☐ In even-numbered years, the parties will follow the suggestions of ☐ Petitioner ☐ Respondent ☐ Other Parent/Party for resolving the disagreement.

(C) ☐ In odd-numbered years, the parties will follow the suggestions of ☐ Petitioner ☐ Respondent ☐ Other Parent/Party for resolving the disagreement.

(D) ☐ Other *(specify):*

c. ☐ This vacation may be outside the state of California.

d. ☐ Any vacation outside ☐ California ☐ the United States requires prior written consent of the other parent or a court order.

e. ☐ Other *(specify):*

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FL-341(D)

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:

ADDITIONAL PROVISIONS—PHYSICAL CUSTODY ATTACHMENT

TO ☐ **Petition** ☐ **Response** ☐ **Request for Order** ☐ **Responsive Declaration to Request for Order**
☐ **Stipulation and Order for Custody and/or Visitation of Children** ☐ **Findings and Order After Hearing or Judgment**
☐ **Custody Order—Juvenile —Final Judgment** ☐ **Other *(specify):***

The additional provisions to physical custody apply to *(specify parties):* ☐ Petitioner ☐ Respondent ☐ Other Parent/Party

1. ☐ **Notification of parties' current address.** ☐ Petitioner ☐ Respondent ☐ Other Parent/Party
must notify all parties within *(specify number)*: days of any change in his or her
a. address for ☐ residence ☐ mailing ☐ work ☐ e-mail
b. telephone/message number at ☐ home ☐ cell phone ☐ work ☐ the children's schools
The parties may not use such information for the purpose of harassing, annoying, or disturbing the peace of the other or invading the other's privacy. No residence or work address is needed if a party has an address with the State of California's Safe at Home confidential address program.

2. ☐ **Notification of proposed move of child.** Each party must notify the other *(specify number):* days before any planned change in residence of the children. The notification must state, to the extent known, the planned address of the children, including the county and state of the new residence. The notification must be sent by certified mail, return receipt requested.

3. ☐ **Child care.**
a. ☐ The children must not be left alone without age-appropriate supervision.
b. ☐ The parties must let each other know the name, address, and phone number of the children's regular child-care providers.

4. ☐ **Right of first option of child care.** In the event any party requires child care for *(specify number):* hours or more while the children are in his or her custody, the other party or parties must be given first opportunity, with as much prior notice as possible, to care for the children before other arrangements are made. Unless specifically agreed or ordered by the court, this order does not include regular child care needed when a party is working.

5. ☐ **Canceled visitation (parenting time).**
a. ☐ If the noncustodial party fails to arrive at the appointed time and fails to notify the custodial party that he or she will be late, then the custodial party need wait for only *(specify number):* minutes before considering the visitation (parenting time) canceled.
b. ☐ If the noncustodial party is unable to exercise visitation (parenting time) on a given occasion, he or she must notify the custodial party *(specify):*
☐ at the earliest possible opportunity.
☐ Other *(specify):*
c. ☐ If the children are ill and unable to participate in the scheduled visitation (parenting time), the custodial party must give the noncustodial party *(specify):*
☐ as much notice as possible.
☐ A doctor's excuse.
☐ Other *(specify):*

6. ☐ **Phone contact between parties and children.**
a. ☐ The children may have telephone access to the parties ☐ and the parties may have telephone access to the children at reasonable times, for reasonable durations.
b. ☐ The custodial parent must make the child available for the following scheduled telephone contact *(specify child's telephone contact with each party):*
c. ☐ No party or any other third party may listen to, monitor, or interfere with the calls.

Form Approved for Optional Use
Judicial Council of California
FL-341(D) [Rev. July 1, 2016]

Family Code, §§ 3003, 3024, 3083
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PETITIONER:	CASE NUMBER:
RESPONDENT:	
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7. ☐ **No negative comments.** The parties will not make or allow others to make negative comments about each other or about their past or present relationships, family, or friends within hearing distance of the children.

8. ☐ **Discussion of court proceedings with children.** Other than age-appropriate discussion of the parenting plan and the children's role in mediation or other court proceedings, the parties will not discuss with the children any court proceedings relating to custody or visitation (parenting time).

9. ☐ **No use of children as messengers.** The parties will communicate directly with each other on matters concerning the children and may not use the children as messengers between them.

10. ☐ **Alcohol or substance abuse.** The ☐ petitioner ☐ respondent ☐ other parent/party may not consume alcoholic beverages, narcotics, or restricted dangerous drugs (except by prescription) within *(specify number):* hours prior to or during periods of time with the children ☐ and may not permit any third party to do so in the presence of the children.

11. ☐ **No exposure to cigarette or medical marijuana smoke.** The parties will not expose the children to secondhand cigarette or medical marijuana smoke.

12. ☐ **No interference with schedule of any party without that party's consent.** The parties will not schedule activities for the children during the other party's scheduled visitation (parenting time) without the other party's prior agreement.

13. ☐ **Third-party contact.**
    a. ☐ The children will have no contact with *(specify name):*
    b. ☐ The children must not be left alone in the presence of *(specify name):*

14. ☐ **Children's clothing and belongings.**
    a. ☐ Each party will maintain clothing for the children so that the children do not have to make the exchanges with additional clothing.
    b. ☐ The children will be returned to the other party with the clothing and other belongings they had when they arrived.

15. ☐ **Log book.** The parties will maintain a "log book" and make sure that the book is sent with the children between their homes. Using businesslike notes (no personal comments), parties will record information related to the health, education, and welfare issues that arise during the time the children are with them.

16. ☐ **Terms and conditions of order may be changed.** The terms and conditions of this order may be added to or changed as the needs of the children and parties change. Such changes will be in writing, dated and signed by the parties; each party will retain a copy. If the parties want a change to be a court order, it must be filed with the court in the form of a court document.

17. ☐ **Other *(specify):***

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FL-341(E)

PETITIONER:	CASE NUMBER:
RESPONDENT:	
OTHER PARENT/PARTY:	

JOINT LEGAL CUSTODY ATTACHMENT

TO ☐ **Petition** ☐ **Response** ☐ **Request for Order** ☐ **Responsive Declaration to Request for Order**
☐ **Stipulation and Order for Custody and/or Visitation of Children** ☐ **Findings and Order After Hearing or Judgment**
☐ **Custody Order—Juvenile—Final Judgment** ☐ **Other *(specify):***

NOTICE! In exercising joint legal custody, the parties may act alone, as long as the action does not conflict with any orders about the physical custody of the children. **Use this form only if you want to ask the court to make orders specifying when the consent of both parties is required to exercise legal control of the children and the consequences for failing to obtain mutual consent.**

1. The parties *(specify):* ☐ Petitioner ☐ Respondent ☐ Other Parent/Party will have joint legal custody of the children.
2. In exercising joint legal custody, the parties will share in the responsibility and discuss in good faith matters concerning the health, education, and welfare of the children. The parties must discuss and consent in making decisions on the following matters:
   a. ☐ Enrollment in or leaving a particular private or public school or daycare center
   b. ☐ Beginning or ending of psychiatric, psychological, or other mental health counseling or therapy
   c. ☐ Participation in extracurricular activities
   d. ☐ Selection of a doctor, dentist, or other health professional (except in emergency situations)
   e. ☐ Participation in particular religious activities or institutions
   f. ☐ Out-of-country or out-of-state travel
   g. ☐ Other *(specify):*
3. **If a party does not obtain the consent of the other party to those items in 2, which are granted as court orders:**
   a. He or she may be subject to civil or criminal penalties.
   b. The court may change the legal and physical custody of the minor children.
   c. ☐ Other consequences *(specify):*
4. ☐ **Special decision making designation and access to children's records**
   a. The ☐ petitioner ☐ respondent ☐ other parent/party will be responsible for making decisions regarding the following issues *(specify):*
   b. Both the custodial and noncustodial parent have the right to access records and information about their minor children (including medical, dental, and school records) and consult with professionals who are providing services to the children.
5. ☐ **Health-care notification.**
   a. ☐ Each party must notify the other of the name and address of each health practitioner who examines or treats the children; such notification must be made within *(specify number):* days of the first treatment or examination.
   b. ☐ Each party is authorized to take any and all actions necessary to protect the health and welfare of the children, including but not limited to consent to emergency surgical procedures or treatment.The party authorizing such emergency treatment must notify the other party as soon as possible of the emergency situation and of all procedures or treatment administered to the children.
   c. ☐ The parties are required to administer any prescribed medications for the children.
6. ☐ **School notification.** Each party will be designated as a person the children's school will contact in the event of an emergency.
7. ☐ **Name.** The parties will not change the last name of the children or have a different name used on the children's medical, school, or other records without the written consent of the other party.
8. ☐ Other *(specify):*

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Judicial Council of California
FL-341(E) [Rev. July 1, 2016]

Family Code, §§ 3003, 3025, 3083
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SPR15-16

Domestic Violence: Request to Modify or Terminate Domestic Violence Restraining Orders; Family Law: Changes to Request for Order Rules and Forms (amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94, 5.151; adopt forms DV-400, DV-400-INFO, FL-303, FL-320-INFO; revise forms DV-115, DV-115-INFO, DV-116, DV-130, DV-200, DV-200-INFO, DV-505-INFO, FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, FL-341, FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	**Position**	**Comment**	**Committee Response**
1.	California Department of Child Support Services (DCSS) by Alisha A. Griffin Director	NI	See comments on specific provisions below.	See response to specific provisions below.
2.	California Department of Justice	AM	See comments on specific provisions below.	See response to specific provisions below.
3.	California Judges Association by Joan P. Weber California Judges Association President	NI	See comments on specific provisions below.	See response to specific provisions below.
4.	California Partnership to End Domestic Violence by Krista Niemczyk Sacramento	NI	The Partnership has identified three suggestions to improve the rules and forms listed in this proposal. See comments on specific provisions below.	See response to specific provisions below.
5.	John Chemeleski Trial Court Commissioner Long Beach	AM	See comments on specific provisions below.	See response to specific provisions below.
6.	Robert Chin Contra Costa County	NI	"These forms would be a great help to simplify the attempts to right a wrong…" * Comment redacted because full comment relates to commentator's personal case.	See response to specific provisions below.
7.	Family Law and Juvenile Court Operations Managers	NI	• There are various references to "Visitation (Parenting Time)." We recommend	Changing all instances in which the term "visitation (parenting time) appears in a rule or

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SPR15-16

Domestic Violence: Request to Modify or Terminate Domestic Violence Restraining Orders; Family Law: Changes to Request for Order Rules and Forms (amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94, 5.151; adopt forms DV-400, DV-400-INFO, FL-303, FL-320-INFO; revise forms DV-115, DV-115-INFO, DV-116, DV-130, DV-200, DV-200-INFO, DV-505-INFO, FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, FL-341, FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	**Position**	**Comment**	**Committee Response**
	by Blanca Ecsobedo Principal Administrative Analyst Superior Court of Orange County		switching those references to reflect "Parenting Time (Visitation)" per the recommendation made by the Elkins Task Force. Page 48 of the final report states, "*The phrase "parenting time" should be used in statutes and rules of court where applicable instead of "visitation." Any statutory or rule changes should state that these changes are not intended to change substantive law but rather to use nomenclature that more respectfully describes the time parents are responsible for, or spend time with, their children."*	form will affect more rules and forms than are in the present cycle. Therefore, the committee prefers to maintain the term "visitation (parenting time)" in the rules and forms in this report and consider making a global changes in a future cycle.
			• Throughout the forms and rules the following reference appears: "a completed Income and Expense Declaration (form FL-150) or Financial Statement (Simplified) (form FL-155) must be filed….." this gives the impression that either form is acceptable when that is not the case. There are specific requirements for the filing of the FL-155. Suggest additional wording wherever this appears to make it clear that the FL-155 is not always appropriate. Rules 5.92(g) and 5.151(c)(2) give generic statements regarding the use of either form: "when relevant to the relief requested", since the	The committee has amended rules and revised forms to clarify the circumstances in which a party may use form FL-155 and when FL-150 is required.

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SPR15-16

Domestic Violence: Request to Modify or Terminate Domestic Violence Restraining Orders; Family Law: Changes to Request for Order Rules and Forms (amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94, 5.151; adopt forms DV-400, DV-400-INFO, FL-303, FL-320-INFO; revise forms DV-115, DV-115-INFO, DV-116, DV-130, DV-200, DV-200-INFO, DV-505-INFO, FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, FL-341, FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	**Position**	**Comment**	**Committee Response**
			FL-155 may not be used if spousal support or attorney fees are being requested, the generic statement may lead a party to file the FL-155 in error. See comments on specific provisions below.	
8.	Marie Hazlett Head Court Records Systems Clerk Los Angeles County Sheriff's Department	A	I agree to all proposed changes.	No response required.
9.	Legal Aid Foundation of Los Angeles	NI	See comments on specific provisions below.	See response to specific provisions below.
10.	Los Angeles Center for Law and Justice by Diane Trunk Managing Attorney		See comments on specific provisions below.	See response to specific provisions below.
11.	Orange County Bar Association by Ashleigh Aitken President	AM	See comments on specific provisions below.	See response to specific provisions below.
12.	Fariba R. Soroosh Supervising Attorney Self Help Center/Family Law Facilitator's Office Superior Court of Santa Clara County	NI	See comments on specific provisions below.	See response to specific provisions below.
13.	The State Bar of California The Executive Committee of the Family Law Section of the State Bar of California (FLEXCOM) by Saul Bercovitch	NI	See comments on specific provisions below.	See response to specific provisions below.

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SPR15-16

Domestic Violence: Request to Modify or Terminate Domestic Violence Restraining Orders; Family Law: Changes to Request for Order Rules and Forms (amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94, 5.151; adopt forms DV-400, DV-400-INFO, FL-303, FL-320-INFO; revise forms DV-115, DV-115-INFO, DV-116, DV-130, DV-200, DV-200-INFO, DV-505-INFO, FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, FL-341, FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	**Position**	**Comment**	**Committee Response**
	Legislative Counsel San Francisco			
14.	The State Bar of California Standing Committee on the Delivery of Legal Services	AM	See comments on specific provisions below.	See response to specific provisions below.
15.	Superior Court of Imperial County, Access Center by Rheeah Yoo Access Center Supervisor and Family Law Facilitator	NI	See comments on specific provisions below.	See response to specific provisions below.
16.	Superior Court of Los Angeles County	AM	See comments on specific provisions below.	See response to specific provisions below.
17.	Superior Court of Sacramento County	NI	…Please note that many of the comments on SPR15-16 are "global": • Consistency with the use of singular v. plural – i.e., we prefer "party" to "parties" • Over use of the word "also" • Consistency when identifying JC forms – i.e., we prefer stating "form FL-xxx" v. "FL-xxx" • Use of old language "child visitation" or	The committee recommends use of the word "party" or "parties" as it is appropriate within the context of the sentence. The committee recommends changing the forms to reduce the number of times "also' is used. Where space permits, the committee recommends using "form FL-xxx." Changing all instances in which the term

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List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	**Position**	**Comment**	**Committee Response**
			"visitation" v. new language "parenting time" See comments on specific provisions below.	"visitation (parenting time) appears in a rule or form will affect more rules and forms than are in the present cycle. Therefore, the committee prefers to consider this change in a future cycle. See response to specific provisions below.
18.	Superior Court of Santa Clara County by Hon. Christine Copeland Commissioner	AM	…FINALLY it is clear that if the restrained party wants to vacate or mod, they are held to CCP 1005 service requirements. Thank you. The statute always said that, but it was easily missed for some reason by litigants, attorneys, sometimes court calendaring staff, etc. See comments on specific provisions below.	No response required. See response to specific provisions below.
19.	Superior Court of San Diego County by Mike Roddy Executive Officer	A	See comments on specific provisions below.	See response to specific provisions below.
20.	Hon. Rebecca Wightman Commissioner Superior Court of San Francisco County	NI	"…I was glad to see that certain changes were made to proposed changed to FL-300 from the last round of comment, however, I still have a number of concerns that were previously raised in the public comment process that I do not believe were adequately addressed. I would ask that the Committee please review the prior public comments submitted (to W14-12)…" See comments on specific provisions below.	See response to specific provisions below and in the comment chart for W14-12. See response to specific provisions below.

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List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	**Position**	**Comment**	**Committee Response**

Rule 5.12		
Commentator	**Comment**	**Committee Response**
Los Angeles Center for Law and Justice by Diane Trunk Managing Attorney	The proposed change would delete the term "motion" from the rule and replace it with the term "requests for orders". Although this change would use the terms "request for orders" consistently throughout Family Law RFO's, the terms "request for orders" is not used in the Code of Civil Procedure related to discovery motions. Recommendation: Use a definitional section which specifies that as used in the rules, "request for orders" and "motion" mean the same thing to avoid confusion when looking at the specific requirements for discovery "motions" in the CCP.	The committee recommends amending the rule to provide a new section, as follows: (a) Use of terms In a family law proceeding, the term "request for order" has the same meaning as the terms "motion" or "notice of motion" when they are used in the Code of Civil Procedure.

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Rule 5.62		
Commentator	**Comment**	**Committee Response**
Los Angeles Center for Law and Justice by Diane Trunk Managing Attorney	Comment: The proposed change would delete the term "defendant" from the rule, delete reference to "notice of motion" or "motion" and replace "appeared" with "made a general appearance. Again, the problem arises with the change in the term "motion" and replaced with the term "request for order" when the latter term in not defined in the Code of Civil Procedure which the Rules are intended to implement. Recommendation: There needs to be a definitional section that clarifies that "request for order" under the Rules is synonymous with the term "motion" or "notice of motion" when those terms are used in the Code of Civil Procedure.	The committee recommends amending the rule to provide a new section, as follows: (a) Use of terms In a family law proceeding, the term "request for order" has the same meaning as the terms "motion" or "notice of motion" when they are used in the Code of Civil Procedure.
Superior Court of Los Angeles County	We appreciate the committee's responsiveness to the submitted comments opposing the proposed changes to Rule 5.62(a)(5).	No response required.

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Rule 5.63		
Commentator	**Comment**	**Committee Response**
Los Angeles Center for Law and Justice by Diane Trunk Managing Attorney	Comment: The proposed change would replace the term "motion" with the term "request for order" with respect to procedures to file a "motion to quash" under the Code of Civil Procedure. The term "request for order" is not used in the Code of Civil Procedure. Recommendation: There needs to be a definitional section that clarifies that "request for order" under the Rules is synonymous with the term "motion" or "notice of motion" when those terms are used in the Code of Civil Procedure.	The committee recommends amending the rule to provide a new section, as follows: (a) Use of terms In a family law proceeding, the term "request for order" has the same meaning as the terms "motion" or "notice of motion" when they are used in the Code of Civil Procedure.

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Rule 5.92		
Commentator	**Comment**	**Committee Response**
Los Angeles Center for Law and Justice by Diane Trunk Managing Attorney	a. Comment: The proposed rule reorders and clarifies the technical rules for filing a Request for Orders using form FL-300. There appear to be no substantive changes. In Section (b)(l) of the proposed rule, the term DECLARANT is used but is not defined anywhere in the rule. That section of the proposed rule would read, "The Request for Order...must set forth facts sufficient to notify the other party of the declarant's contentions in support of the relief requested." Recommendation: Replace the term "declarant's" with the term "the moving party's".	The committee recommends amending the rule as suggested by the commentator.
	b. Comment: Under the proposed change, in section (d)(2), the rule references Code of Civil Procedure section 1005 (relating to service of MOTIONS) as applying to Requests for Orders. Recommendation: Clarify that a "request for orders" is synonymous with a "motion".	The committee recommends amending the rule by adding a new item (a)(1)(C) to provide that "<u>The term "request for order" has the same meaning as the terms "motion" or "notice of motion" when they are used in the Code of Civil Procedure.</u>
	c. Comment: The proposed rule clarifies the service requirements for Requests for Orders as being the same for service requirements of the Code of Civil Procedure.	The committee believes that the above-described recommendation to the rule will respond to the concern raised by the commentator.

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Domestic Violence: Request to Modify or Terminate Domestic Violence Restraining Orders; Family Law: Changes to Request for Order Rules and Forms (amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94, 5.151; adopt forms DV-400, DV-400-INFO, FL-303, FL-320-INFO; revise forms DV-115, DV-115-INFO, DV-116, DV-130, DV-200, DV-200-INFO, DV-505-INFO, FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, FL-341, FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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Rule 5.92		
Commentator	**Comment**	**Committee Response**
	See proposed rule section (f)(3). The term "request for orders" is not used in the Code of Civil Procedure. Recommendation: Clarify that that the term "motion" is synonymous to "request for order".	
The State Bar of California Standing Committee on the Delivery of Legal Services	1. Rule 5.92. Request for Court Order (b)(2) "……or when relevant to other relief requested. " Change language to <u>"or when a monetary contribution or financial relief is requested."</u> <u>2. Rule 5.92. Request for Court Order</u> (b)(3) " Must be filed with the Request for Order (form FL-300) when a party seeks child support orders", Add the following language "<u>and shall be updated every ninety (90) days and filed ten (10) days prior to any other further hearing dates concerning the same Request for Order regarding child support."</u> 3. Rule 5.92. Request for Court Order (d) (2) The moving party's request must be supported by a declaration <u>OR A STATEMENT OF FACTS</u> showing good cause for the court to prescribe shorter times…."	To respond to the concerns of the commentator, the committee recommends amending rule 5.92(b)(2) as follows: The committee recommends various formatting and substantive changes in the rule to better clarify what forms are need when a party seeks support orders, orders about the parties' finances, or attorney's fees and costs. The committee is not able to recommend this change without additional public comment. The committee recommends this amendment to the rule.

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Rule 5.92		
Commentator	**Comment**	**Committee Response**
	4. Rule 5.92. for Court Order (g)(3) "……or when relevant to other relief requested. " Change language to "or when a monetary contribution or financial relief is requested."	The committee recommends various formatting and substantive changes in the rule to better clarify what forms are need when a party seeks support orders, orders about the parties' finances, or attorney's fees and costs.
Superior Court of Los Angeles County	**(1) CRC 5.92(g)(2):** should make clear that if a party is seeking unrelated relief the RFO must be served on 16 days notice. The proposed rule could be read to suggest that the RFO on unrelated relief can be set for hearing at the same time as the existing RFO without complying with the 16 day notice rule. **(2) CRC 5.92(b)(3) and 5.92(g)(3):** should indicate that all blanks must be filled in on the Income and Expense Declaration and pay stubs, profit and loss statement, or Schedule C, must be attached. We are supportive of the proposed language in Rule 5.92(g) regarding Responding papers as clear and thorough.	To respond to the concerns raised by the commentator, the committee recommends revising rule 5.92(g)(2) to state: "The responding party may request relief related to the orders requested in the moving papers. However, unrelated relief must be sought by scheduling a separate hearing using *Request for Order* (form FL-300) and following the filing and service requirements for a *Request for Order* described in this rule. The committee recommends amending the rule to incorporate some of the commentator's suggestions. No response required.

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Domestic Violence: Request to Modify or Terminate Domestic Violence Restraining Orders; Family Law: Changes to Request for Order Rules and Forms (amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94, 5.151; adopt forms DV-400, DV-400-INFO, FL-303, FL-320-INFO; revise forms DV-115, DV-115-INFO, DV-116, DV-130, DV-200, DV-200-INFO, DV-505-INFO, FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, FL-341, FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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Rule 5.92		
Commentator	**Comment**	**Committee Response**
	Service Requirements Rule 5.92(f) (1)(B) on page 31, states that personal service is required when "The responding party has not yet appeared in the case as described in rule 5.62;" However, on the FL-300 INFO item 15 states personal service is required when the respondent has not yet been served with a summons and Petition, but makes no mention of an appearance being necessary. Item 17 states that service by mail is permissible when "Respondent was previously served with a Summons or Petition – it does not indicate that an appearance is necessary to allow service of an RFO by mail. The proposed rule and proposed form do not appear to be consistent.	The committee recommends revising form FL-300-INFO so that it is consistent with rule 5.92(f)(1(B).
Superior Court of Sacramento County	* Comments Item (b)(2) - this is a good change Item (b)(4) - What is the point of this statement? The statement offers no instruction. Item (b)(5) - This is horrible. This statement will create more continuances and result in more local rules. Item (c)(1) - It is unnecessary to call out specific rules that parties must be complied with. It implies that they don't have	 No response required. The committee recommends amending subdivision (b)(4) to reference Information Sheet for Request for Order (form FL-300-INFO), which provides a list of forms that may apply to a party requesting orders. Subdivision (b)(5) is a statement in the current rule. The committee has not received input from the courts that the current rule has created more continuances or resulted in more local rules since the rule became effective on July 1, 2012. The committee believes that is it particularly important that parties understand that there are special

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Rule 5.92		
Commentator	**Comment**	**Committee Response**
	to comply with any Statute not specifically called out.	requirements when requesting temporary emergency (ex parte) orders. Therefore, the committee recommends maintaining the language in the rule.
	Item (c)(2) - Insert (Ex Parte) after the word "Emergency"	The committee recommends amending the rule as suggested.
	Item (c)(3) - The phrase "local court procedures" sanctions unwritten rules which is in violation of Elkins.	The committee believes that it is important that parties understand that they must also comply with local court procedures, especially those that relate to scheduling hearings.
	Item (d)(1) - It is unnecessary to call out specific rules that parties must be complied with. It implies that they don't have to comply with any Statute not specifically called out.	The committee believes that is it particularly important that parties understand that there are special requirements when requesting temporary emergency (ex parte) orders. Therefore, the committee recommends maintaining the language in the rule.
	Item (d)(3) - This is an editorial comment and does not need to be included.	The committee believes it is important to preserve the Advisory Committee Comment following the rule to reflect the history of, and the rationale for the use of, *Request for Order* (form FL-300).
	Item (e) - This section (e) adds no value or instruction. We	The committee believes that subdivision (e) should be

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Domestic Violence: Request to Modify or Terminate Domestic Violence Restraining Orders; Family Law: Changes to Request for Order Rules and Forms (amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94, 5.151; adopt forms DV-400, DV-400-INFO, FL-303, FL-320-INFO; revise forms DV-115, DV-115-INFO, DV-116, DV-130, DV-200, DV-200-INFO, DV-505-INFO, FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, FL-341, FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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Rule 5.92		
Commentator	**Comment**	**Committee Response**
	recommend it b removed.	maintained in the rule to respond to the concerns raised by commentators in the previous comment cycles. The rule adds significant value to the courts. By authorizing the court clerk to issue a *Request for Order* as a ministerial act in certain circumstances, the rule can save courts significant time when the signature of a judicial officer would have been otherwise been required before filing.
	Item (f)(1) - Remove the reference to "including personal service" it's unnecessary.	The committee recommends no change to subdivision (f)(1). The committee believes that a reference to "personal service" can be helpful to self-represented parties.
	Item (f)(2) - The word "paternity" should be replaced with the word "parentage"	The committee recommends amending the rule to remove the word "parentage."
	Item (f)(3) - insert "served by mail or otherwise…" [All other requests for orders and appropriate documents may be served by mail or otherwise as specified in code of Civil Procedure section 1010 et seq. At the end of the sentence remove "including service by mail."	The committee recommends no change to subdivision . The committee believes that a reference to "personal service" can be helpful to self-represented parties.
	Item (g)(4) - This section (4) adds nothing. The statement adds no instruction.	The committee recommends amending the rule at (g)(4) to reference the information sheet associated with form FL-320, which provides a list of forms a party may want to complete and file.

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Rule 5.92		
Commentator	**Comment**	**Committee Response**
	Item (g)(5) - This statement will increase continuances and result in more local rules.	Subdivision (g)(5) is a statement in the current rule. The committee has not received input from the courts that the current rule has created more continuances or resulted in more local rules since the rule became effective on July 1, 2012.

Rule 5.94		
Commentator	**Comment**	**Committee Response**
California Partnership to End Domestic Violence by Krista Niemczyk Sacramento	Rule 5.94(e)(3) The proposed version of this rule, "No fee will be charged for reissuance of the order unless the order has been dissolved three times previously." is unclear as currently written. As written, it is punitive and could serve as a deterrent to repeated requests to reissuance. If fees could be assessed in cases where a party has requested reissuance three times previously, it could deter domestic violence survivors who have been unable to effectuate service due to evasion by the other party as well as other factors outside of the survivors' control. Further, this rule is silent on those cases where a party has a fee waiver in place already. Would this rule supersede the fee waiver, or would those with a fee waiver be exempted from a fee under this rule? These temporary orders are an important tool for survivor safety, and the court should not create barriers and deterrents to survivors seeking a reissuance.	The committee recommends amending the rule to conform to Family Code section 245, which is amended, effective January 1, 2016 by Assembly Bill 1081. The amended statute states that a fee shall not be charged for the extension of the temporary restraining order and deletes the language about charging a fee if the order had been dissolved three times previously.
The State Bar of California Standing Committee on the	Rule 5.94 Order shortening time (e)(2) Failure to timely serve the Request for Order (FL-300),	The committee recommends amending rule 5.94(e)(e) to

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Rule 5.94		
Commentator	**Comment**	**Committee Response**
Delivery of Legal Services	any temporary emergency orders and supporting documents or FAILURE to obtain a reissuance will result in all orders included in that Request for Order and Temporary Emergency Orders (form FL-305) TO EXPIRE on the actual hearing date. “	conform to the language of Family Code section (as amended, effective January 1, 2016): The *Request for Order* (form FL-300) and *Temporary Emergency (Ex Parte) Orders* (form FL-305) will expire on the date and time of the scheduled hearing if the moving party fails to: (1) Have the other party timely served before the hearing with the *Request for Order* (form FL-300), supporting documents, and any orders issued on *Temporary Emergency (Ex Parte) Orders* (form FL-305); or (2) Obtain a court order to continue the hearing and extend the expiration date of the temporary emergency (ex parte) orders until the end of the continued hearing.
Superior Court of Los Angeles County	We are supportive of the proposed language in Rule 5.94(e) Request for Order; reissuance clear and thorough.	No response required.
Superior Court of Sacramento County	* Commentator suggests inserting “(Ex Parte)” after the word “Emergency.”	The committee recommends amending the rule as suggested by the commentator.

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Rule 5.94		
Commentator	**Comment**	**Committee Response**
	Item (d)(2) - Insert - "on or before" the day papers are due.	The committee recommends amending the rule as suggested by the commentator.
	Item (e)(2) - insert (Ex Parte) after the word "emergency." Delete "actual" - it implies the court has hearings that are other than actual.	The committee recommends amending the rule as suggested by the commentator.
	Item (e)(3) - Stay with the standard language. Change "dissolved" to "reissued"	To conform to the changes to Family Code section 245, the committee recommends using the term "extended" instead of "reissued."

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Rule 5.151		
Commentator	**Comment**	**Committee Response**
Superior Court of Sacramento County	* Comments Item (c)(3) - insert (Ex Parte) after the word "Emergency"	The committee recommends this change to the rule.
Hon. Rebecca Wightman Commissioner Superior Court of San Francisco County	• By combining or "mixing" Ex Parte emergency request information with regular noticed motion information all on one RFO form (upon the CRC 5.151 being revised to require use of RFO vs. courts having been allowed to have a *separate* Ex Parte Application form), this inadvertently allows the trial court judicial officer to review information on an ex parte basis (for an ex parte hearing) that, but for the fact that both requests must be made on the same form, would not have otherwise been before that judicial officer. The ethical and due process issues raised by such a situation, are some of the very concerns raised by the CJEO opinion. I have attached a copy of the CJEO Opinion for your review. (The opinion may be found at: http://www.judicialethicsopinions.ca.gov/sites/default/files/CJEO_Formal_Opinion_2014-004.pdf) • Suggestion: Please consider – in conjunction with revising FL-300, a CHANGE in the CRC 5.151 to allow an alternative EX PARTE Emergency Application (NOT just a "notice" declaration). By creating this alternative, you can avoid the ethics and other issues raised.	The CJEO opinion relates to review of motions when no notice has been given or waived. This proposal anticipates that courts will follow rule 5.151 which requires parties to provide notice or good cause for waiver. The committee considered a separate ex parte form, however, it is concerned that it is difficult for the court and the parties to have multiple filings on the same issue. It also seems that most parties have a difficult time separating out which issues of their child custody issue are an emergency versus other issues and that declarations will commonly be confused.

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DV-130		
Commentator	**Comment**	**Committee Response**
California Department of Justice California Restraining and Protective Order Unit	We have reviewed the proposed revisions to the existing form DV-130 and approve of the changes.	No response required.
Family Law and Juvenile Court Operations Managers by Blanca Ecsobedo Principal Administrative Analyst Superior Court of Orange County	Page one, section 4, recommend moving the "original order" and "___ Amended Order" boxes to the top of the form to be consistent with other judicial council forms.	The committee recommends that the check box for "Amended Order be moved to the top of the form.
Marie Hazlett Head Court Records Systems Clerk Los Angeles County Sheriff's Department	* "… the proposed revision to form DV-130 which adds check boxes to indicate the order is an original or 1st, 2nd, 3rd amended will be extremely helpful to agencies that do the CLETS entries. It will make it very clear when a CLETS entry needs to be updated."	No response required.
Fariba R. Soroosh Supervising Attorney Self Help Center/Family Law Facilitator's Office Superior Court of Santa Clara County	-Item 4: Omit "original Order" box and move the "Amended Order" box to the top, next to the title of the form, as it is too confusing place in this spot next to the expiration date. We need not indicate that an order is original as it is assumed so unless the amended box is checked (same as with Petition, for example). Also, ROs are amended for various reasons and putting this box next to the expiration date area may seem as if the expiration date is being amended.	The committee prefers to maintain the "Original" and "Amended" boxes as this revision was developed with significant input from the legal community, including court staff, domestic violence victim advocates, and law enforcement officers. The revision was also approved the Department of Justice, California Restraining and Protective Order Unit.
The State Bar of California The Executive Committee of the Family Law Section of the State Bar of California (FLEXCOM)	Item 4: Omit "original Order" box and move the "Amended Order" box to the top, next to the title of the form, as it is too confusing place in this spot next to the expiration date. It is unnecessary to indicate that an order is original as it is	The committee prefers to maintain the "Original" and "Amended" boxes as this revision was developed with significant input from the legal community, including court staff, domestic violence victim advocates, and law

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Domestic Violence: Request to Modify or Terminate Domestic Violence Restraining Orders; Family Law: Changes to Request for Order Rules and Forms (amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94, 5.151; adopt forms DV-400, DV-400-INFO, FL-303, FL-320-INFO; revise forms DV-115, DV-115-INFO, DV-116, DV-130, DV-200, DV-200-INFO, DV-505-INFO, FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, FL-341, FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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DV-130		
Commentator	**Comment**	**Committee Response**
by Saul Bercovitch Legislative Counsel San Francisco	presumed. Also, Restraining Orders are amended for various reasons and putting this box next to the expiration date area may seem as if the expiration date is being amended.	enforcement officers. The revision was also approved the Department of Justice, California Restraining and Protective Order Unit.
Superior Court of Los Angeles County	DV-130: Item 24: add "by someone other than the protected person" after "served" (or similar language as on new DV -400 at page 2). Page 2 : The bold language re consequences for violating the order may be misleading since, in certain circumstances, violation of the order may have other consequences (parole violation, charge for the underlying crime, etc.)	To be consistent with the language in the items in the section, the committee prefers to not include the suggested language The specific language was not an item on which the committee specifically requested comment. The committee may consider reviewing this language in a future cycle.
Superior Court of Sacramento County	* Comments Item 3 - Last check box reads "*Check here if there are additional protected persons. List them on attached sheet of paper and write*, "DV-130, Additional Person," *as a title*." - Replace word "write" with "print" Item 15 - Last check box reads "*Check here if more payments are ordered. List them on an attached sheet of paper and write* "DV-130, Debt Payments" *as a title*. - Replace word "write" with "print" Item 20 - "*Check here if more payments are ordered. List them on an attached sheet of paper and write* "DV-130, Payments for Costs and Services" *as a title*. - Replace word "write" with "print"	The committee does not recommend changing the language as suggested by the commentator. The use of the word "write" vs. "print" in the Judicial Council forms was previously vetted by the committee and was not among the changes on which the committee sought comment during this cycle. Same as above response. Same as above response.

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DV-130		
Commentator	**Comment**	**Committee Response**
	Item 25(a) - Replace word "write" with "print"	The committee does not recommend changing the language as suggested by the commentator. The use of the word "write" vs. "print" in the Judicial Council forms was previously vetted by the committee and was not among the changes on which the committee sought comment during this cycle.
Superior Court of Santa Clara County by Hon. Christine Copeland Commissioner	DV-130 24(b)(2)- the current DV-130 says the same thing, but when did we change this? I believe it used to be that if the order made differed from the APPLICATION, and restrained person was not at the hearing, then the DV-130 had to be personally served. Now, if the DV-130 differs from the DV-110 and restrained person was not at the hearing, personal service is required. Rarely would a DV-130 match a DV-110, if the latter is made pending hearing. I point out request for batterers intervention classes as a good example: who would be making that pre-hearing at the DV-110 stage? But many make that after-hearing, at the DV-130 stage. Same for financial orders: who would be making a spousal support order at the DV-110 stage, or a medical bill reimbursement order pre-hearing? Yet many orders would come out of the DV-130 hearing. It would be great to have a rule or legislative fix.	Family Code section 6384(a) provides that mail service is permissible if the "terms and conditions of the restraining order or protective order issued at the hearing are identical to the temporary restraining or emergency protective order, except for the duration of the order. As noted by the commentator, an order for batterer's treatment or spousal support would not be included in the temporary order, and thus, the order after hearing would require personal service.

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DV-200		
Commentator	**Comment**	**Committee Response**
Family Law and Juvenile Court Operations Managers by Blanca Ecsobedo Principal Administrative Analyst Superior Court of Orange County	• Item #1 – form asks for "Name of Person Asking for Protection", this may not be accurate. This could be a person who has a Protection Order and IS a Protected Person. Recommend changing to: Name of Protected Person or Person Asking for Protection. • Item #4 – recommend adding two other items: *How to Change or End a Domestic Violence Restraining Order (DV-400)* and an option to add amended filings, such as "Amended _____."	To address the concerns raised by the commentator, the committee has decided not to recommend revising form DV-200 to include reference to service of a *Request for Order* (form FL-300). The committee believes the best protocol is for litigants to use the existing family law proof of service forms (FL-330 and FL-335) to serve the *Request for Order*. The committee does recommend revising the form so that it conforms to the changes to Family Code section 245, which will be amended, effective January 1, 2016 by Assembly Bill 1081.
Superior Court of Sacramento County	Suggested revision - A field should be added to include the submitting party's name and mailing address. As the form is currently set up, we are unable to determine which party submitted the form (especially true once both parties start using each form for the FL-300). We are unable to determine who to return the form to if it is incomplete.	To address the concerns of the commentator, the committee has decided not to recommend revising form FL-200 to include references to service of a *Request for Order* (form FL-300). The committee believes the best protocol is for litigants to use the existing family law proof of service forms (FL-330 and FL-335) to serve the *Request for Order*. The committee does recommend revising the form so that it conforms to the changes to Family Code section 245, which will be amended, effective January 1, 2016 by Assembly Bill 1081.

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Domestic Violence: Request to Modify or Terminate Domestic Violence Restraining Orders; Family Law: Changes to Request for Order Rules and Forms (amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94, 5.151; adopt forms DV-400, DV-400-INFO, FL-303, FL-320-INFO; revise forms DV-115, DV-115-INFO, DV-116, DV-130, DV-200, DV-200-INFO, DV-505-INFO, FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, FL-341, FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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DV-250		
Commentator	**Comment**	**Committee Response**
Family Law and Juvenile Court Operations Managers by Blanca Ecsobedo Principal Administrative Analyst Superior Court of Orange County	• Item #1 – form asks for "Name of Person Asking for Protection", this may not be accurate. This could be a person who has a Protection Order and IS a Protected Person. Recommend changing to: Name of Protected Person or Person Asking for Protection. • Item #4 – recommend adding an option to add amended filings, such as "Amended _____."	To address the concerns raised by the commentator, the committee has decided not to recommend revising form DV-250 to include reference to service of a *Request for Order* (form FL-300). The committee believes: • Existing family law proofs of service (forms FL-330 and FL-335) should be used to serve a family law form (FL-300). • Using a DV form to serve a FL form is not the culture in family law proceedings and might be confusing to litigants. • Forms DV-250 and FL-250-INFO were designed specifically for the initial request for temporary domestic violence restraining orders. • Further substantive and formatting changes would be required to DV-250-INFO to reflect the expanded use of DV-250 for family law filings. This would require public comment.
Superior Court of Sacramento County	Suggested revision - A field should be added to include the submitting party's name and mailing address. As the form is currently set up, we are unable to determine which party submitted the form (especially true once both parties start using each form for the FL-300). We are unable to determine who to return the form to if it is incomplete.	Same as above response.

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Domestic Violence: Request to Modify or Terminate Domestic Violence Restraining Orders; Family Law: Changes to Request for Order Rules and Forms (amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94, 5.151; adopt forms DV-400, DV-400-INFO, FL-303, FL-320-INFO; revise forms DV-115, DV-115-INFO, DV-116, DV-130, DV-200, DV-200-INFO, DV-505-INFO, FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, FL-341, FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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DV-400		
Commentator	**Comment**	**Committee Response**
California Department of Justice California Restraining and Protective Order Unit	In section 4- Court Orders - We propose the following, The protective orders in *Restraining Order After Hearing* (form DV-130) issued or modified on (date):_____are hereby terminated. In many cases, the order is sometimes extended or modified more than once and the issue date is often changed to the date when modified. Section 5 *(now item 6)*- CLETS Entry – We propose the following verbiage: The court or its designee will transmit this form within one business day to law enforcement personnel for entry into ~~CLETS~~ the statewide Restraining and Protective Order System via CLETS. (CLETS is not a database but it the mechanism used for transporting the data to and from authorized LEA's, other criminal justice agencies and the DOJ.) We recommend adding "CLETS-CANCEL" at the bottom of the form. We added that on the bottom of existing JC forms many years ago to help the records person know what order type to use when entering into CLETS since we have codes for all the different order types. In this case Form DV- 400 is an order for termination of an existing OAH. This will require a "CANCEL" transaction in CARPOS.	The committee recommends revising the form as recommended by the commentator. The committee recommends revising the form as recommended by the commentator. No response required. The committee recommends adding this language to the bottom of the form.
Family Law and Juvenile Court	• We recommend retitling the form to *Findings and Notice of*	The committee recommends that the form be titled

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DV-400		
Commentator	**Comment**	**Committee Response**
Operations Managers by Blanca Ecsobedo Principal Administrative Analyst Superior Court of Orange County	*Termination of Restraining Order **and Order***, as courts will use this form to make orders. • Add instructions to the top of the form to reflect, "Complete numbers 1 and 2 only." • • Item #3(a) should include the Temporary Restraining Order (DV-110) for instances when parties would like to terminate temporary restraining orders. • Item #3(e) – please clarify if this form will be required for all dismissals or particular dismissals. • Item #4(b) *(now 4c.)* – this is a statement regarding existing child custody, support, etc. orders remaining in effect and could be confusing when (d) and/or (e) are checked as they conflict. Recommend making (b) a check box to be used when those types of orders will remain. • • Item #4(d) and (e) *(now a and b)* – recommend adding information to Item #1 in both sections to indicate the date and form # of the modifying order.	*Findings and Order to Terminate Restraining Order After Hearing.* The committee recommends revising the form to include the language suggested by the commentator. This form is intended to cover termination of a restraining order after hearing, as required by Family Code section 6345. The committee recommends not including particular language on the form about dismissals to avoid implying that form DV-400 must be used with all dismissals. The committee recommends revising the form at item 4c to begin with "Unless modified or terminated by court order." The committee prefers that the item remain a statement rather than a check box. The committee recommends revising the form as suggested by the commentator.
Legal Aid Foundation of Los Angeles	The family law advocates at Legal Aid Foundation of Los Angeles—who have significant experience representing domestic violence survivors—in collaboration with our LAFLA Self Help Center colleagues, have reviewed the Judicial	No response required.

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Domestic Violence: Request to Modify or Terminate Domestic Violence Restraining Orders; Family Law: Changes to Request for Order Rules and Forms (amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94, 5.151; adopt forms DV-400, DV-400-INFO, FL-303, FL-320-INFO; revise forms DV-115, DV-115-INFO, DV-116, DV-130, DV-200, DV-200-INFO, DV-505-INFO, FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, FL-341, FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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DV-400		
Commentator	**Comment**	**Committee Response**
	Council's proposed new DV-400 form and the proposed changes relating to modifying and terminating domestic violence restraining orders. First, we are grateful to the Committee for carefully considering the relevant feedback received from three previous public comment periods, and for recognizing that these changes are controversial and potentially hazardous to victims of violence. We also recognize that California Family Code (CFC) § 6380(f) mandates the Judicial Council to adopt forms for restraining order modifications and terminations. With regard to balancing the tensions between these issues, we respectfully offer the following comments, feedback, and suggestions and hope that you will carefully consider the following proffered modifications: **1. NOTICE: Service and Identification Requirements:** As you well know, the new DV-400 would become the Judicial Council's mandatory form for use when terminating a CLETS civil restraining order in California. One of the major reasons termination of these orders is potentially hazardous to domestic violence victims is notice. The Judicial Council must ensure that the new forms and instructions comport with the requirements of CFC § 6345(d), which provides for personal service (or service on the Secretary at State for those victims registered in the Safe At Home program.)	No response required. No response required.

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Domestic Violence: Request to Modify or Terminate Domestic Violence Restraining Orders; Family Law: Changes to Request for Order Rules and Forms (amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94, 5.151; adopt forms DV-400, DV-400-INFO, FL-303, FL-320-INFO; revise forms DV-115, DV-115-INFO, DV-116, DV-130, DV-200, DV-200-INFO, DV-505-INFO, FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, FL-341, FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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DV-400		
Commentator	**Comment**	**Committee Response**
	It is particularly crucial that any person protected by a DV-130 CLETS order properly receives timely notice and an opportunity to be heard to object, if desired, or otherwise they will be left extremely vulnerable. This often happens with criminal protective orders that can expire prior to the expiration date written on the form (for example, when probation is terminated, or the restrained person is incarcerated. This latter situation is more of a problem than may appear at first blush because of early release dates.) Due to the high-conflict nature of domestic violence relationships, we are concerned about the potential for fraud regarding actual service and appearance at hearings. What if the Protected Party is not the person who was personally served, did not receive notice of the upcoming hearing, and was not the individual who appeared as the Protected Party at the designated hearing? In an attempt to avoid such fraud, we propose the following safeguards: **a. Additional Court Service by Mail** We propose that *in addition* to the personal service requirement, a clerk of the Superior Court be required to send out a notice by mail to the Protected Party to the most recent address on file. This additional method of service (i) would create only minimal additional costs for the Court; (ii) is already a service the Court provides in certain other situations or cases (trial setting conferences, unlawful	No response required. While the concerns of the commentator are appreciated, the committee does not recommend revising the rule to require the clerk to mail the notice as suggested. This would require clerks to be able to identify these cases. Setting up a procedure that is significantly different than other family law and domestic violence matters would be difficult for the courts to implement at this time,

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DV-400		
Commentator	**Comment**	**Committee Response**
	detainer matters[1]); and (iii) protects the Court by reducing the possibility of fraud and the potential subsequent hazardous consequences.	particularly given the cutbacks in staffing. This recommendation does not prevent courts from establishing or continuing such a local practice.
	b. Protected Party: Valid Identification Necessary In order to ensure that the person who appears at the hearing *is actually* the Protected Party, we propose that the alleged Protected Party be required to show a valid identification document (such as California ID or valid passport) to the court clerk on the day of the hearing. This will ensure that the Restrained Party cannot bring someone else to the hearing, fraudulently claiming to be the Protected Party. We are aware of anecdotes of this type of fraud and know of some courtrooms already utilizing a practice of checking identification.	The committee recommends revising item 3 in form DV-400 to include a finding that a protected person who appeared at the hearing and verifying his or her identity. The committee believes that this recommendation is institutionalizing a best practice, not putting an undue burden on the court, since most people travel to court with some kind of identification.
	c. Additional time for service for Safe At Home Registered Litigants For those litigants who have registered with the Safe At Home program, we request that the Court provide for additional time for the hearing, allowing for the fact that mail via the Safe At Home program will take longer to reach the intended recipient. Appropriate extra time would be a minimum of eight days, three additional days pursuant to Government Code § 6207's time allowance for the forwarding of mail by the Secretary of State and five	The committee recommends including in DV-400-INFO a notice for the restrained party to let the court clerk know if the other party participates in the Safe at Home program. The restrained party will need to request a hearing date to allow time for the protected party to receive notice of the court hearing from the Secretary of State.

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DV-400		
Commentator	**Comment**	**Committee Response**
	additional days for mailing from the SAFE at Home program onto the litigant, under CCP §1013. In addition, we propose that any litigant signing a proof of service to a Safe At Home registrant include a valid registration number for that registrant, if this information is properly recorded in the case file on a Notice of Change of Address form or other filed document. **d. Personal Service by a Sheriff or Registered Service Professional** The current proposal requires personal service on the Protected Party of any request to modify or terminate a restraining order currently in effect. We would favor service of a DV-400 form and any attachments being perfected by either a sheriff or a registered service professional. This will help to avoid the problems associated with false proofs of service and maintain the highest possible protection for the domestic violence victim. We believe it would be appropriate for the sheriff to charge for such service (subject to the use of a fee waiver by eligible litigants.) This accords with the language of VAWA, which provides for free service for victims of domestic violence, but not for the restrained party (bold font added): **VAWA Language on no fee** U.S. Code › Title 42 › Chapter 46 › Subchapter XII-H › § 3796gg–5	The committee prefers to recommend that form DV-400-INFO include a notice about special service requirements for protected parties who are registered with the Safe at Home program. The form would also include a link to that web site. The committee does not recommend this change in service requirements without a specific amendment in the Family Code.

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DV-400		
Commentator	**Comment**	**Committee Response**
	42 U.S. Code § 3796gg–5 - Costs for criminal charges and protection orders (a) In general A State, Indian tribal government, or unit of local government, shall not be entitled to funds under this subchapter unless the State, Indian tribal government, or unit of local government— (1) certifies that its laws, policies, and **practices do not require**, in connection with the prosecution of any misdemeanor or felony domestic violence, dating violence, sexual assault, or stalking offense, or in connection with the filing, issuance, registration, modification**,** enforcement, dismissal, withdrawal or service of a protection order, or a petition for a protection order, to protect a victim of domestic violence, dating violence, sexual assault, or stalking, **that the victim bear the costs** associated with the filing of criminal charges against the offender, or the costs associated with the filing, issuance, registration, modification, enforcement, dismissal, withdrawal or service of a warrant, protection order, petition for a protection order, or witness subpoena, whether issued inside or outside the State, tribal, or local jurisdiction; **California FC language on no fee for ROs** 6222. There is no filing fee for an application, a responsive pleading, or an order to show cause that seeks to obtain, modify, or enforce a protective order or other order authorized	The committee recommends revising the information sheet to reflect that there is no fee to file a request to change or end a *Restraining Order After Hearing* (form

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DV-400		
Commentator	**Comment**	**Committee Response**
	by this division **when the request for the other order is necessary to obtain or give effect to a protective order**. There is no fee for a subpoena filed in connection with that application, responsive pleading, or order to show cause. **2. <u>OTHER ORDERS: Proposal for Additional Options & Attached Forms, FL-341 *et seq*.:</u>** The proposed DV-400 form provides for the Court not only to modify or terminate a CLETS restraining order, but also to modify or terminate other orders including those for child custody, visitation and support; and for spousal or domestic partner support. The Court might not modify or terminate any of those orders, thus leaving those boxes blank. We are concerned that the current form design makes it too easy for a litigant to fraudulently check one of the available boxes *after* the Court makes its orders. These DV-400 orders (like TROs and ROAHs) would most likely be hand-written by the Judicial Officer at the time of the hearing, thus an additional hand-written "x" would be easy to add after the fact. In response, we propose that the form have additional options at #4(d) and (e): "Have not been modified" and "Have not been terminated." Further, we propose that for any of these modifications, the Court be required to attach the appropriate FL-341-343 or DV 140 form, indicating precisely what modifications are made, thus the forms need appropriate check	DV-130) under Family Code section 6222. The committee also recommends that this section specify that, under rule 5.381 of the California Rules of Court, *after* the restraining order ends, the court may charge a fee to file a request to change the child custody, visitation, and support orders granted in form DV-130. The committee recommends adding checkboxes in item 4 a and b to provide an option to indicate that orders relating to child custody, visitation, or spousal, domestic partner, or child support remain in effect. Same as above response. The committee recommends adding checkboxes in item 4 a and b to provide an option to indicate that orders relating to child custody, visitation, or spousal, domestic partner, or child support remain in effect.

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DV-400		
Commentator	**Comment**	**Committee Response**
	boxes, indicating which forms are attached. **3. <u>PREVIOUS REQUEST(S): Requirement to Notify Court re Previous Requests for Same Orders:</u>** We are also concerned about the possibility of litigation abuse, such as is evident in Lister v. Bowen, (2013), 215 Cal.App.4th 319 ("The court was also concerned about the number of hearings held on the matter. It indicated its view that Bowen could not "let this go" . . ." Lister at 328.) We, therefore, propose an additional inquiry on the proposed DV-400 and FL-300 forms, copying the language from the proposed form FL-303, paragraph 6, asking the moving party to address whether s/he has made the same request previously, and if so, to provide details. Such an inquiry would notify the trier of fact whether or not there has been a history of prior unsuccessful filings, information that is not revealed by the modifications offered by FL-300, page 2, 1(e) and 2(b), which only recognize successful prior modifications. [1] In Los Angeles County, after a significant problem with inadequate service in unlawful detainer ("UD") cases resulting in default judgments, the Court now mails notice of UD filing to tenants upon filing of all unlawful detainer actions. The interests to be protected in a proposed termination of restraining order are no less important than those in an eviction.	Form DV-400 is meant only to note and transmit the termination of a restraining order after hearing into the statewide Restraining and Protective Order System. Therefore, the committee does not recommend revising the form for a party to provide details about how many times the party has made a request to terminate the restraining order after hearing.
	-Add the word "order" to the title for clarity.	The committee recommends a revised title that includes

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DV-400		
Commentator	**Comment**	**Committee Response**
		the word "order."
	-Include information regarding Judicial Officer's name, courtroom number and date and time of hearing. This item could be placed between items 2 and 3 or there is space below the "Case Number" box.	The committee recommends revising the form to include information regarding Judicial Officer's name, courtroom number and date and time of hearing.
	-Item 3(a): Require filing date of the RO being terminated to be consistent with item 4.	The committee prefers that this section focus on identifying the party that filed the request to terminate.
	-Item 3(b)(3): Make it simple and replace "designed to afford actual notice" with, for example, "to make sure that the other party receives notice of your request and the hearing".	The committee recommends simplifying the language at item 3(b)(3).
	-Item 3(d): Omit this option as it may encourage RP's to approach PP's for such stipulations. PP's may mistakenly believe that it is OK for RP to contact them for this purpose. This may create a huge safety risk for PP's.	The committee prefers that the item remain to reflect the relief cited in the statute. However, the committee also recommends revising the information sheet (form DV-400-INFO) to specify that a restrained party may not violate a restraining order to contact the protected party.
	-Item 3(e): Is this why the word "Notice" is used in the title? As I understand it, this form can be used to communicate through CLETS that the RO is terminated because the case was dismissed previously. I have seen situations where a case was dismissed but the Clerk did not enter an order into CLETS terminating the RO based on the dismissal of the case.	The committee recommends revising the title of the form to "Findings and Order to Terminate Restraining Order After Hearing."
	-Item 4(b)*(now c)*: Insert "Unless the case was dismissed" at	The committee recommends revising the item to start

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Domestic Violence: Request to Modify or Terminate Domestic Violence Restraining Orders; Family Law: Changes to Request for Order Rules and Forms (amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94, 5.151; adopt forms DV-400, DV-400-INFO, FL-303, FL-320-INFO; revise forms DV-115, DV-115-INFO, DV-116, DV-130, DV-200, DV-200-INFO, DV-505-INFO, FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, FL-341, FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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DV-400		
Commentator	**Comment**	**Committee Response**
	the start of this provision to avoid confusion as this provision applies in every case where this form is used even if item 3(e) is checked as the reason for issuance of this order. -Item 4(c)*(now d)*: This provision needs clarification and simplification as the word "civil" includes family law matters and most SRL's do not know what "probate" means. This item can be changed to state, for example, "This order does not modify or terminate any non-family law restraining or protective orders" and perhaps continue with "including, but not limited to, Criminal Protective Orders."	with "unless modified or terminated by court order…" The committee recommends that the sentence state that the order does not modify or terminate any other criminal, juvenile, civil, or probate orders.
The State Bar of California The Executive Committee of the Family Law Section of the State Bar of California (FLEXCOM) by Saul Bercovitch Legislative Counsel San Francisco	-Add the word "order" to the title for clarity. -Include information regarding the Judicial Officer's name, courtroom number and date and time of hearing. This item could be placed between items 2 and 3 or there is space below the "Case Number" box. -Item 3(a): Require filing date of the RO being terminated to be consistent with item 4. -Item 3(b)(3): Simplify and replace "designed to afford actual notice" with "to make sure that the other party receives notice of your request and the hearing". -Item 3(d): Omit this option as it may encourage restrained	The committee recommends a revised title that includes the word "order." The committee recommends revising the form to include information regarding Judicial Officer's name, courtroom number and date and time of hearing. The committee prefers that this section focus on identifying the party that filed the request to terminate. The committee recommends simplifying the language at item 3(b)(3). The committee prefers that the item remain to reflect the

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Domestic Violence: Request to Modify or Terminate Domestic Violence Restraining Orders; Family Law: Changes to Request for Order Rules and Forms (amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94, 5.151; adopt forms DV-400, DV-400-INFO, FL-303, FL-320-INFO; revise forms DV-115, DV-115-INFO, DV-116, DV-130, DV-200, DV-200-INFO, DV-505-INFO, FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, FL-341, FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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DV-400		
Commentator	**Comment**	**Committee Response**
	parties to approach protected parties for such stipulations. Protected parties may mistakenly believe that it is acceptable and permissible for the restrained party to contact him/her for this purpose. This may create a significant safety risk for the protected person. -Item 3(e): Is this why the word "Notice" is used in the title? As we understand, this form can be used to communicate through CLETS that the RO is terminated because the case was dismissed previously. FLEXCOM reports cases where an RO is dismissed but the Clerk did not enter an order into CLETS terminating the RO. -Item 4(b)*(now c)*: Insert "Unless the case was dismissed" at the start of this provision to avoid confusion as this provision applies in every case where this form is used even if item 3(e) is checked as the reason for issuance of this order. -Item 4(c)*(now d)*: This provision needs clarification and simplification with regard to the words "civil" and "probate". This item can be changed to state, for example, "This order does not modify or terminate any non-family law restraining or protective orders" and perhaps continue with "including, but not limited to, Criminal Protective Orders."	relief cited in the statute. The committee recommends that the information sheet state that a restrained party must not violate a restraining order to contact the protected party. The committee recommends revising the title of the form to "Findings and Order to Terminate Restraining Order After Hearing." The committee recommends revising the item to start with "unless modified or terminated by court order…" A case that is dismissed falls under the current language, "unless changed by court order." The committee recommends that the sentence state that the order does not modify or terminate any other criminal, juvenile, civil, or probate orders."
The State Bar of California Standing Committee on the Delivery of Legal Services	DV-400 – This is a good form that provides the court with all the findings necessary prior to terminating a restraining order. This should make the orders more uniform.	No response required.

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DV-400		
Commentator	**Comment**	**Committee Response**
	However, section No. 4 "Court Orders" is a bit confusing. Item (b) *(now c)* states that custody/visitation/support orders survive termination of the DVRO unless changed by court order. However, item (d) *(now a)* then states that the orders were terminated or modified. Item (b)*(now c)* is standard language on the form, not a check box. Item (d) *(now a)* is a check box. Insertion of clarifying language should be considered. For example, at Item (b)*(now c)* adding the language, "and remain in effect unless changed by court order or terminated as stated below in Item (d)*(now a)*."	The committee recommends revising item 4 to include the commentator's suggestions.
Superior Court of Los Angeles County	The proposed title of the new form DV400 "Findings and Notice of Termination of Restraining Order" should be changed to "Findings and Notice of Modification and/or Termination of Restraining Order." The name of the form is misleading as it does allow for modification of the restraining order.	The committee agrees to recommend a different title for this form to avoid confusion. The form is only to be used to reflect termination of form DV-130. If form DV-130 is amended, DV-130 is to be used to note it is an amended order.
Superior Court of Sacramento County	* Comments Items 1-3 - Form should be consistent "party" or "person" Item 4 (b) and (d) *(now a and b)*- approved language for "child visitation" is "parenting time"	 The committee recommends revising item 1 and 2 to state "Name of Protected Party" and "Name of Restrained Party." The committee has changed all references to "visitation" to "visitation (parenting time)".

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Domestic Violence: Request to Modify or Terminate Domestic Violence Restraining Orders; Family Law: Changes to Request for Order Rules and Forms (amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94, 5.151; adopt forms DV-400, DV-400-INFO, FL-303, FL-320-INFO; revise forms DV-115, DV-115-INFO, DV-116, DV-130, DV-200, DV-200-INFO, DV-505-INFO, FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, FL-341, FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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DV-400		
Commentator	**Comment**	**Committee Response**
	Item 6 *(now 7)*- Why not use party designations here since there is room on the page? The numbers are confusing and make the service instructions harder to read, especially for SRL/pro pers.	The committee recommends revising item 6 as requested by the commentator.
Superior Court of Santa Clara County by Hon. Christine Copeland Commissioner	DV-400: Items 1 and 2 use "person" then right below, items 3 and 4 use "party." You may want to sync up and choose just "person" or "party" and then use uniformly. DV-400 and DV-400 INFO I am confused after reading the proposal and forms a few times: is "change" the same as "renew" the RO? If the renewal process and forms remain intact as of 1/1/16, then maybe we should make clear on the INFO sheet that if you want to renew an existing order, do not use the RFO form set… Otherwise, I know my SRLs and they are going to equate a request for "change" with a renewal request (and who could blame them- that would be a change) and use the RFO form set.	The committee recommends revising item 1 and 2 to state "Name of Protected Party" and "Name of Restrained Party." As used in the rules and forms, "change" means "modify," not "renew." The committee recommends revising the information sheet (form DV-400-INFO) to specify the forms needed to ask the court to renew the restraining order after hearing. The committee recommends revising the information sheet (form DV-400-INFO) to refer to form DV-700 if a party wants to renew the restraining order after hearing.

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Domestic Violence: Request to Modify or Terminate Domestic Violence Restraining Orders; Family Law: Changes to Request for Order Rules and Forms (amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94, 5.151; adopt forms DV-400, DV-400-INFO, FL-303, FL-320-INFO; revise forms DV-115, DV-115-INFO, DV-116, DV-130, DV-200, DV-200-INFO, DV-505-INFO, FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, FL-341, FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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DV-400-INFO		
Commentator	**Comment**	**Committee Response**
California Department of Justice	Section 2 – 1st check box. Restraining Orders that protect persons from violence or threat of violence by others, including personal conduct, no contact, stay-away, move out, firearm *exemptions*, recording of unlawful communications. The only way this can be modified would be if the court had a finding for this exemption.	The committee recommends deleting "firearms" from item 2.
California Partnership to End Domestic Violence by Krista Niemczyk Sacramento	Deciding to change or end a restraining order is an important decision that can have serious consequences for a survivor. As such, we would recommend that the DV-400-INFO include a statement about consulting with a domestic violence advocate and/or an attorney should be included. Similar information is currently provided on several Judicial Council forms, including the DV-500-INFO; DV-505-INFO, and DV-520-INFO. At minimum, the language included in these existing forms should be inserted into the DV-400-INFO. The text is provided here as reference: Need more help? Ask the court clerk about free or low-cost legal help. For a referral to a local domestic violence or legal assistance program, call the National Domestic Violence Hotline: 1-800-799-7233 **TDD: 1-800-787-3224** It's free and private. They can help you in more than 100 languages.	The committee recommends revising the form to include the language suggested by the commentator.

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Domestic Violence: Request to Modify or Terminate Domestic Violence Restraining Orders; Family Law: Changes to Request for Order Rules and Forms (amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94, 5.151; adopt forms DV-400, DV-400-INFO, FL-303, FL-320-INFO; revise forms DV-115, DV-115-INFO, DV-116, DV-130, DV-200, DV-200-INFO, DV-505-INFO, FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, FL-341, FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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DV-400-INFO		
Commentator	**Comment**	**Committee Response**
	Should the form instruct a party to attach a copy of the current court ordered *Restraining Order After Hearing* (DV-130) if seeking to modify, terminate, or respond to a request about that order? As was noted above with reference to the form FL-300, we believe that the instruction should ask the party to attach the DV-130 *only if it is available*. While we agree that attaching the DV-130 does allow the court to be more efficient, in many instances survivors have lost their DV-130 or their existing DV-130 has been damaged and is difficult to read clearly. These survivors should not be penalized.	The committee recommends that the forms not require a party to attach a copy of the current order made on form DV-130.
Legal Aid Foundation of Los Angeles	Again, we do believe that in any request to modify or terminate a restraining order that the Restraining Order After Hearing should be attached. Therefore, the instructions should indicate that the moving party must attach to their request. We do not believe it is necessary to attach the Restraining Order After Hearing to a response to a request as it would be duplicative. (Cf. above section 3: Previous Requests)	After considering all the comments on this issue, the committee recommends that the forms not require a party to attach a copy of the current order made on form DV-130. The court has access to the filed order and requiring a party to attach the order may cause undue delay or cost in filing the request.
Orange County Bar Association by Ashleigh Aitken President	*The form should instruct a party to attach a copy of the current order on form DV-130 if seeking to modify or terminate the order. This procedure makes it consistent with the FL-300 request.	After considering all the comments on this issue, the committee recommends that the forms not require a party to attach a copy of the current order made on form DV-130. The court has access to the filed order and requiring a party to attach the order may cause undue delay or cost in filing the request.
Fariba R. Soroosh	Item 4: Include (repeat) an admonishment to RP's not to	The committee recommends revising the form as

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DV-400-INFO		
Commentator	**Comment**	**Committee Response**
Supervising Attorney Self Help Center/Family Law Facilitator's Office Superior Court of Santa Clara County	contact PP's as the contact may be in violation of the existing RO. This may also avoid any coercion and undue pressure that RP's may exert upon PP's. This poses a huge safety risk for PP's.	suggested by the commentator.
The State Bar of California The Executive Committee of the Family Law Section of the State Bar of California (FLEXCOM) by Saul Bercovitch Legislative Counsel San Francisco	-Item 4: Include (repeat) an admonishment to restrained parties not to contact protected parties as the contact may be in violation of the existing Restraining Order. This may also avoid any coercion and undue pressure that restrained parties may exert upon protected parties. This poses a significant safety risk for protected parties.	The committee recommends revising the form as suggested by the commentator.
The State Bar of California Standing Committee on the Delivery of Legal Services	Re: form DV-400-INFO Should the form instruct a party to attach a copy of the current court ordered *Restraining Order After Hearing* (DV-130) if seeking to modify, terminate, or respond to a request about that order? Yes. This new form explains to the litigants how a DVRO can be modified or terminated. However, at Item 3, the language regarding custody/visitation/support orders states that these orders will remain in effect after termination of the DVRO. Language should be inserted that the orders will remain in effect unless terminated or modified by order of the court.	After considering all the comments on this issue, the committee recommends that the forms not require a party to attach a copy of the current order made on form DV-130. The court has access to the filed order and requiring a party to attach the order may cause undue delay or cost in filing the request. The committee recommends revising item 3 as suggested by the commentator.

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DV-400-INFO		
Commentator	**Comment**	**Committee Response**
Superior Court of Los Angeles County	Re: form DV-400-INFO Should the form instruct a party to attach a copy of the current court ordered Restraining Order After Hearing (DV-130) if seeking to modify, terminate, or respond to a request about that order? No for the reason indicated in #3 above. Form DV-400-INFO page 3-regarding "Pay filing fees"- Is it up to each Court to determine if a filing fee will be charged to file a request to terminate a restraining order or to modify custody, visitation or support orders if the restraining order is expired?	After considering all the comments on this issue, the committee recommends that the forms not require a party to attach a copy of the current order made on form DV-130. The court has access to the filed order and requiring a party to attach the order may cause undue delay or cost in filing the request. The committee recommends revising the form to state that there is no fee to file the request. It should be noted, however, that when restraining order is no longer in effect, the court may charge a filing to fee to modify orders made in DV-130 relating to child custody and visitation (parenting time), child support, and spousal and domestic partner support under rule 5.381 of the California Rules of Court.
Superior Court of Sacramento County	* Item 2 at second check box - "Names of Protected People" - this implies the form can be used to request a name change, i.e., changing from married name to maiden name. Item 2 at fourth check box and in Item 3 - The phrase "child visitation" was changed by JC to "parenting time." Item 4 - This sounds like notice is the only requirement. Item 5 - Revise title to: "How do I ask to change or end the Restraining Order"	The committee recommends rewording item 2 to state that the list of protected persons can be changed. The committee recommends revising the form to state "child visitation (parenting time)." The committee recommends several changes to item 4 to address the issue raised by the commentator. The committee recommends that the form be titled to clarify that a the procedure applies only to a restraining order after hearing (and not to a temporary order).

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Domestic Violence: Request to Modify or Terminate Domestic Violence Restraining Orders; Family Law: Changes to Request for Order Rules and Forms (amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94, 5.151; adopt forms DV-400, DV-400-INFO, FL-303, FL-320-INFO; revise forms DV-115, DV-115-INFO, DV-116, DV-130, DV-200, DV-200-INFO, DV-505-INFO, FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, FL-341, FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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DV-400-INFO		
Commentator	**Comment**	**Committee Response**
	Throughout Item 5 - There is an overuse of the word "also." It is not necessary.	The committee recommends the changes suggested by the commentator.
	Item 5(d) at first check box - The word "form" should be in lower case	The committee recommends the changes suggested by the commentator.
	Item 5(d) at second check box - Insert word "form". There should be consistency in the referencing of forms, i.e., "form FL-150" or "FL-150." This document is not consistent. We recommend using the word from "form".	Due to space constraints the committee has decided to list the forms in item 5 starting with "FL."
	Items 5(c)-(d) at first check box - Delete the reference "A current." The likelihood that there is a recently filed form FL-150 is very low - no need to say current.	The committee prefers that the word "current" remain in the description of form FL-150 or FL-155.
	Item 5(e) and 5(F) for all check boxes - Insert word "form". There should be consistency in the referencing of forms, i.e., "form FL-150" or "FL-150." This document is not consistent. We recommend using the word from "form".	The committee recommends adding "form" as suggested by the commentator.
	Item 7 - Email address should be added. As electronic filing expands, it is important to ensure courts collect email addresses.	The committee recommends this change to the form.
	Item 7 at bullet 1 - Replace the word "write" with "print". Replace "parties" with "party"	The committee does not recommend this global change to the forms.
	Item 7 at bullet 2 - Replace "visitation" with "parenting time"	The committee recommends revising the form to state

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Domestic Violence: Request to Modify or Terminate Domestic Violence Restraining Orders; Family Law: Changes to Request for Order Rules and Forms (amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94, 5.151; adopt forms DV-400, DV-400-INFO, FL-303, FL-320-INFO; revise forms DV-115, DV-115-INFO, DV-116, DV-130, DV-200, DV-200-INFO, DV-505-INFO, FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, FL-341, FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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DV-400-INFO		
Commentator	**Comment**	**Committee Response**
		"visitation (parenting time)."
	Item 7 at Item 1 - Replace "write" with "print"	The committee does not recommend this global change to the forms.
	Item 7 at Item 3 - Use singular reference to persons. Replace "parties" with "party"	The committee does not recommend this change. The term "parties" is proper in the context of the sentence, since there may be one or more other parties in the case.
	Item 8 at paragraph 3 - Replace "write" with "print"	To remain consistent with other forms, the committee does not recommend this change.
	Item 13 - the word "Form" should be in lower case.	The committee recommends this change.
Superior Court of Santa Clara County by Hon. Christine Copeland Commissioner	DV-400 and DV-400 INFO I am confused after reading the proposal and forms a few times: is "change" the same as "renew" the RO? If the renewal process and forms remain intact as of 1/1/16, then maybe we should make clear on the INFO sheet that if you want to renew an existing order, do not use the RFO form set… Otherwise, I know my SRLs and they are going to equate a request for "change" with a renewal request (and who could blame them- that would be a change) and use the RFO form set.	The committee recommends adding a note in item 2 that a party must use *Request to Renew Restraining Order* (form DV-700) to renew a restraining order. Also, to avoid confusion, the committee recommends deleting the box in item 2 that infers that a party must file a request to change or end a restraining order if he or she wants to change the end date of the restraining orders.

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Domestic Violence: Request to Modify or Terminate Domestic Violence Restraining Orders; Family Law: Changes to Request for Order Rules and Forms (amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94, 5.151; adopt forms DV-400, DV-400-INFO, FL-303, FL-320-INFO; revise forms DV-115, DV-115-INFO, DV-116, DV-130, DV-200, DV-200-INFO, DV-505-INFO, FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, FL-341, FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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FL-300		
Commentator	**Comment**	**Committee Response**
California Judges Association by Joan P. Weber California Judges Association President	*Form FL - 300, Request for Order, Page 2* The primary purpose of this form is to give notice of the orders that are being requested. Unfortunately this form, like the existing version, fails to leave enough space to indicate even a summary of what custody/visitation/parenting plan orders are being requested, requiring the applicant to provide that information on a separate form. Unfortunately, in practice many applicants, with or without attorneys, fail to do so or simply state that it is contained in a declaration, requiring the reader to search through other pages to find out what is being re- quested. A description of the order being requested should have much higher priority than a description of the existing orders (which is on the existing and proposed form) as that information could be obtained from other sources in the court file. The form is also unnecessarily complicated by having separate option sections for “Child Custody” and for “Child Visitation/Parenting Time”, requiring the applicant to determine if his or her request falls under one or the other or both categories. Some applicants might consider a request for a holiday as a visitation request, however, the holiday schedule is listed as an attachment to the “Child Custody” request and is not mentioned in the section for the visitation request . Both of these sections have an option for attaching the three page form FL–311, “child custody and visitation application attachment”. Since both paragraphs refer to that same	To address the concerns raised by the commentator, the committee recommends making a global change to form FL-300 to create more space under each item for a party to specify the orders they are requesting. The recommendation includes revising the form to create additional space for a party to explain the child custody, visitation (parenting time), or parenting plan orders that the moving party is requesting. To address the concerns raised by the commentator, the committee recommends combining the items for child custody and visitation (parenting time), so that they will share the same information about the children and the same references to Judicial Council forms relating to these subjects.

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Domestic Violence: Request to Modify or Terminate Domestic Violence Restraining Orders; Family Law: Changes to Request for Order Rules and Forms (amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94, 5.151; adopt forms DV-400, DV-400-INFO, FL-303, FL-320-INFO; revise forms DV-115, DV-115-INFO, DV-116, DV-130, DV-200, DV-200-INFO, DV-505-INFO, FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, FL-341, FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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FL-300		
Commentator	**Comment**	**Committee Response**
	attachment it would simplify the form to have these two sections (paragraphs 1 and 2 on page 2) combined into one section entitled "Child Custody and/or Child Visitation/Parenting Time". This would then leave additional space for use by the applicant in stating what orders are actually being requested on the "Request for Order" form. Many applications to obtain or modify existing orders have requests that can be described in a few sentences or less, such as "I would like to change the Tuesday visitation to Wednesday" making it unnecessary to have to attach another 3 page form. Additional space on the FL-300 "Request for Order" form could also be provided by moving paragraph 3, "Child Support", to the following page so all of that section would be on the same page (page 4) of the FL-300 form.	To address the concerns raised by the commentator, the committee recommends making a global change to form FL-300 to create more space under each item for a party to specify the orders they are requesting. The recommendation includes revising the form to create additional space for a party to explain the child custody, visitation (parenting time), and child support orders that the moving party is requesting. See above response.
California Partnership to End Domestic Violence by Krista Niemczyk Sacramento	**Re: form FL-300** (1)Should the language at item 4 on page 1 be deleted as proposed? The Partnership agrees with the proposed deletion. (3) Should item 8 include an instruction requiring a moving party to attach a copy of the current court ordered *Restraining Order After Hearing* (DV-130) if seeking to modify or terminate that order? We believe that the instruction should ask the party to attach the DV-130 *only if it is available*. While we agree that attaching the DV-130 does allow the court to be more efficient, in many	The committee recommends deleting the Order to Show Cause language in item 4. After considering all the comments on this issue, the committee recommends that the forms not require a party to attach a copy of the current order made on form DV-130. The court has access to the filed order and requiring a party to attach the order may cause undue delay or cost to the litigant in filing the request.

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FL-300		
Commentator	**Comment**	**Committee Response**
	instances survivors have lost their DV-130 or their existing DV-130 has been damaged and is difficult to read clearly. These survivors should not be penalized. It is also worth noting that form FL-300 does not require parties who are seeking to modify other orders, such as child custody or support orders, to attach their existing order. We believe it would be unfair to impose this requirement only in DVRO cases. (4) Should a separate check box be added to items 1 through 4 (as shown on pages 2 and 3 of form FL-300) for a party to indicate that he or she seeks modification of orders for child custody, visitation (parenting time), and support that are found in the *Restraining Order After Hearing* (form DV-130)? The Partnership does not object to the addition of a separate check box.	After considering all the comments on this issue, the committee does not recommend that the form include a separate check box.
John Chemeleski Trial Court Commissioner Long Beach	Page 2, par. 1 & 2, Custody, Visitation: The primary purpose of this form is to give notice of the orders that are being requested. Unfortunately this form, like the existing version, fails to leave enough space to indicate even a summary of what custody/visitation/parenting plan orders are being requested, requiring the applicant to provide that information on a separate form. Unfortunately, in practice many applicants, with or without attorneys, fail to do so or simply state that it is contained in a declaration, requiring the reader to search through other pages to find out what is being requested. A description of the order being requested should	To address the concerns raised by the commentator, the committee recommends making a global change to form FL-300 to create more space under each item for a party to specify the orders they are requesting. The recommendation includes revising the form to create additional space for a party to explain the child custody, visitation (parenting time), or parenting plan orders that the moving party is requesting.

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FL-300		
Commentator	**Comment**	**Committee Response**
	have much higher priority than other portions such as a description of the existing orders (which is on the existing and proposed form) as that information could be obtained from other sources in the court file. The form is also unnecessarily complicated by having separate option sections for "Child Custody" and for "Child Visitation/Parenting Time", requiring the applicant to determine if his or her request falls under one or the other or both categories. For example some applicants might consider a request for a holiday as a visitation request, however, the holiday schedule is listed as an attachment to the "Child Custody" request and is not mentioned in the section for the visitation request. Both of these sections have an option for attaching the three page form FL–311, "child custody and visitation application attachment". Since both paragraphs refer to that same attachment it would simplify the form to have these two sections (paragraphs 1 and 2 on page 2) combined into one section entitled "Child Custody and/or Child Visitation/Parenting Time". This would then leave additional space for use by the applicant in stating what orders are actually being requested on the "Request for Order" form. Many applications to obtain or modify existing orders have requests that can be described in a few sentences or less, such as "I would like to change the Tuesday visitation to Wednesday" making it unnecessary to have to attach another 3	To address the concerns raised by the commentator, the committee recommends combining the items for child custody and visitation (parenting time) . They will continue to be separate check boxes in case a party only wants to change visitation (parenting time), but they will share the same information about the children and the same references to Judicial Council forms relating to these subjects. Same as above response.

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Domestic Violence: Request to Modify or Terminate Domestic Violence Restraining Orders; Family Law: Changes to Request for Order Rules and Forms (amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94, 5.151; adopt forms DV-400, DV-400-INFO, FL-303, FL-320-INFO; revise forms DV-115, DV-115-INFO, DV-116, DV-130, DV-200, DV-200-INFO, DV-505-INFO, FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, FL-341, FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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FL-300		
Commentator	**Comment**	**Committee Response**
	page form. The heading on page one should then combine the "Child Custody" option box with the "Visitation (Parenting Time)"option box to have one box entitled "Child Custody, Visitation, Parenting Time" to simplify the form and avoid confusion as to which category a request falls into. Additional space on the FL-300 "Request for Order" form could also be provided by moving paragraph 3, "Child Support", to the following page so all of that section would be on the same page (page 4) of the FL-300 form. Paragraph 7 "Property Control" at the bottom of page 3 could then be moved to page 4 so all of the "Property Control" section would be on the same page (page 4). Corresponding changes should then be made to the Responsive Declaration form (FL-320) Page 3, par. 5 Attorney's fees and Costs: This section fails to provide space for the amount of attorney fees and costs that are being requested forcing the reader to thumb through numerous other pages to hopefully find this information. It would take very little space to accommodate this as in the existing form. Par 10 on page 4 "Order Shortening Time" may be confusing	 The committee prefers to maintain the child custody and visitation (parenting time) items in the caption on page one as separate check boxes. This will cover situations in which a party only seeks to modify an order for visitation (parenting time). The committee recommends revising the form to maintain all items intact instead of straddling them between pages. The committee recommends revising form FL-320 as suggested by the commentator. The committee recommends adding a blank space to allow a party to indicate the total amount of attorney's fees and costs being requested. The committee does not recommend revising the form as

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FL-300		
Commentator	**Comment**	**Committee Response**
	as the Court will not see that request until the after the case has already been set for hearing unless there has been a request for emergency orders (REO). RFOs without the REO would be set on calendar for hearing by the clerk's office without knowledge of the REO as no one would be reading the RFO unless presented to the Court as an REO. Such a request should be on the first page near the hearing date space so the clerk could spot it and refer it to the appropriate judicial officer. This section also fails to advise the applicant of the requirements of proposed Rule of Court 5.92.	suggested by the commentator. Rules 5.151-5.169 requires a party to request an order shortening time as a temporary emergency order. This means that a party must submit a declaration showing that the notice requirements of the rules have been satisfied. Thus, the court will have notice of the temporary emergency orders a party is requesting by reviewing the separate declaration that a party must file to demonstrate that notice of the ex parte request was given to the other party. The clerk could also spot all the ex parte requests from reviewing the declaration instead of reviewing each item on form FL-300.
Family Law and Juvenile Court Operations Managers by Blanca Ecsobedo Principal Administrative Analyst Superior Court of Orange County	Page one, the *Request for Order* box has the *modify* and *temporary restraining order* selections bolded, which gives the appearance that one of those boxes needs to be selected in addition to one of the boxes below. We recommend adding a "New/Initial" selection, keeping the "Modify" selection, and moving the Temporary Emergency Order below and remove bold. Page one, item #3 should have a period of the end of the paragraph, not a comma. Also, last sentence: *(Forms FL-300-INFO and DV-400-INFO provide information about completing form FL-300)* suggest removing "form FL-300" and replace with "this form". Page 2, item 1 (e) and 2(b), page 3 items 3(d) and 4(2), suggest removing "*ordering (specify)*:" these could lead to voluminous	The committee does not recommend adding a check box for "New/Initial" to avoid confusion and the implication that a party may use form FL-300 to request a new or initial domestic violence restraining order. The committee recommends maintaining temporary emergency orders in the caption as a bolded item to highlight the matter for the litigants and the court. The committee recommends correcting the form as suggested by the commentator. The committee recommends simplifying the language throughout the form with respect to identifying current

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FL-300		
Commentator	**Comment**	**Committee Response**
	statements regarding extensive visitation orders that could be verified by the court through court documents that are easier to read. Best evidence of the current orders are the actual orders. This seems like an unnecessary burden to the party. Page 3, item #7, allows for use and possession of property that is "owned or are buying" suggest adding temporary use of property leased or rented. Page 4, item #8 should also reflect Temporary Restraining Order (DV-110). Also, there are double parenthesis at the end of the sentence. Page 4, item #11 is confusing. It appears there are too many parenthesis.	orders. The committee recommends revising the property control item on the form as suggested by the commentator. The committee prefers to recommend most language providing instruction about completing form FL-300 be moved to form FL-300-INFO. The committee recommends correcting Supporting Facts item on the form as suggested by the commentator.
Legal Aid Foundation of Los Angeles	**Re Form FL-300 Question 3** The Restraining Order After Hearing should be required to be attached. This is required for renewals of restraining orders and can serve as a reminder to the court of the orders that were previously made. **Re Form FL-300 Question 4** Yes, separate check boxes should be required to indicate someone is seeking a modification of a DV-130. The court	After considering all the comments on this issue, the committee recommends that the forms not require a party to attach a copy of the current order made on form DV-130. The court has access to the filed order and requiring a party to attach the order may cause undue delay or cost in filing the request. After considering all the comments on this issue, the committee does not recommend that the form include a

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FL-300		
Commentator	**Comment**	**Committee Response**
	needs to be clear that the previous orders were made in a restraining order and that there are then extra inquiries into service and identity of the parties. This will also help facilitate our suggestion that the court send notice of the hearing as the clerks will also clearly know when they are to give notice to the non-moving party. (Cf. above section 3: Previous Requests)	separate check box.
Los Angeles Center for Law and Justice by Diane Trunk Managing Attorney	a. Comment: page 1 Captions- Request for Order _MODIFY. We think that a subsection should be included to incorporate the date the original order was filed. Recommendation: add a subsection "order filed on (date)__:" below the word MODIFY. b. Comment: page 2- number 1 Child Custody- "Applicant requests temporary orders". We think that subsection should be included to remind the applicant to attach or include FL-303 and FL-305, we do not want the litigant's documents to be rejected for failing to include all necessary f forms to her/his Request for Orders. Recommendation: add a subsection "Attach FL-303 and FL-305" beneath "Applicant requests temporary orders". c. Comment: page 2- number 1(e)- "Modify existing order filed on (date): ordering (specify)" and "in Restraining	Due to space constraints in the caption, the committee prefers that the filing date of the order should remain under the appropriate item within the form. The committee recommends adding Temporary Emergency Order (form FL-305) to the list of attachments in the child custody and visitation (parenting time) item. However, because there are additional forms needed to request temporary emergency orders, the committee prefers using the information sheet to list all the forms, instead of trying to fit them into form FL-300. The information sheet, for example, has enough space to let a party know that form FL-303 is an optional form, and that local courts may require other forms.

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FL-300		
Commentator	**Comment**	**Committee Response**
	Order After Hearing (form DV-130). We think this section should be deleted. See comment II (A) above. Recommendation: DELETE # 1(e). See comment II (A) above.	The committee recommends revising this item instead of deleting it.
	d. Comment: page 2- number 2 Child Visitation (Parenting Time)- currently there is no section below to add the children's name and age, like the Child Custody section above it. Sometimes parties will ONLY want to modify the parenting plan, and NOT custody. However, since there is NO place to put in the children's name and age in this section, parties tend to add it to the Child Custody section above it (but do NOT check the box- because they do NOT care to modify that section) and it becomes confusing for all parties and the courts. Sometime the court will assume that custody is also at issue and think that the party forgot to check the Custody box since they see the child's name and age in that section. Recommendation: Number 2 _Child Visitation (parenting plan) should read "a. Child's name and age." If this change is made, pages 2-4 will have be renumbered.	To address the concerns raised by the commentator, the committee recommends combining the items for child custody and visitation (parenting time). They will continue to be separate check boxes in case a party only wants to change visitation (parenting time), but they will share the same information about the children and the same references to Judicial Council forms relating to these subjects.
	e. (a)- "As requested in: (1)...(2)... (3)". This section needs to be changed to reflect the same options as the new proposal (same page) number 1(d) – which expands the	To address the concerns raised by the commentator, the committee recommends combining the items for child custody and visitation (parenting time). They will

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FL-300		
Commentator	**Comment**	**Committee Response**
	number of choices one can choose from. We also propose this be changed from section (a) to section 2 (b). See comment D above for explanation. Recommendation: renumber this section to "(b) – AS requested in: (1) – (7)". It is import to have uniformity and adding the same boxes as in the custody section -above it- from which to choose from will make it clear for litigants.	continue to be separate check boxes in case a party only wants to change visitation (parenting time), but they will share the same information about the children and the same references to Judicial Council forms relating to these subjects.
	f. Comment: page 2 number "2 c_One or more domestic violence restraining/protective orders are now in effect..." This subsection should have its own number. Instead of being part of the Custody Visitation section, it should be its own section. Recommendation: Change from 2 c to number "3. ___ One or more domestic violence..." Again, if the section is changed, pages 2-4 will have to be renumbered.	The committee recommends revising the form as suggested by the commentator.
	g. Comment: page 4 number 8, "Domestic Violence Restraining Orders (personal conduct, stay away, ..." This heading should change to reflect the new proposed changes on page one below re Orders Requested. Recommendation: "8. _Change or End Domestic Violence Restraining Orders or Order After Hearing	The committee recommends revising the heading to state "Domestic Violence Order" instead of "Change or End Domestic Violence Restraining Order After Hearing." This section will include a notice that this form is not used to request a new domestic violence restraining order.

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FL-300		
Commentator	**Comment**	**Committee Response**
	(personal conduct…" This will mirror the new proposal.	
Orange County Bar Association by Ashleigh Aitken President	(1) Should the language in item 4 on page 1 be deleted? Yes. (2) Would removing the OSC language from form FL-300 have any adverse impacts on courts or the parties in a family law case? Keep reference to OSC. (3) Should the moving party be required to attach a copy of the orders in form DV-130? Yes, the moving party will always (in all likelihood) have a copy of the most-recent restraining order (4) Should a separate check box be added to items 1 through 4 for a party to indicate that he or she seeks modification of orders for child custody, visitation (parenting time), and support that are found in form DV-130? No, keep the DV forms separate from the FL forms	The committee recommends this revision The committee recommends deleting the OSC language. After considering all the comments on this issue, the committee recommends that the forms not require a party to attach a copy of the current order made on form DV-130. The court has access to the filed order and requiring a party to attach the order may cause undue delay or cost in filing the request. After considering the comments, the committee does not recommend including the check box.
Fariba R. Soroosh Supervising Attorney Self Help Center/Family Law Facilitator's Office	**Request for Specific Comments** Deleting the OSC language from page 1 of FL-300: I think there is a split among courts as to whether a bench warrant can be issued for non-appearance of a responding party after	The committee recommends revising form FL-300 to provide simplified language to help the responding party understand that a court can make orders without his or

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FL-300		
Commentator	**Comment**	**Committee Response**
Superior Court of Santa Clara County	personal service without this statement on the form. This language helps responding party understand that appearance in mandatory and there are consequences. Attaching copies of current orders to the RFO should not be mandated or even encouraged. The original is in the court file and this would only increase the size of the file and require more storage space (even when all courts have e-files). I am not clear why a separate box is needed to indicate that the orders seeking to be modified were issued as part of a restraining order. Two months is not enough for court to implement use of the new forms that are created herein. Some counties may require local rule changes as well. I suggest delaying effective date at least to July 2016. -Item 1: Somehow clarify what this means as most SRL's do not know what to put here. For example, provide pre printed boxes for "Petitioner", "Respondent", "Other Party", "DCSS", "Attorneys, if any".	her input if a *Responsive Declaration to Request for Order* (form FL-320) is not filed and served and he or she does not appear at the hearing. After considering all the comments on this issue, the committee recommends that a party not be required to attach a copy of the current order made on form DV-130. After considering all the comments on this issue, the committee does not recommend that the form include a separate check box. The committee recommends that the Judicial Council adopt the rules and forms in the report and delay their effective date until July 1, 2016. The committee recommends revising the form to maintain a space for a party the write the name(s) of the other party in the case. In addition, the committee recommends providing for certain pre-printed boxes beneath the space for the other party's name to help clarify how item 1 should be completed.

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FL-300		
Commentator	**Comment**	**Committee Response**
	Item 8: -Item 8: I suggest that "CHANGE/END" be inserted at the start of this item to be consistent with the corresponding item in the caption on the first page of this form and item 8 of proposed form FL-320 (responsive declaration to RFO). -Item 9: Provide more space here. -Item 10: Provide no space here and require an attached declaration. The space provided is not sufficient and we do not want to suggest that it is. The Court will require more facts and in larger font than can fit here for the average RFO and the SRL's will be confused.	The committee recommends an alternative heading (Domestic Violence Order) in the caption and on page four because the domestic violence order is the topic at issue. The committee recommends that the "Other orders requested " item include more space, if possible, considering all other changes recommended to the form. The committee recommends maintaining some space in the Supporting Facts item, so that this item is not overlooked by the moving party. Because additional space is recommended following each item, the party may need only a little more space in the supporting facts area to conclude his or her points.
The State Bar of California The Executive Committee of the Family Law Section of the State Bar of California (FLEXCOM) by Saul Bercovitch Legislative Counsel San Francisco	The Executive Committee of the Family Law Section of the State Bar (FLEXCOM) is concerned about the court's ability to issue a bench warrant for non-appearance of responding party should the OSC language be omitted from FL-300. -Item 1: Clarify this item to be more understandable to self-represented litigants. For example, provide pre-printed boxes for "Petitioner", "Respondent", "Other Party", "DCSS", "Attorneys, if any".	The committee believes that the proposed revision would not prevent the court from making an order for the other party to appear at the hearing and issue a bench warrant if the party fails to appear in violation of the order. The committee recommends revising the form to provide for certain pre-printed boxes to help clarify how item 1 should be completed. The committee also recommends revising the information sheet to provide

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FL-300		
Commentator	**Comment**	**Committee Response**
		more details about completing item 1.
	-Item 8: "CHANGE/END" be inserted at the start of this item to be consistent with the corresponding item in the caption on the first page of this form and item 8 of proposed form FL-320 (responsive declaration to RFO).	The committee recommends an alternative heading (Domestic Violence Order).
	-Item 9: Provide more space here.	The committee recommends additional space for the "Other orders requested item, if the additional space is available after all other changes are mad to this form.
	-Item 11: Provide no space here and require an attached declaration. The space provided is not sufficient and the form should not imply that it is.	The committee recommends maintaining some space in the Supporting Facts item, so that this item is not overlooked by the moving party. Because additional space is recommended following each item, the party may need only a little more space in the supporting facts area to conclude his or her points.
	Including a copy of the DV-130 when a moving party is asking for modification or termination is unnecessary as the original should be in the court file, and including it will increase the size of the file.	The committee agrees and does not recommend requiring a party to attach a filed copy of form DV-130.
The State Bar of California Standing Committee on the Delivery of Legal Services	(1) Should the language at item 4 on page 1 be deleted as proposed? Maybe. The OSC language is impactful. However, the checkbox has left a question as to whom should be checking the box to indicate that penalties will occur for failure to	The committee recommends revising form FL-300 to provide simplified language to help the responding party understand that a court can make orders without his or her input if a *Responsive Declaration to Request for Order* (form FL-320) is not filed and served and he or

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FL-300		
Commentator	**Comment**	**Committee Response**
	appear. Strongly worded language that lets litigants know they can be penalized for failing to appear at hearings has merit. (2) Would removing the OSC language from form FL-300 have any adverse impact on courts or the parties in a family law case (please specify)? As stated in item (1), it is hard to determine whether there will be an "adverse" impact on courts or families if the language is removed. However, providing language that indicates a person shall appear at a hearing implies that there may be penalties for failing to appear. When litigants show up for court hearings, it prevents continuances, dismissals, and makes better use of the court's time. On the other hand, the penalty language is one-sided, and does not anticipate that a moving party might fail to appear. There may be value in stating that unless the RFO has been dismissed by the moving party, penalties may apply to the moving party as well as the responding party. (3) Should item 8 include an instruction requiring a moving party to attach a copy of the current court ordered *Restraining Order After Hearing* (DV-130) if seeking to modify or terminate that order? Yes. Although these documents are in the court file, it is possible that the Responding party may not have the document; and, it may make reference to the document easier for the bench.	she does not appear at the hearing. Same as above response. After considering all the comments on this issue, the committee recommends that the forms not require a party to attach a copy of the current order made on form DV-130. The court has access to the filed order and requiring a party to attach the order may cause undue delay or cost in filing the request.

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FL-300		
Commentator	**Comment**	**Committee Response**
	(4) Should a separate check box be added to items 1 through 4 (as shown on pages 2 and 3 of form FL-300) for a party to indicate that he or she seeks modification of orders for child custody, visitation (parenting time), and support that are found in the *Restraining Order After Hearing* (form DV-130)? There is no need for a "separate check box" for modifying orders made requesting modification of orders contained in a DVRO. The proposed amended form is clear. **Comments on FL-300 not addressed by Judicial Council "specific questions"** 1. FL-300 – Requested Relief/Page 1 - Instead of stating "Property Issues" which opens up calendars to issues better set for Trial, consider titling this checkbox as "Property Restraint/Control." 2. FL-300: The box for Shortening Time on Page 4, should state "Temporary Emergency Order Requesting to Shorten Time" for the clerk's reference that they will need to specially set the RFO. 3. FL-300: The proposed modification to the Request for Order includes a box on Page 1 and Page 4, that specifically states "Change or end Domestic Violence Restraining Order after Hearing." SCDLS is concerned	After considering the various comments in response to the specific question, the committee does not recommends revising the form to include a check box to indicate if a party is seeking to change orders found in DV-130. The committee recommends maintaining property control in the caption and removing the check box (and specific item) for property restraint. The committee recommends that a party use the "Other" check box in the caption to request an order shortening time. The committee believes that the caption should specifically identify the Request for Order as the proper form to file when seeking to change or end a *Restraining Order After Hearing* (form DV-130). However, to address the commentator's concerns, the committee recommends revising the title of the check box to

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FL-300		
Commentator	**Comment**	**Committee Response**
	that this gives the appearance of "encouraging" litigants to file an RFO to modify/terminate a Restraining Order almost like an appeal process if they are not satisfied with the results of the restraining order hearing. As an unintended consequence, this could increase the number of these types of filings in court, encumber the judicial system, and possibly increase the number of times the victim of abuse has to confront the aggressor again in court. This Request for Modification/Termination can be handled by the "Other" box and have the information on how to Modify or End a Domestic Violence specifically detailed on the DV-400 INFO sheet.	"Domestic Violence Order."
Superior Court of Los Angeles County	**Re: form FL-300** **(3) Should the language at item 4 on page 1 be deleted as proposed (see write-up on page 11)?** Yes, the "OSC" language should be deleted. The language that the court can make the requested orders if the party doesn't appear is sufficient, and clearer for litigants. Removing the language should not interfere with the Court's ability to order a party to appear or issue a bench warrant. **(4) Would removing the OSC language from form FL-300 have any adverse impact on courts or the parties in a family law case (please specify)?** No. Removing the OSC language would cause less confusion for court staff.	The committee recommends revising the form by deleting the "OSC" language. Same as above response.

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Domestic Violence: Request to Modify or Terminate Domestic Violence Restraining Orders; Family Law: Changes to Request for Order Rules and Forms (amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94, 5.151; adopt forms DV-400, DV-400-INFO, FL-303, FL-320-INFO; revise forms DV-115, DV-115-INFO, DV-116, DV-130, DV-200, DV-200-INFO, DV-505-INFO, FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, FL-341, FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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FL-300		
Commentator	**Comment**	**Committee Response**
	(5) Should item 8 include an instruction requiring a moving party to attach a copy of the current court ordered Restraining Order After Hearing (DV-130) if seeking to modify or terminate that order? No. The Restraining Order After Hearing should be in the court file and it is therefore not necessary to attach it. Attaching it would make it convenient to all parties, but they should already have a copy. As courts are moving toward going paperless, it doesn't make sense to require litigants to attach and file additional pages that would then take staff resources to scan and shred.	After considering all the comments on this issue, the committee recommends that the forms not require a party to attach a copy of the current order made on form DV-130. The court has access to the filed order and requiring a party to attach the order may cause undue delay or cost in filing the request.
	(6) Should a separate check box be added to items 1 through 4 (as shown on pages 2 and 3 of form FL-300) for a party to indicate that he or she seeks modification of orders for child custody, visitation (parenting time), and support that are found in the Restraining Order After Hearing (form DV-130)? No. The check boxes on the header suffice.	After considering the various comments in response to the specific question, the committee does not recommend revising the form to include a check box to indicate if a party is seeking to change orders found in DV-130.
	• We are very appreciative and supportive of the proposal to remove the "OSC" language from the FL-300.	No response required.
	• We are also very appreciative and supportive of the proposal to change the language in FL-300, item 7 from mandatory custody services (most people have no what it means) to child custody mediation.	No response required.

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FL-300		
Commentator	**Comment**	**Committee Response**
	• We are supportive of changing the language in FL-300, items 1,2, 6 & 7 from "To Be ordered pending hearing" which was confusing and often misleading to litigants, to "requests temporary emergency orders".	No response required.
	FL-300, page 1, Item # 6 – there needs to be more space for litigants to write in the date, time and address of the custody mediation appointment. There is plenty of space at the bottom of the page in Item 8, that could instead be used for Item 6.	The committee recommends revising the form to provide more space to write in the information required at item 6.
	FL-300, Page 2: The primary purpose of this form is to give notice of the orders that are being requested. The form fails to leave enough space to indicate even a summary of what custody/visitation/parenting plan orders are being requested, requiring the applicant to provide that information on a separate form and the reader to hope that the forms will be attached. A description of the order being requested should be required.	To address the concerns raised by the commentator, the committee recommends making a global change to form FL-300 to create more space under each item for a party to specify the orders they are requesting. The recommendation includes revising the form to create additional space for a party to explain the child custody, visitation (parenting time), or parenting plan orders that the moving party is requesting.
	The form is complicated by having separate sections for "Child Custody" and "Child Visitation/Parenting Time", requiring the applicant to determine if his or her request falls under one or the other or both categories. For example, some applicants might consider a request for a holiday as a visitation request, however, the holiday schedule is listed as an attachment to the "Child Custody" request and is not mentioned in the section for the visitation request.	To address the concerns raised by the commentator, the committee recommends combining the items for child custody and visitation (parenting time). They will continue to be separate check boxes in case a party only wants to change visitation (parenting time), but they will share the same information about the children and the same references to Judicial Council forms relating to

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FL-300		
Commentator	**Comment**	**Committee Response**
	Both of these sections have an option for attaching the three page form FL- 311, "Child Custody and Visitation Application Attachment". Since both paragraphs refer to that same attachment it would simplify the form to have these two sections (paragraphs 1 and 2 on page 2) combined into one section entitled "Child Custody and/or Child Visitation/Parenting Time". This would then leave additional space for use by the applicant in stating what orders are requested on the "Request for Order" form. Paragraph 6(a)(Property restraint) also needs clarification. The language may mislead a party into believing that there is no consequence to using community funds to retain an attorney. The paragraph states that the "parties may use community property, quasi-community property, or separate property to pay for the help of an attorney or to pay court costs." This language is apparently a paraphrase of FC 2040(a)(2). However, the code also provides that the use of such funds must be for "reasonable" attorney's fees. The word "reasonable" is lacking from the form. Also, when using such funds, the party "shall account to the community for the use of the property." This code language suggests two things: 1) there must be an accounting and 2) there could be a charging of the funds used against a party's share of the community property. By comparison, the language in the form may mislead a person into believing that they are entitled to use the funds without accounting for them and without being charged for	these subjects. Same as above response. The committee recommends deleting the "Property Restraint" item from form FL-300. These orders are covered by the language in the family law Summons and a party seeking to modify the orders can use the "Other Orders Requested" item of the form.

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FL-300		
Commentator	**Comment**	**Committee Response**
	such use and that the applicant consents to same. FL-300, page 3 Item # 6(b)and(c) – this language is already included on the Summons that the party has either filed or been served with. It seems unnecessary here. In addition, it would not be applicable in parentage cases – but may give litigants that false sense that it could be applicable to them. Or in the alternative – add language after the Property Restraint checkbox (Does not apply in Parentage cases)	The committee recommends deleting the "Property Restraint" item from form FL-300. These orders are covered by the language in the family law Summons and a party seeking to modify the orders can use the "Other Orders Requested" item of the form.
Superior Court of Sacramento County	* Comments on ITC, page 5, paragraph 3 - "As to this item, the committee seeks comment on whether the form should instruct a party to attach a copy of the restraining order FL-300 being filed with the clerk and served on the other party." - Commentator's response to this question is "Yes" Comments on ITC, page 10, bullet 1 under "*Changes to page 1*" at reference to "Temporary Emergency Orders" - Insert (Ex Parte) before the word "order." Comments on ITC, page 12, last paragraph - Insert (Ex Parte) after "emergency." Comments on ITC, page 13, bullet 2 under "*Form FL-300 changes to pages 2-4*" - Insert (Ex Parte) before the word "order." - Adding this language to the form will increase non-	After considering all the comments on this issue, the committee recommends that the forms not require a party to attach a copy of the current order made on form DV-130. The court has access to the filed order and requiring a party to attach the order may cause undue delay or cost in filing the request. The committee recommends this global change to the forms in the report. Same as above response. The committee recommends this revision to clarify that the checked box does not mean that the court has made orders pending the hearing. The committee believes that

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FL-300		
Commentator	**Comment**	**Committee Response**
	emergency ex-parte requests.	providing more information about requirements for seeking temporary emergency orders will help parties understand when it is appropriate to ask for these orders.
	Comments on ITC, page 21, last paragraph of bullet 1 under "Alternatives Considered" - Good. Sacramento agrees with the committee's decision to use FL-300 to modify or terminate orders instead of creating a stand-alone DVPA packet.	No response required.
	The second check box in the "Request for Order" box reads "TEMPORARY EMERGENCY ORDER" - Insert (Ex Parte) before the word "order"	The committee recommends this global change to the forms in the report.
	"Request for Order" box at "Visitation (Parenting Time)" check box - suggest reversing description to - Parenting Time (Visitation)	As previously noted, the committee does not recommend making this change in this cycle.
	Item 5 on page 1 - Consistency - the word "form" should be added.	The committee recommends revising item 5 as suggested by the commentator.
	Item 6 on page 1 - Use singular person reference. Replace "parties" with "party."	The committee believes that the term "parties" is correct within the context of the sentence.
	Item 7 on page 1 - This is confusing if multiple form FL-305 have been filed.	The committee recommends maintaining this item as a check box for the court to check, if appropriate under the circumstances of the case.
	Item 7 on page 1 - Insert (Ex Parte) before the word "order."	The committee recommends revising item 7 as

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FL-300		
Commentator	**Comment**	**Committee Response**
		suggested by the commentator.
	Item 1(d) on page 2 - Should include a box for form FL-305.	The committee recommends adding a check box for form FL-305 under the Child Custody item.
	Item 2 on page 2 - The title/subtitle should be reversed. Should be Parenting Time (Child Visitation).	The committee does not recommend making this change in this cycle.
	Notice box at bottom of page 2 - add the word "form" before FL-150 and FL-155.	The committee recommends moving the notice about child support to the information sheet for Responsive Declaration to Request for Order (form FL-320-INFO) since this information is directed to the responding party.
	Items 3(e), 4(c) and 5(a) on page 3 - Delete reference "Current". It is unnecessary.	The committee recommends maintaining the reference to "current" to encourage parties and their attorneys to comply with the requirements of rule 5.260 of the California Rules of Court.
	Items 6(a) and 6 (b) - Use singular person reference. Replace "parties" with "party."	The committee recommends deleting item 6 Property Restraint from form FL-300. This change will cover the commentator's suggestion.
	Item 7 on page 4 - Why is this repeated here? Either keep all on previous page or bring both here.	The committee recommends revising the form so that no item continues to the next page on form FL-300.
	Item 10(b) on page 4 - This is unclear - makes it sound like the	The committee recommends revising "Order Shortening

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FL-300		
Commentator	**Comment**	**Committee Response**
	hearing itself should be shorter, not the time until the hearing.	Time" to state "Time for Service/Time Until Hearing"
Superior Court of San Diego County by Mike Roddy Executive Officer	While there are changes and additions being made to the FL-300 form, we would propose that a box for "move-away" be added. Generally, when a request for move-away is made, it is written in "other." Our judicial officers have had many times, however, that only "custody/visitation" is checked, and no request for a move-away is stated in the top box. The mediator is then not on notice if there is a move-away pending. Or, if the parties went to FCS within the last year, they are not given a date, even though in the body they are requesting to move. The parties then have to be sent back to have this addressed. It would be better to have it added as a stand-alone request since that section is currently being amended.	The committee considered adding a check box for a "move-away" case in the caption. The committee also considered adding it as a sub-item in the Child Custody area of the form on page 2. Instead of these changes, the committee believes that adding more space under each item on the form will likely provide more notice to the court that it is dealing with a relocation request.
Hon. Rebecca Wightman Commissioner Superior Court of San Francisco County	• The new draft FL-300, with the added WARNING that the litigant must file a Responsive Declaration "at least nine days before the hearing" etc.) creates an even GREATER CONFUSION for litigants where the use of the RFO is for Ex Parte Emergencies!!!!! • Finally, in asking our FL research attorney what, if any, problems were generated by the revision of CRC 5.151 to require the use of FL-300 in emergency situations, the following comment was previously submitted – and does	Form FL-300 allows for a different date for providing a responsive declaration if an Order Shortening Time is issued in the "Court Order" section of the form. To address the commentator's concerns, the committee recommends revising the instructions for form FL-320-INFO to let the responding party know that the court might order a shorter time to file and serve his or her *Responsive Declaration to Request for Order* (form FL-320).

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FL-300		
Commentator	**Comment**	**Committee Response**
	not appear to have been addressed by this new round of proposed form changes: The requirement that FL-300 be used to submit an application for ex parte (emergency) orders is very confusing. We have found that attorneys and self represented litigants (SRLs) are confused about how to use the FL-300 when it comes to , among other things, indicating the date, time and place of the ex parte hearing/ submission. There is no place to indicate the date, time and place of the ex parte hearing/ submission on the FL-300. The place to indicate date, time and place on the FL-300 is intended to used for the law and motion hearing date not the ex parte date. While the forms may work for many courts, they are very confusing for courts that give the parties a "date" for the submission / hearing of the ex parte request. SRLs are instructed to serve of copy of the application for emergency orders (FL-300) on the opposing party. The problem is that when the opposing party gets the FL-300 it does not state a date time and place of the ex parte hearing. The only "notice" they receive is a phone call stating the date time and place of the ex parte submission / hearing ….nothing on paper to refer back to. The forms may work for cases with two attorneys but it is extremely confusing for SRLs. I suggest / request that the Judicial Counsel develop a stand	It appears that the practice that was commonly used in San Francisco may have been considered an Order Shortening Time in courts and can be expressed in that way on the form. The notice of the ex parte request is optional and a local court may want to include a provision for the time for the ex parte hearing. It appears that the practice that was commonly used in San Francisco may have been considered an Order Shortening Time in courts and can be expressed in that way on the form.

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FL-300		
Commentator	**Comment**	**Committee Response**
	alone optional form to request ex parte/emergency orders that will enable the court to write in the date time and place of the ex parte hearing. This optional form can also be used in cases where there is no need to set the matter on the Family Law law and motion calendar because the emergency orders are for a single event ….for example "mother may remove the child from the Bay Area counties for the weekend of 2/1/14 to attend a family reunion in San Diego". A FL-300 would not be needed in the above example as no further hearing is necessary. Suggestion: Please consider – in conjunction with revising FL-300, a CHANGE in the CRC 5.151 to allow an alternative EX PARTE Emergency Application (NOT just a "notice" declaration). By creating this alternative, you can avoid the ethics and other issues raised.	The committee considered this and is concerned that having two separate pleadings is difficult for parties as well as many courts. If this matter is heard on the basis of an order shortening time an order can be issued and no further hearing need be set if that is appropriate

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FL-300-INFO		
Commentator	**Comment**	**Committee Response**
Family Law and Juvenile Court Operations Managers by Blanca Ecsobedo Principal Administrative Analyst Superior Court of Orange County	• Page 1, item 2, states that the FL-300 may not be used if the Petition is not yet filed; the form can be filed at the same time as the Petition. Recommend adding wording to clarify. • It also states that FL-300 may not be used for domestic violence restraining orders, there are other orders that can't be requested using the FL-300: FL-410, FL-450 and FL-470 are examples of MANDATORY forms used to request specific court orders. • Page one, item 3 should include information about modifying a restraining order. • Page three, item 9, second bullet should clarify this applies to non-domestic violence matters.	The committee recommends rewording the sentence to indicate that form FL-300 may be filed with the Petition. The committee recommends revising the item to state that form FL-300 must not be used when specific Judicial Council forms must be used to ask the court for orders. This statement can then be followed by a list of those proceedings that require specific forms. The committee prefers to have item 1 refer parties to form DV-400-INFO for information about modifying a restraining order. The committee recommends revising the form to state that as suggested by the commentator.
Los Angeles Center for Law and Justice by Diane Trunk Managing Attorney	a. Comment: add section to these instructions regarding a person's right to request a fee waiver, if they cannot pay the RFO filing fee. Recommendation: Add section "i. If you cannot afford to pay the filing fee associated with the Request for Orders, your fees may be waived if you request a fee waiver, but you must fill out FW-001."	The language suggested by the commentator is already include in the information sheet.
Fariba R. Soroosh	-Item 2, 3rd bullet: Clarify that an agreement must be filed in a	The committee recommends revising the form to

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Domestic Violence: Request to Modify or Terminate Domestic Violence Restraining Orders; Family Law: Changes to Request for Order Rules and Forms (amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94, 5.151; adopt forms DV-400, DV-400-INFO, FL-303, FL-320-INFO; revise forms DV-115, DV-115-INFO, DV-116, DV-130, DV-200, DV-200-INFO, DV-505-INFO, FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, FL-341, FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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FL-300-INFO		
Commentator	**Comment**	**Committee Response**
Supervising Attorney Self Help Center/Family Law Facilitator's Office Superior Court of Santa Clara County	case to be effective and enforceable. I suggest that the last sentence be changed as follows: *For information about how to write up your agreement, get it approved by the court and filed in your court case, see . . . .*	incorporate the commentator's suggestions.
	-Item 3(c): Why is there a referral to a DV form here? This may be confusing. There are also instructions on the second page of form FL-155 regarding who does not qualify to use that form.	To avoid confusion and redundancy, the committee recommends deleting the reference to form DV-570 in item 3c and replacing it with instructions to look at page 2 on form FL-155 for the list of eligibility requirements.
	-Item 3(g): I find it confusing that form FL-321 is a Witness List but FL-321-INFO is an information sheet about minors' council.	To avoid confusion about the forms, the committee recommends renumbering form FL-321-INFO in future cycle.
	-Item 4: Instruction for item 1 of the RFO should include other possibilities such as DCSS if they are involved and must be noticed. They are technically not a party to the case. Also, include "attorneys of record" just in case any party is represented (no need for specific names of attorneys).	The committee recommends revising the instructions for to reflect that the party may need to serve other persons or agencies, such as the other party's attorney or a local child support agency.
	-Item 15*(now item 16)*, 3rd bullet: Is personal service on respondent required if he/she has not filed a Response or otherwise made a general appearance in the case regardless of whether the Summons and Petition have been served.	The committee recommends revising the form to respond to the commentator's question.
	-Item 17: Why use bullet points in other sections but check boxes here? Just a formatting question and not substantive.	Check boxes and bullet points are used to help guide the reader's eye through the form and break up blocks of

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FL-300-INFO		
Commentator	**Comment**	**Committee Response**
	-Item 19: Change instruction re e-filing to "(or e-file them if available in your county)" unless it is expected that all counties will have e-filing before this form as to be revised again.	text to help make the information easier to read. The committee recommends revising the form as suggested by the commentator.
The State Bar of California The Executive Committee of the Family Law Section of the State Bar of California (FLEXCOM) by Saul Bercovitch Legislative Counsel San Francisco	-Item 2, 3rd bullet: Clarify that an agreement must be filed in a case to be effective and enforceable. It is suggested the last sentence be revised as follows: *For information about how to write up your agreement, get it approved by the court and filed in your court case, see . . . .* -Item 3(c): A referral to a domestic violence court form in this space on FL-300 is confusing and the reference should be eliminated. -Item 3(g): It may be confusing that form FL-321 is a Witness List but FL-321-INFO is an information sheet about minor's counsel. Perhaps a renumbering of the forms would be appropriate. -Item 4: Instruction for item 1 of the RFO should include other potential issues such as noticing DCSS if necessary. Also, include "attorneys of record" in the event any party is represented (no need for specific names of attorneys).	The committee recommends incorporating language to indicate that the agreement has to be filed in a case to be effective. Because form FL-155 already includes information to help a party identify if he or she is eligible to use the form, the committee recommends deleting the reference to form DV-570. To avoid confusion about the forms, the committee recommends reviewing form FL-321-INFO in future cycle to consider a new number for the information sheet. The committee recommends revising the instructions for item 4 to reflect that the party may need to serve other persons or agencies, such as the other party's attorney or a local child support agency.

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Domestic Violence: Request to Modify or Terminate Domestic Violence Restraining Orders; Family Law: Changes to Request for Order Rules and Forms (amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94, 5.151; adopt forms DV-400, DV-400-INFO, FL-303, FL-320-INFO; revise forms DV-115, DV-115-INFO, DV-116, DV-130, DV-200, DV-200-INFO, DV-505-INFO, FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, FL-341, FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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FL-300-INFO		
Commentator	**Comment**	**Committee Response**
	-Item 15 bullet: The form should indicate whether personal service on respondent is required. -Item 17: There is an inconsistency between using bullet points in certain areas of the form but check boxes in this section. One method should be selected and used consistently throughout the form. -Item 19: Change instruction re e-filing to "(or e-file them if available in your county)" unless it is expected that all counties will have e-filing before this form as to be revised again.	The committee recommends substantive changes to the section to better clarify when to use personal service of service by mail. Using check boxes and bullet points help guide the reader's eye through the form and break up blocks of text to help make the information easier to read. The committee recommends revising the form as suggested by the commentator.
Superior Court of Los Angeles County	We are supportive of adding language in the FL-300 INFO page telling litigants when personal service v. service by mail should be used.	No response required.
Superior Court of Sacramento County	* Comments Items 3(c)-(e) - The phrase "A current…" is not necessary. Items 3(c)-(h) - There needs consistency - change language in phrase "you need" to "you need forms" or add the word "form" to each JC form listed. Item 3(f) at first check box - Insert (Ex Parte) after the word "emergency."	 The committee prefers to keep the term "current" so that the form is consistent with rules 5.92 and 5.260 of the California Rules of Court. The committee recommends this change where appropriate. The committee recommends this revision.

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FL-300-INFO		
Commentator	**Comment**	**Committee Response**
	Item 4 - Replace the word "enter" with the word "print."	The committee prefers "write" to be consistent with other forms.
	Item 4 at second paragraph - Insert (Ex Parte) after the word "Emergency."	The committee recommends this revision.
	Item 4 at Item 1 - Replace "Write" with "Print."	The committee prefers "write" to be consistent with other forms.
	Item 7 - Delete "…with the court clerk." This added language is not necessary.	The committee recommends this revision.
	Item 8 - Replace "is" with "may be."	The committee does not recommend this revision. A fee is actually due at the time of filing. There is an exception for fees that are waived for a party.
	Item 10 - Delete last phrase "…and law enforcement…" If no orders are made, there is nothing to enforce.	The committee recommends this revision.
	Item 12 - Use of plural vs. singular. Replace "parties" with "party."	The committee recommends that the forms reflect that there may be more than one party in the case.
	Item 12 at second paragraph - Do not indicate type of service. Delete "…need to be served by mail" and replace with "…will be served."	The committee recommends substantive changes to the form to respond to the commentator's suggestion.
	Item 13 - #13 - Title does not match description below.	The committee recommends changing the title to W*ho*

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FL-300-INFO		
Commentator	**Comment**	**Committee Response**
	Suggest changing title to "Selecting a Server."	*can be a "server."*
	Item 13 - Delete first two sentences of the instructions.	The committee recommends this revision.
	Item 16 - Typo in second sentence "ofage."	The committee recommends correcting this error.
	Item 17 - at first check box, bullet 3 - Replace the word "strike" with the more plain language word "dismiss."	The committee prefers to use the word "strike" to as it reflects the language of Code of Civil Procedure section 435. However, the committee does recommend revising the language to state "Request to strike all or part of the *Petition*." This will make it easier to understand.
	Item 17 at last paragraph - The reference to the department should be capitalized. "Family Law Facilitator or Self-Help Center."	The committee recommends this revision.
	Item 20 - Capitalize "Family Law Facilitator and Self-Help Center."	The committee recommends this revision.
	Item 20 - Remove the reference to providing forms as many courts advise litigants to go online for forms.	The committee recommends this revision.
	Item 20 - Add "assistance," after "information."	The committee recommends this revision.
Superior Court of Santa Clara County by Hon. Christine Copeland Commissioner	In item 2 in the first bullet, it says you can't use the RFO unless you have already filed a Petition; I think this confuses a litigant who has no marital action case and wants to file an RFO to vacate or change the RO. Also, a restrained party can file the	The committee recommends form DV-400-INFO for use by parties who want to change or end a restraining order. Thus, the committee does not recommend revising the form as suggested by the commentator.

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FL-300-INFO		
Commentator	**Comment**	**Committee Response**
	RFO to vacate or mod, so we shouldn't make that restrained person think that they have to first file a Petition in a marital action case.	

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FL-303		
Commentator	**Comment**	**Committee Response**
Family Law and Juvenile Court Operations Managers by Blanca Ecsobedo Principal Administrative Analyst Superior Court of Orange County	• Recommend changing form title to reflect "Service" versus "Delivery" to avoid confusion. • • Page two, item #3 we recommend substituting "Delivery" with "Service" for clarity. • This is a declaration of service, therefore we recommend removing items 5, 6, and 7.	The committee recommends revising the form as suggested by the commentator. The committee recommends revising the form as suggested by the commentator. The committee recommends the changes suggested by the commentator to be consistent with the requirements of rule 5.151.
Los Angeles Center for Law and Justice by Diane Trunk Managing Attorney	a. Comment: page 1, number 2 Notice. We think two subsections could be added to include notice via TEXT or E-MAIL Recommendations: add two new subsections to "2. Notice a. (2) I gave notice by this method…(e) e-mail and (f) text..."	The committee prefers that the form be consistent with rule 5.151, which does not include notice via text or email.
Fariba R. Soroosh Supervising Attorney Self Help Center/Family Law Facilitator's Office Superior Court of Santa Clara County	-I suggest that Judicial Council not issue this form at all. While there are California Rules of Court that govern the basic process for handling ex parte requests, some discretion is left to the counties to come up with their own individual processes such as not having ex parte hearings. Accordingly, some counties, like Santa Clara and San Diego, have put a lot of work into coming up with local forms and need the flexibility to make changes as necessitated by rule changes and change of relevant circumstances (budget and staffing, etc.). Once an optional JC form is available, local courts must accept it for filing even if a local alternative is available (CRC 1.35) and	Effective January 1, 2013, the Judicial Council adopted specific rules relating to requests for temporary emergency (ex parte) orders: rules 5.151 through 5.169. Rule 5.151 (Request for emergency orders; application; required documents) requires, among other items, that a party's request for temporary emergency orders include a written declaration regarding notice of application for emergency orders based on personal knowledge. There is no current Judicial Council form to help a party comply with the requirement for such a written

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FL-303		
Commentator	**Comment**	**Committee Response**
	that may cause confusion (we are currently experiencing this with the publication forms). I am not sure if CRC's allow for local courts to mandate use of an optional JC form, here proposed FL-303, and eliminate their local form, if any.	declaration. Historically, the reason has been because courts throughout the state had adopted a variety of rules and forms regarding notice of ex parte hearings in family law matters. Local rules and forms often differed from county to county about the time frame for providing notice, which presented particular challenges to proposing a statewide form that could serve the needs of self-represented litigants or attorneys who practice in more than one jurisdiction. With the adoption of rule 5.165 (Requirements for notice), effective January 1, 2013, the Judicial Council implemented a uniform rule in family court addressing the time frame for providing notice to the other party about the request for temporary emergency orders. The rule requires, absent the court's approval for shortened notice or a waiver of notice, that, "[a] party seeking emergency orders under this chapter must give notice to all parties or their attorneys so that it is received no later than 10:00 a.m. on the court day before the matter is to be considered by the court." While some local courts offer a form for parties to complete and demonstrate their compliance with the notice requirements of rule 5.165, the committee recognizes that other courts do not. The *Declaration Regarding Notice and Delivery of Request for Temporary Emergency (Ex Parte) Orders* (form FL-

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FL-303		
Commentator	**Comment**	**Committee Response**
		303) would help fill a need for a standard form that can be accepted for filing in family courts across the state. Understanding that local courts may still require a party seeking temporary emergency orders to follow local rules and encourage parties to use local forms, the proposed FL-303 would include a notice box under the caption to advise parties that local procedures for this type of hearing may vary in each county and that parties should consult their county court's local rules. In addition, the notice box would include a link to *http://www.courts.ca.gov/3027.htm*, which lists the local court rules from the California Court's Online Self-Help Center.
	-If this form is created, please consider the following comments:	
	-Item 2(a): Indicate that this notice must be given before filing the request.	The committee recommends revising the form as suggested by the commentator.
	-Item 2(a)(1): Include a box for minor's counsel to be noticed as well.	The committee recommends revising the form as suggested by the commentator.
	-Items 2(a)(2) & (3): These will be confusing to attorneys and SRL's alike as not all those manners of notice and hearing are allowed in every county.	The committee recommends revising the form to cover use in courts that do not schedule an ex parte hearing.

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FL-303		
Commentator	**Comment**	**Committee Response**
	-Item 3(a): Clarify if a file or unfiled copy was delivered.	The committee does not recommend this change.
	-Item 5: Ask that the moving party specify county, state, and, if applicable, country where other court cases exist.	The committee recommends revising the form as suggested by the commentator.
	-Item 6: Indicate if other party has or has not requested these orders in the past. Cross orders are issued in error all time.	Because the committee recommends removing this item from the form (about past requests for orders) the committee does not recommend the commentator's suggested revisions.
	-Item 7: It is less confusing to add an attachment box under each item that needs explanation.	The committee recommends deleting item 7 and adding check boxes throughout the form for a party to indicate if the answer is made on an attachment.
The State Bar of California The Executive Committee of the Family Law Section of the State Bar of California (FLEXCOM) by Saul Bercovitch Legislative Counsel San Francisco	-FLEXCOM supports the creation of this new form and is concerned about confusion that may be created due to existence of varying local rules as allowed by the applicable CRC sections for processing ex parte requests. Therefore, FLEXCOM proposes that the sentence on this form with regard to local rules varying as to procedure should appear in bold-type and italic font.	No response required. The committee prefers to limit the use of bolded text in the form.
	-Item 2(a): Indicate that this notice must be given before filing the request.	The committee recommends revising the form as suggested by the commentator.
	-Item 2(a)(1): Include a box for minor's counsel to be noticed as well.	The committee recommends revising the form as suggested by the commentator.
	-Items 2(a)(3): This will be confusing to attorneys and self-	The committee recommends revising the form to cover

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FL-303		
Commentator	**Comment**	**Committee Response**
	represented litigants as CRC 5.169 allows for courts to make emergency orders based on documents submitted without requiring an ex parte hearing. It will be helpful to clarify that the deadline for this notice is before hearing or submission depending on what is required in that county. -Item 3(a): Clarify that an unfiled copy was delivered. -Item 5: Ask that the moving party specify county, state, and, if applicable, country where other court cases exist. -Item 6: Indicate if other party has or has not requested these orders in the past. It is not uncommon for cross orders to be issued in error. -Item 7: It is less confusing to add an attachment box under each item that needs explanation.	use in courts that do not schedule an ex parte hearing. The committee recommends this change. The committee recommends revising the form as suggested by the commentator. Because the committee recommends removing the inquiry on the forma about past requests for orders, the committee does not recommend the commentator's suggested revisions. The committee recommends deleting item 7 and adding check boxes throughout the form for a party to indicate if the answer is made on an attachment.
Superior Court of Los Angeles County	FL 303: Is this form to be used when notice is not given on a DVRO request? If not, should there be a specific form in the "DV" series? Currently LASC uses a local form that is in need of amendment as it uses the word "violence" rather than "abuse" and thus is not strictly applicable when the applicant seeks a DVRO under FC 6320.	This form is not for use for requests for domestic violence temporary restraining orders. The committee recommends adding such a notice in the form.
Superior Court of Sacramento	* Comments	

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FL-303		
Commentator	**Comment**	**Committee Response**
County	Item 2(a)(1) - The "date, time, and place" for hearing should contain blanks so litigant can indicate what information was given to the other party.	The committee recommends revising the form as suggested by the commentator.
	Item 3(a) - Insert (Ex Parte) after the word "Emergency."	The committee recommends revising the form as suggested by the commentator.
	Item 5 - Use singular person reference. Replace "parties" with "party."	The reference to "parties" is appropriate in the sentence "The parties in this case are involved in another family, probate, juvenile, or criminal court case." Therefore, the committee does not recommend the change suggested by the commentator.
	Item 6 - #6 only speaks of (a) no previous orders of (b) previously denied orders. A third check box should be added to previously granted orders.	Because the committee recommends removing the inquiry on the form (about past requests for orders), the committee does not recommend the commentator's suggested revisions.

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FL-305		
Commentator	**Comment**	**Committee Response**
California Judges Association by Joan P. Weber California Judges Association President	I suggest that paragraph 2a of this form contain a preliminary statement to establish the basis for granting such emergency orders. Such as: "The court finds that the application for temporary emergency orders meets the requirements of California Rules of Court, Rule 5.151 and that the declarations in support of such request meets the requirements of CRC Rule 5.111 and Family Code section 3064, and that the applicant has made an affirmative factual showing of irreparable harm, immediate danger, or other statutory basis for granting relief." Such a statement would help clarify the legal requirements for such an order for both the applicant and the judicial officer granting such orders especially for those judicial officers not familiar with family law who may be called upon on short notice to address such emergency requests.	To address the commentator's concerns, the committee recommends revising the form to include a new item 2 to succinctly set out the requirements for making temporary emergency (ex parte) orders.
Family Law and Juvenile Court Operations Managers by Blanca Ecsobedo Principal Administrative Analyst Superior Court of Orange County	• Is this form for non-DV matters? If so, recommend revising title of form to *Temporary Emergency Orders* ***(Non-Domestic Violence)***. • Page 1, item #2 (a)*(now item 3)*, suggest placing child's age in a separate column for quick reference; this also follows the format in other forms. • Page 1, item #2 (a)(3) *(now item 3 (b))*, suggest adding the form numbers of appropriate forms to guide parties.	The form is not for use in DV matters. The committee does not recommend the revision to the title. Current information sheets for domestic violence orders and family law orders clarify the appropriate forms needed to record court orders. The committee recommends revising the form to include a column for a child's date of birth. The committee prefers to not repeat on this order the list of forms already identified on *Request for Order* (form

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Domestic Violence: Request to Modify or Terminate Domestic Violence Restraining Orders; Family Law: Changes to Request for Order Rules and Forms (amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94, 5.151; adopt forms DV-400, DV-400-INFO, FL-303, FL-320-INFO; revise forms DV-115, DV-115-INFO, DV-116, DV-130, DV-200, DV-200-INFO, DV-505-INFO, FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, FL-341, FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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

FL-305		
Commentator	**Comment**	**Committee Response**
		FL-300).
Los Angeles Center for Law and Justice by Diane Trunk Managing Attorney	a. Comment: Below the Captions page 1- "Temporary Emergency Orders" There is a joint box that one can check if the litigant is requesting a change in "Child Custody/Parenting Plan". We think that there should be a separate box asking for a change in Visitation (Parenting Plan). Recommendation: Add a box _Visitation (Parenting Plan) and delete "Parenting Time" from the box _Child Custody/Parenting Plan below the captions, under orders requested. b. Comment: page 1, number "2. a. Child Custody (3) Visitation (Parenting time)*(now 3(b))* The temporary orders..." this subsection should be renumbered to make it uniform to the underlying FL-300 Request for Orders. Recommendation: "b._Visitation (Parenting time) The temporary orders..." renumbering the subsection will make it conform to FL-300. To clarify deleting (3) and adding b to number 2 on page 2. c. Comment: page 1- If the above change is changed or NOT, the council should include the child's name and age to the section re "(3) _Visitation (Parenting time)".	The committee recommends revising the form as suggested by the commentator. The committee recommends renumbering the form so that visitation (parenting time) is a subsection of the item for child custody. This will reflect that law requires temporary orders for physical custody, care, and control of a minor child are subject to the other party's rights of visitation (parenting time). Because the visitation (parenting time) item is a subsection of child custody, there is no need to repeat

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FL-305		
Commentator	**Comment**	**Committee Response**
	This will allow for uniformity throughout the FL-300 and additional attachments or orders. Recommendation: "(3)._Visitation (Parenting time) The temporary orders..." adding subsection "(1) Child's name and age". This change will make it conform to FL-300.	the child's name and age.
Fariba R. Soroosh Supervising Attorney Self Help Center/Family Law Facilitator's Office Superior Court of Santa Clara County	-Item 1: The dot is missing next to item number. Blank space may not be big enough to list the parties and attorneys. -Item 2(a)(1) *(now 3(a))*: Provide a box to attach list of additional children as there are families with more than five minor children. -Item 2(a)(3) *(now 3(b))*: Currently, many applicants, specially SRL's, and even judicial officers leave this item blank. Perhaps it would be helpful to provide three choices under this item: □ None pending hearing. □ See attached. □ Pursuant to existing orders filed on (date) _____, in this case or another case (filed copy attached).	The committee recommends correcting the typographical error in item and providing more space to list the parties and attorneys. The committee recommends revising the form as suggested by the commentator. Rather than suggest possible orders in this section, the committee prefers to provide additional space for the court to make visitation (parenting time) orders and then provide a check box in case the court needs to continue orders on an attachment.
The State Bar of California The Executive Committee of the	FLEXCOM supports the creation of this form. A few suggested modifications are below.	

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FL-305		
Commentator	**Comment**	**Committee Response**
Family Law Section of the State Bar of California (FLEXCOM) by Saul Bercovitch Legislative Counsel San Francisco	-Item 1: The dot is missing next to the item number. The blank space provided may not be large enough to list the parties and attorneys. -Item 2: At the end of the sentence delete the words "in item 1." Revise the words "on the hearing date" to "on the date of the hearing". -Item 2(a)(1): Provide a box to attach a list of additional children as there are litigants with more than five minor children. -Item 2(a)(3): Currently, many applicants leave this item blank. Perhaps it would be helpful to provide three choices under this item: □ None pending hearing. □ See attached. □ Pursuant to existing orders filed on (date) _____, in this case or another case (filed copy attached).	The committee recommends correcting the typographical error in item and providing more space to list the parties and attorneys. The committee recommends revising the form as suggested by the commentator. Rather than suggest possible orders in this section, the committee prefers to provide additional space for the court to make visitation (parenting time) orders and then provide a check box in case the court needs to continue orders on an attachment.
Superior Court of Sacramento County	* Comments "Temporary Emergency Orders" box - Insert the word (Ex Parte) after the word "Emergency."	The committee recommends revising the form as suggested by the commentator.

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FL-305		
Commentator	**Comment**	**Committee Response**
	"Temporary Emergency Orders" box at first check box - The forms have been very inconsistent with interchangeably using child visitation, visitation, parenting time or a combination of the three.	The committee recommends revising the forms to create consistency with these terms.
	Item 2(a)(2) *(now 3 (c)(1))*- Delete "or parties."	This item is drafted to reflect that a child in California may have more than 2 parents, and that the orders may so reflect. Therefore, the committee prefers to use the phrase "party or parties" in this part of the form.
	Item 2(a)(3)*(now 3(b))* - Reverse title/sub-title, should be Parenting Time (child visitation).	The committee prefers to consider global change to child visitation (parenting time) in a future cycle.
	Item 2(a)(4) *(now 3(c))* at third check box - Delete "of the parties."	The committee recommends revising the form as suggested by the commentator.
	Bottom of page 1 (title) - Insert (Ex Parte) after the word "Emergency."	The committee recommends revising the form as suggested by the commentator.
	Item 2(a)(6)(b) *(now 3(e)(2))*- This would not be true if this was an ex parte with no notice. Suggest adding language "or notice has been waived upon a showing of good cause."	The committee believes that an ex parte without notice is covered by the phrase "as provided by the laws of the State of California." Therefore, the committee does not recommend revising the form as suggested by the commentator.
	Bottom of page 2 (title) - Insert (Ex Parte) after the word "Emergency."	The committee recommends revising the form as suggested by the commentator.

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FL-305		
Commentator	**Comment**	**Committee Response**
Superior Court of Los Angeles County	FL-305: Capitalize "code" at page 2 second line of 6(a) *(now 3(e)(1))*. Paragraph 2a of this form should contain a preliminary statement to establish the basis for granting emergency orders such as "The court finds that the application for temporary emergency orders meets the requirements of California Rules of Court, Rule S .151 and that the declarations in support of such request meets the requirements of Rule 5.111 and Family Code Section 3064, and that the applicant has made an affirmative factual showing of irreparable harm, immediate danger, or other statutory basis for granting relief." Such a statement would help clarify the legal requirements for such an order for both the parties and the judicial officer granting such orders, especially for those judicial officers not familiar with family law who may be called upon on short notice to address such emergency requests.	The committee recommends revising the form as suggested by the commentator. To address the commentator's concerns, the committee recommends revising the form to include a new item 2 to succinctly set out the requirements for making temporary emergency (ex parte) orders.

FL-306		
Commentator	**Comment**	**Committee Response**
Family Law and Juvenile Court Operations Managers by Blanca Ecsobedo Principal Administrative Analyst Superior Court of Orange County	• Top of the forms is missing a line, right above the court information. • Recommend swapping items #2 and #3. It's helpful to have information about prior orders at the top, so they could be referenced quickly. • Add line to separate application and order sections (similar to the FL-300 form).	The committee recommends revising the form as suggested by the commentator. The committee recommends amending the rule as suggested by the commentator. The committee does not recommend this change

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FL-306		
Commentator	**Comment**	**Committee Response**
	• Judicial officer signature line is very tight.	The committee recommends revising the form as suggested by the commentator.
Fariba R. Soroosh Supervising Attorney Self Help Center/Family Law Facilitator's Office Superior Court of Santa Clara County	Will pending legislation, AB1081, have an effect on this form? This bill seems to eliminate the term reissuance and make other changes that will have to be reflected on this form or result in omitting this form and creating a new one accordingly. Therefore, I will not make any comments as to content at this time.	Assembly Bill 1081 does affect this form. The committee recommends revising the form to reflect the amendments to Family Code section 245 made by AB 1081.
The State Bar of California Standing Committee on the Delivery of Legal Services	FL-305 Ex Parte Orders should also include the date of birth of child, in lieu of, or in addition to age. This form simplifies the former Ex Parte orders attached to the RFO. This standalone form should make it easier for enforcement purposes	The committee recommends revising the form as suggested by the commentator. No response required.
Superior Court of Sacramento County	* Item 2(c) - Insert (Ex Parte) after the word “Emergency.” Item 8 - What about form FL-305 if Temp orders were issued?	The committee recommends revising the form as suggested by the commentator.

FL-311		
Commentator	**Comment**	**Committee Response**
Family Law and Juvenile Court Operations Managers by Blanca Ecsobedo	Item #2(d) needs a period at the end of the sentence.	The committee recommends revising the form as suggested by the commentator.

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FL-311		
Commentator	**Comment**	**Committee Response**
Principal Administrative Analyst Superior Court of Orange County		
Los Angeles Center for Law and Justice by Diane Trunk Managing Attorney	Comment: There should be boxes added to add specific times, and, an area to indicate what happened when school is not in session. Parents do not always have a holiday schedule for summer, winter, or spring breaks so visitations may occur when no school is in session. In addition, at times there are non-holidays when school is not in session such as teacher days. Recommendation: the check boxes be before the blanks for exact times. Include an option to make it say something to the effect of pick up after school unless no school in session, then at __ time. Also, include an option for drop off.	The committee recommends that parties use Children's Holiday Schedule Attachment (form FL-341(C)) instead of revising this form to indicate the schedule when school is not in session. Due to space constraints, the committee prefers that parties use item 10. Other to include the information described in the comment.
Fariba R. Soroosh Supervising Attorney Self Help Center/Family Law Facilitator's Office Superior Court of Santa Clara County	**FL-311** -Item 2(e)(4): There is not enough space here to write in anything. So the box to allow for use of an attachment should be moved up and indented.	The committee recommends revising the form as suggested by the commentator.
The State Bar of California The Executive Committee of the Family Law Section of the State Bar of California (FLEXCOM) by Saul Bercovitch	-Item 2(e)(4): There is not enough space here to write in anything. The box to allow for use of an attachment should be moved up and indented.	The committee recommends revising the form as suggested by the commentator.

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FL-311		
Commentator	**Comment**	**Committee Response**
Legislative Counsel San Francisco		
Superior Court of Imperial County, Access Center by Rheeah Yoo Access Center Supervisor and Family Law Facilitator	* There are parents whom only request access for a couple of hours on one particular day. Recommend adding the option to mark "same day only" for items 2e(1-3). * Item #4b regarding transportation **to** the visits is confusing to parties. Recommendation: change language to "Transportation at the BEGINNING of the visit…" * Item #4c regarding transportation **from** the visits is confusing to parties. Recommendation: change language to "Transportation at the END of the visit…" * Item #4d regarding drop-off is confusing to parties. Recommendation: change language to "Drop-off of the children at the beginning of the visit…" * Item #4e regarding pick-up is confusing to parties. Recommendation: change language to "Pick-up of the children at the end of the visit…"	The committee believes the form already permits a party to respond to the situation described in the comment. The committee recommends revising the form to state, "Transportation **to** begin the visits will be provided by *(name)*:" The committee believes that changing the form at 4.b., as stated above, will clarify the meaning of 4c. Therefore, the committee does not recommend the change suggested by the commentator. Maintaining the current language will also keep it consistent with the similar provisions in form FL-341. The committee recommends revising the form at item 4d. so that the language is consistent with form FL-341 (at item 10.d.), which states: "The exchange point at the beginning of the visit will be at *(address)*:" The committee recommends revising the form at item 4d. so that the language is consistent with form FL-341 (at item 10.e.), which states: "The exchange point at the

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FL-311		
Commentator	**Comment**	**Committee Response**
		end of the visit will be at *(address):*"
Superior Court of Los Angeles County	FL-311: Page 2, item 3: If professional supervised visitation is requested the party must file an Income and Expense Declaration (FL-150).	The committee does not recommend revising the form as suggested. Neither the Family Code nor the California Rules of Court require the filing of form FL-150 for this purpose.
	FL-311, Item #2.c. "The parties will go to child custody mediation…." Is this language necessary, since there is already a place for it to go on the 1st page of the FL-300? In addition, it leads litigants to check this box and not specify any other request. If no agreement is reached in mediation and the responding party doesn't appear at the RFO hearing – what orders would result? Neither the other party or the court has not been put on notice of what the moving party is requesting for visitation orders.	The committee recommends that the language remain in the form because form FL-311 also serves as an attachment to a Petition (form FL-100) and a Response (form FL-120), which do not already include language about child custody mediation or child custody recommending counseling.
Superior Court of Sacramento County	* Comments Form title at top of page 1 - Suggest changing title to: Child Custody and Parenting Time (Visitation)	The committee does not recommend the change suggested by the commentator. The committee may consider a global, technical change to the rules and forms in a future cycle.
	Item 1 - Replace "parties" with "party."	The use of the word "parties" is appropriate in the context of the sentence in item 1 ("Custody of the minor children of the parties is requested as follows:") Therefore, the committee does not recommend this revision.

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FL-311		
Commentator	**Comment**	**Committee Response**
	Item 2 "Note:" - Reword last part of sentence to "…priority over…regular parenting time."	The committee recommends revising the form as suggested by the commentator.

FL-312		
Commentator	**Comment**	**Committee Response**
Family Law and Juvenile Court Operations Managers by Blanca Ecsobedo Principal Administrative Analyst Superior Court of Orange County	Item #4(d) has a missing colon at the end of the sentence.	The committee recommends correcting the typographical error as suggested by the commentator.
Los Angeles Center for Law and Justice by Diane Trunk Managing Attorney	Comment: 4d: states "explain" after the last option so people might only explain if they checked the last box Recommendation: If explanations are required for all of d, either put "explain" somewhere more clear or repeat the request to explain for each section.	The committee recommends revising item d to state "*Explain your answers to item d.*"
The State Bar of California Standing Committee on the Delivery of Legal Services	FL-312—Request Abduction Orders – Suggest that a check box be added allowing the litigant to request law enforcement assistance if needed.	This change would require additional public comment before the committee can recommend including it in the form, effective January 1, 2016.
Superior Court of Los Angeles County	FL-312 Request for Child Abduction Prevention Orders, item #9 – Notify other State of Travel Restrictions. This provision requests that the court order the other party to register the order in another state before the children can travel to that state – but includes no language regarding the ability to request a mechanism for that party to provide proof of registering the order.	The committee recommends revising the form as suggested by the commentator.

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FL-320		
Commentator	**Comment**	**Committee Response**
California Department of Child Support Services by Alisha A. Griffin Director	As proposed, the Responsive Declaration To Request For Order (FL-320) generally meets the needs of DCSS with two limited exceptions. First, while the local child support agencies (LCSAs) routinely use this form, they do not file Income and Expense Declarations. As such, DCSS proposes that Items 3.a and 4.a. be amended to reflect they do not apply to FL-320s filed by the LCSAs. Second, DCSS would also recommend additional formatting changes be made to maximize the amount of white space available at Item 10.	The committee prefers that the form remain directed to parties in the family law case and not be revised to indicate that DCSS is not required to file form FL-150. There are a number of procedures that are different with respect to DCSS. The committee does not want to highlight this particular matter either on this form for or on form FL-320-INFO. The committee recommends revising the form as suggested by the commentator.
Family Law and Juvenile Court Operations Managers by Blanca Ecsobedo Principal Administrative Analyst Superior Court of Orange County	Page 2, information box at bottom, suggest this be moved to top of 1st page where it would be seen before completion of form.	The committee prefers to move the notice about domestic violence restraining orders to the information sheet associated with this form (form FL-320-INFO) to maximize the space available to respond.
Fariba R. Soroosh Supervising Attorney Self Help Center/Family Law Facilitator's Office Superior Court of Santa Clara County The State Bar of California The Executive Committee of the Family Law Section of the State Bar of California (FLEXCOM) by Saul Bercovitch	Item 4(a): Last word should be "request" and not "declaration". Item 5(a): Last word should be "request" and not "declaration".	"Declaration" is meant to refer to the responsive declaration itself. The committee recommends revising the form to clarify the meaning. Same as above response.

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FL-320		
Commentator	**Comment**	**Committee Response**
Legislative Counsel San Francisco		
The State Bar of California Standing Committee on the Delivery of Legal Services	FL-320 Responsive Declaration/Agree with changes. The repeated indications that an Income & Expense Declaration form is attached under each "support" request (paragraphs 3, 4, and 5) is questionable. Some Self-Represented Litigants may think they need to file three FL-150s. On the other hand, it could lead to self-represented litigants filing three Income & Expense Declarations. Consider making the attachment of an Income & Expense Declaration a separate checkbox section on the form.	No response required. The committee prefers to revise form FL-320-INFO to clarify that one form FL-150 may be filed to satisfy the requirements for child support, spousal or domestic partner support, attorney's fees and costs, and other issues relating to property or finances.
Superior Court of Sacramento County	Item 2 - The title/sub-title should be reversed - Parenting Time (Child Visitation) Item 3(a), 4(a) and 5 (a) - Delete "current."	The committee does not recommend revising the form as suggested. The change would affect many more rules and forms than those included in this cycle. The committee would prefer reviewing the rules and forms to consider technical changes in a future cycle. The word "current" make the language in the form consistent with rules 5.92 and 5.260. Therefore, the committee does not recommend changing the form as suggested.

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FL-320-INFO		
Commentator	**Comment**	**Committee Response**
Los Angeles Center for Law and Justice by Diane Trunk Managing Attorney	Comment: Item 7. The instruction says that "File your original paperwork....The clerk will keep the original and give you back copies with a court stamp on them." However, it does not state to bring copies of the forms to be stamped by the clerk. Recommendation: Indicate that the person filing the forms should bring the original and 2 copies to the clerk. Comment: Item 10. The instruction states that personal service should be completed at least 9 "days" before the hearing or 14 "days" before the hearing if by mail. The instruction does not indicate whether it is court or calendar days. Recommendation: State whether the number of days are "court" or "calendar" days. Otherwise, if the persons use calendar days, service may be untimely.	The committee recommends revising the form as suggested by the commentator. Same as above response. The committee recommends revising the form to state "court" days.
Fariba R. Soroosh Supervising Attorney Self Help Center/Family Law Facilitator's Office Superior Court of Santa Clara County	-Item 2: Please make clear that a written response should not be filed if the responding party seeks a continuance for reasons such as needing more time to prepare or to consult an attorney. Often a responding party is not ready to proceed at the first hearing and can easily get a continuance at that hearing. But if she/he files a written response, the Court has to find good cause to grant a continuance, and could deny the request. -Item 7: SRL's are often confused about what the purpose of	Note: the committee recommends consolidating the information from item 2 and 3 into under item 2 to avoid redundancy in the information. The committee recommends revising item 1 to include the information suggested by the commentator. The committee recommends incorporating the

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Domestic Violence: Request to Modify or Terminate Domestic Violence Restraining Orders; Family Law: Changes to Request for Order Rules and Forms (amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94, 5.151; adopt forms DV-400, DV-400-INFO, FL-303, FL-320-INFO; revise forms DV-115, DV-115-INFO, DV-116, DV-130, DV-200, DV-200-INFO, DV-505-INFO, FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, FL-341, FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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

FL-320-INFO		
Commentator	**Comment**	**Committee Response**
	these boxes are (1-9) and the declaration in support (10). I usually explain that your answers to items 1-9, are about what you want and your answer or explanation to item 10 is why you want those things. -There are two number 7's and then two number 9's. So every item after the first number 7 is numbered incorrectly as a result. -Item 10 (should be 12)*(now item 10)*: Please explain what happens if there is an order shortening time for service of responsive pleadings?	commentator suggestions in item 1. The committee recommends correcting the numbering error in the form. The committee recommends that the form to state that "If the court has ordered a shorter time to serve your responsive papers, sure to have them served by the date specified in the court order."
The State Bar of California The Executive Committee of the Family Law Section of the State Bar of California (FLEXCOM) by Saul Bercovitch Legislative Counsel San Francisco	-Item 2: The form should specify that a written response should not be filed if the responding party seeks a continuance for reasons such as needing more time to prepare or to consult an attorney. -Item 7(*now item 6)*: Self-represented litigants are often confused about the purpose of these boxes (1-9) as compared to the declaration in support (10). For example, explain that the purpose of items 1-9 is to tell the court what orders responding party would like the court to make, either agreeing with moving party or other orders, and the declaration under Item 10 is for telling the court why responding party is asking for those orders. -There are two numbers "7" and then two numbers "9". Every	The committee recommends incorporating the commentator's suggestions in item 1 of the form. The committee recommends incorporating similar language in this form. The committee recommends correcting the numbering

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FL-320-INFO		
Commentator	**Comment**	**Committee Response**
	item numbered after the first item "7" is numbered incorrectly and should be renumbered.	error in the form.
The State Bar of California Standing Committee on the Delivery of Legal Services	FL-320 INFO sheet Section 9: Serve your papers on the other party, should include language to serve the Responsive Declaration to the party's attorney if the other party is represented by counsel. FL-320 INFO sheet Section 10: Should state the party must be served nine COURT days before the court hearing. Currently the form just says nine days.	The committee recommends incorporating the suggestions of the commentator into the form. The committee recommends revising the form as suggested by the commentator.
Superior Court of Los Angeles County	We are supportive of the proposed new form FL-320 INFO and agree that it promotes the court's goals of access and fairness as well as neutrality.	No response required.
Superior Court of Sacramento County	* Item 2 - Replace "will with "may." Items 5(c), 5(d), and 5(e) - Delete reference to "A current." The liklihood that there is a recently filed form FL-150 is very low, no need to say current. Items 5(c), 5(d), 5(e), 5(f), and 5(g) - To maintain consistency either the word form should be added to the statement "you need forms" or the word "form" should be added to each JC form referenced. Item 6 - Replace "write" with "print."	 The committee recommends revising the form as suggested by the commentator. The committee prefers to use the word "current" to be consistent with the language rules 5.92 and 5.260. The committee recommends revising the form as suggested by the commentator. The committee prefers to use "write" to be consistent

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FL-320-INFO		
Commentator	**Comment**	**Committee Response**
		with other forms.
	Item 7 at Item 3 - Include the word "form."	The committee recommends revising the form as suggested by the commentator.
	Item 14 - Use uppercase when referencing "Family Law Facilitator and Self-Help Center." Remove reference to providing "court forms."	The committee recommends revising the form as suggested by the commentator.

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FL-336		
Commentator	**Comment**	**Committee Response**
Family Law and Juvenile Court Operations Managers by Blanca Ecsobedo Principal Administrative Analyst Superior Court of Orange County	Top of page one, remove the filing party/attorney box, as courts complete this form. Page two has a notice to the persons ordered to pay waived court fees and costs. Unsure why this section was added to the form, it appears this section may not be needed, hence we recommend removing it.	The caption is the standard caption for Judicial Council forms. Therefore, the committee does not recommend revising the form as suggested. The notice conforms with the language and requirements of Government Code section 68637(d). Therefore, the committee recommends that it remain on the form.
Los Angeles Center for Law and Justice by Diane Trunk Managing Attorney	Comment: page two, section 2 (in the box) "You have the opportunity for a hearing to request that the court set aside the order to pay waived court fees and costs." This section is confusing because it states that a litigant must complete FL-300 and FL-337, in order to get the set aside. If there is a fee attached to this filing, this will dissuade litigants from setting aside the order to pay court fees and costs. We think this filing should be free specifically stating that in this box. Recommendation: add the following language to the last sentence in the box on page 2, "You can obtain these forms from the clerk of the court, your county library, or online at www.courts.ca.govl forms. There is no fee to request a hearing."	The suggested language would require a legislative change since it relates to filing fees.

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FL-337		
Commentator	**Comment**	**Committee Response**
		The committee received no comments about this form.

FL-341		
Commentator	**Comment**	**Committee Response**
Family Law and Juvenile Court Operations Managers by Blanca Ecsobedo Principal Administrative Analyst Superior Court of Orange County	Page 1, item #7 c, asks for specific information regarding location of mediation/counseling, suggest adding date and time options. Add "This is a court order" to the bottom of FL-341, FL-341(B), FL-341(C), and FL-341(D) to be consistent with other Judicial Council forms.	The committee recommends revising the form as suggested by the commentator. The committee recommends that form FL-341 continue to maintain "This is a court order" at the bottom of the page since it is a child custody and visitation (parenting time) order attachment.
Fariba R. Soroosh Supervising Attorney Self Help Center/Family Law Facilitator's Office Superior Court of Santa Clara County	**FL-341** Item 7(e)(4): Move the attachment box up and indent to provide more space to write other orders in this space. -Reduce space provided under items 12-14, as most people, in my experience, use the attachments or do not have this much to list on the form. Instead devote the space to item 15 as, in my experience, that box is most convenient and least confusing to use to list additional orders on the form as opposed to an attachment.	The committee recommends revising the form as suggested by the commentator. The committee recommends revising the form as suggested by the commentator.
Los Angeles Center for Law and Justice by Diane Trunk	Comment: page one section below the captions "Child Custody and Visitation (parenting time) order attachment To" should include a box for paternity judgments- IE-	The committee recommends revising the form as suggested by the commentator.

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FL-341		
Commentator	**Comment**	**Committee Response**
Managing Attorney	Judgment (form FL-250). As practitioners, we often find ourselves checking the "other " box and type in "Judgment (FL-250)". There should be a box for this because half the family law clients we assist are non-married persons, resulting paternity cases/judgments. Recommendation: add the following box "_Judgment (FL-250) next to "Other (specify)". Comment: page two section 7.e. (2) "Alternate weekends starting (date):" Alternate weekend orders are difficult to enforce because if you have an order from 6 months ago, you would have to go through the entire calendar to see whose weekend it is with the minor child. We think have an order that reflects lst/2nd/3rd/4th/5th is sufficient and likelier to be enforced by police, if necessary. Recommendation: delete section 7.e. (2) "Alternate weekends starting (date):"	The committee recommends revising the form as suggested by the commentator. The committee recommends maintaining item 7.e.(2) on the form.
The State Bar of California Standing Committee on the Delivery of Legal Services	FL-341 – Custody/Visitation – FL-250 (Paternity Judgment) should be included on the form.	The committee recommends revising the form as suggested by the commentator.

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FL-341(B)		
Commentator	**Comment**	**Committee Response**
Family Law and Juvenile Court Operations Managers by Blanca Ecsobedo Principal Administrative Analyst Superior Court of Orange County	Page 1, item #8, the court makes an order to turn in passports however does not give direction as to where/who to turn them in to; suggest adding this information. Add "This is a court order" to the bottom of FL-341, FL-341(B), FL341(C), and FL-341(D) to be consistent with other Judicial Council forms.	The committee recommends revising the form as suggested by the commentator. The committee recommends revising form FL-341(B) as suggested by the commentator because it is an order attachment.
Superior Court of Sacramento County	*Comments on ITC, page 21, first sentence under "*Adapting family law forms for use as juvenile court child custody orders*"- "In addition to the above-mentioned changes, forms FL-341(B)-(E) would be revised to include a check box in the caption tomake clear that each form may serve as attachments to either *Custody–Juvenile Court–Final Judgment* (form JV-200) or *Visitation Order–Juvenile* (form JV-205). - This is a good revision.	No response required.

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FL-341(C)		
Commentator	**Comment**	**Committee Response**
Family Law and Juvenile Court Operations Managers by Blanca Ecsobedo Principal Administrative Analyst Superior Court of Orange County	• Add "This is a court order" to the bottom of FL-341, FL-341(B), FL341(C), and FL-341(D) to be consistent with other Judicial Council forms.	Form FL-341(C) is a multipurpose form that may be used as an attachment to an application as well as an order. Therefore, the committee does not recommend adding "This is a court order" to the bottom of form FL-341(C).
Superior Court of Sacramento County	* Comments on ITC, page 20, bullet 1 - Why not just blank spaces since this varies so much? The day of the week and dates change from year to year. Comments on ITC, page 20, bullet 6 – New items at 2 (b)(1) and (2)(A)-(D).This will be problematic. Parties are in court because they don't want to follow the suggestion of the other…. Comments on ITC, page 21, first sentence under "*Adapting family law forms for use as juvenile court child custody orders*"- "In addition to the above-mentioned changes, forms FL-341(B)-(E) would be revised to include a check box in the caption to make clear that each form may serve as attachments to either *Custody–Juvenile Court–Final Judgment* (form JV-200) or *Visitation Order–Juvenile* (form JV-205). - This is a good revision. Title of form - Suggestion to changing title to "Child's Exception to Parenting Time Schedule Attachment."	The committee recommends no change to the form based on the comment. As it circulated for comment, the form was expanded to provide blank spaces in another table for "Other Holidays" (on page 2) to allow parents to tailor a parenting plan that is in the best interest of their child. The committee recommends maintaining these new items on the form to allow the parties to consider examples of how they can resolve disagreements about holidays. No response required. The committee does not recommend changing the title of the form as suggested by the commentator.

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FL-341(C)		
Commentator	**Comment**	**Committee Response**
	Item 1 on page 1 - Replace word "write" with "print." Item 1, page 2 - Replace word "Holidays" with "Exceptions" (in first column) and "holiday parenting" to "exception parenting time."	The committee prefers the word "write" to be consistent with other FL and DV forms. The committee does not recommend the suggested revision as it could cause confusion to litigants.

FL-341(D)		
Commentator	**Comment**	**Committee Response**
California Partnership to End Domestic Violence by Krista Niemczyk Sacramento	FL-341(D) Additional Provisions-Physical Custody Attachment In the proposed amendments to FL-341(D) (Additional Provisions-Physical Custody Attachment), under Item 1 (Notification of parties' current address), the proposed language includes: "The parties may not use such information for the purpose of harassing, annoying, or disturbing the peace of the other or invading the other's privacy. If a party has an address with the State of California's Safe at Home confidential address program, no residence or work address is needed." We appreciate this language and recommend that it is broadened to also state that a party does not have to disclose their residence, work or other contact info if they have a DVRO against the other party that includes a No Contact order or if the person is residing in a confidential location.	The committee is not able to recommend the changes suggested by the commentator in this cycle. The changes are substantive in nature and would require additional public comment.

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FL-341(D)		
Commentator	**Comment**	**Committee Response**
John Chemeleski Trial Court Commissioner Long Beach	Form FL - 341(D), Additional Provisions - Physical Custody provisions: Many of the optional orders contained on this form, such as paragraphs 7 - 16, are orders that are not authorized by the Family Code and may be unconstitutionally broad as an intrusion on parental decision making. There is a presumption that fit parents act in their children's best interests, Parham v. J. R., 442 U. S. 584, 602, and there is normally no reason for the State to inject itself into the private realm of the family to further question fit parents' ability to make the best decisions regarding their children, see, e. g., Reno v. Flores, 507 U. S. 292, 304. The fact that the parties have a custody dispute before the court should not in itself be a reason for the court to impose restrictions on parents that are not imposed by law on parents who are not before the court in absence of evidence that a parent is not fit to make such decisions. The "best interest of the child" standard refers to the basis for the resolution of the custody dispute and does not give the court authority to impose restrictions that might be considered best for the children in absence of parental unfitness. Having these orders in a court order form, however, suggests that such orders are otherwise appropriate. Although parties	Effective January 1, 2004, the Judicial Council approved form FL-341(D) for optional use to address common issues in custody and visitation orders such as safety, child care, and phone contact. It is meant to allow (1) litigants to set out a parenting schedule and (2) judicial officers to specify the scope of, and incorporate common provisions regarding, physical custody. The form does not impose any restrictions on a parent's right to act in the best interests the child. The form allows the parents to address common issues that recurred regularly in a statewide review of custody

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FL-341(D)		
Commentator	**Comment**	**Committee Response**
	often agree to such orders, or may be coerced into agreeing to such orders, they can lead to time wasting contempt or other proceedings. Such provisions, if to be included in court forms, should only be in an agreement form, not an order form, with a provision that such agreements are not subject to law enforcement or contempt proceedings but could be the basis for a request for further orders if violation of such agreement was found to be evidence of parental unfitness.	agreements. The committee does not recommend changing the form as suggested by the commentator.
Family Law and Juvenile Court Operations Managers by Blanca Ecsobedo Principal Administrative Analyst Superior Court of Orange County	Add “This is a court order” to the bottom of FL-341, FL-341(B), FL-341(C), and FL-341(D) to be consistent with other Judicial Council forms.	Form FL-341(D) is multipurpose forms that may be used as an attachment to an application as well as an order. Therefore, the committee does not recommend adding “This is a court order” to the bottom of form FL-341(D).
Los Angeles Center for Law and Justice by Diane Trunk Managing Attorney	Comment: page one section 6 Phone contact between the parents- We would like to add language stating that the custodial parent must make the child available during the schedule times and that neither party shall interfere with the phone calls. Recommendation: add to section 6 c, "No party or any other third party may listen to or monitor the calls. Neither party shall interfere with the phone calls." AND add a new section "6 d. The custodial parent shall make the child available during the following times (specify):"	The committee recommends revising the form to incorporate a statement that the custodial parent must make the child available for the scheduled telephone contact. The committee recommends a slight revision to an existing item 6b to include that the parties will make the child available. The committee also recommends a slight change to existing item 6c to include a prohibition against interfering with the call. Item 6c would be revised to state: No party or any third party may listen

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FL-341(D)		
Commentator	**Comment**	**Committee Response**
		to, monitor, or interfere with the calls.
Superior Court of Imperial County, Access Center by Rheeah Yoo Access Center Supervisor and Family Law Facilitator	* The options for telephone are either home, work, or child's school. Recommendation: Add option for cell phone under 1b.	The committee recommends revising the form as suggested by the commentator.
Superior Court of Sacramento County	* Comments Comments on ITC, page 21, first sentence under "*Adapting family law forms for use as juvenile court child custody orders*"- "In addition to the above-mentioned changes, forms FL-341(B)-(E) would be revised to include a check box in the caption to make clear that each form may serve as attachments to either *Custody–Juvenile Court–Final Judgment* (form JV-200) or *Visitation Order–Juvenile* (form JV-205). - This is a good revision.	No response required.

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FL-341(E)		
Commentator	**Comment**	**Committee Response**
California Judges Association by Joan P. Weber California Judges Association President	***Form FL – 341 (E): Joint legal custody attachment*** This proposal contains a significant change in the language concerning joint legal custody. The existing form provides in paragraph 2 for an order that provides "the parents must confer in making decisions on the following matters". The proposed revision to this form changes this language dramatically by stating "the parties must discuss and consent in making decisions on the following matters". The "following matters" include enrollment in school, participation in religious activities, mental health counseling, extracurricular activities, and out-of-state travel. The change from "confer" to "consent" would effectively prohibit either parent from any of the above activities without the consent of the other parent. The form provides that a parent who does not obtain the consent of the other for these actions is subject to civil and criminal penalties. Therefore a parent, even one who has minimal physical custody, could prevent the other parent from taking any of these actions by doing nothing and that non-consenting parent would not be exposed to any penalties no matter how unreasonable that parents position would be. The parent who is seeking to take such actions is left in a position of either violating the court order or filing a request to change the order and waiting many weeks until a court hearing. Regardless of the necessity therefore, a parent could not lawfully take the child to child care, school, an extracurricular activity, a church service, a doctor (except in an emergency) or a therapist unless	The proposed change described by the commentator is not a major change to the form. The revisions are meant to better reflect the form's original purpose and the language of Family Code section 3083. The Judicial Council approved form FL-341E, *Joint Legal Custody Attachment*, effective January 1, 2004, to allow the court to specify the circumstances under which the *consent* of both parents is required to be obtained in order for them to exercise legal control of the child and the consequences of the failure to obtain mutual consent as required by Family Code section 3083. Family Code section 3083 requires that: In making an order of joint legal custody, the court shall specify the circumstances under which the consent of both parents is required to be obtained in order to exercise legal control of the child and the consequences of the failure to obtain mutual consent. In all other circumstances, either parent acting alone may exercise legal control of the child. An order of joint legal custody shall not be construed to permit an action that is inconsistent

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FL-341(E)		
Commentator	**Comment**	**Committee Response**
	the other parent has consented.	with the physical custody order unless the action is expressly authorized by the court.
	Although family code section 3083 provides that the court in making an order for joint legal custody shall specify the circumstances under which the consent of both parents is required, nothing in the code suggest that such draconian restrictions are necessary or in a child's best interest. The existing form language provides for a conference before making such decisions which gives notice of such proposed changes and an opportunity to object or propose alternatives or seek court assistance.	To correct a misunderstanding in the legal community about the meaning of "joint legal custody"—that it means neither party can act alone in making major decisions about a child—the committee added a notice under the caption to specify that, in exercising joint legal custody, the parties may act alone, as long as the action does not conflict with any orders about physical custody of the children. In addition, the notice explains the proper use of this optional form. It is used only if a party wants the court to specify when the consent of both parties is required to exercise legal control of the children. The form also conforms to the code by noting that an order under Section 3083 must include the consequences for failing to obtain mutual consent.
	The proposed requirement of consent to the above actions would also appear to tread on parents constitutional rights under the 14th amendment that the Supreme Court has ruled on in a number of cases. There is a pre-sumption that fit parents act in their children's best interests, Parham v. J. R., 442 U. S. 584, 602, and there is normally no reason for the State to inject itself into the private realm of the family to further question fit parents' ability to make the best decisions regarding their children, see, e. g., Reno v. Flores, 507 U. S. 292, 304. The fact that the parties have a custody dispute before the court should	The form reflects the requirements of Family Code section 3083.

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SPR15-16

Domestic Violence: Request to Modify or Terminate Domestic Violence Restraining Orders; Family Law: Changes to Request for Order Rules and Forms (amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94, 5.151; adopt forms DV-400, DV-400-INFO, FL-303, FL-320-INFO; revise forms DV-115, DV-115-INFO, DV-116, DV-130, DV-200, DV-200-INFO, DV-505-INFO, FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, FL-341, FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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FL-341(E)		
Commentator	**Comment**	**Committee Response**
	not in itself be a reason for the court to impose restrictions on parents that are not imposed by law on parents who are not before the court in absence of evidence that a parent is not fit to make such decisions. Additionally in my experience an attorney in family law for 18 years and as a family law bench officer for the past 21 years I have found that having such draconian provisions in court forms encourages a party seeking to control the other parent to insist in having such provisions included in a court order creating an additional obstacle to settlement. ***Form FL – 341 (E), Paragraph 4b*** This provision about each parent having access to children's records etc. (which is also included in the existing form) is required by family code section 3025 and therefore should not be preceded by a checkbox as it is not an optional provision. Additionally, as this provision applies to all custody orders, not just joint custody, it should be included on form FL 341 and not on this form. Having this provision listed as optional on this form is likely to mislead parties to believe that it does not apply otherwise. I also suggest that this provision quote family code section 3025 verbatim to avoid any misunderstanding by schools or medical facilities.	The optional form reflects the requirements of Family Code section 3083. The committee recommends revising 4b by removing the check box as suggested by the commentator. The committee recommends revising item 4b to state: Both the custodial and non-custodial parent have the right to access records and information about their minor children (including medical, dental, and school records) and consult with professionals who are providing services to the children.
Hon. John Chemeleski Trial Court Commissioner Long Beach	Form FL – 341 (E), Joint legal Custody Attachment. Paragraph 2: This proposal contains a significant change in the language	The proposed change described by the commentator is

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SPR15-16

Domestic Violence: Request to Modify or Terminate Domestic Violence Restraining Orders; Family Law: Changes to Request for Order Rules and Forms (amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94, 5.151; adopt forms DV-400, DV-400-INFO, FL-303, FL-320-INFO; revise forms DV-115, DV-115-INFO, DV-116, DV-130, DV-200, DV-200-INFO, DV-505-INFO, FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, FL-341, FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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FL-341(E)		
Commentator	**Comment**	**Committee Response**
	concerning joint legal custody. The existing form provides in paragraph 2 for an order that provides "the parents must confer in making decisions on the following matters". The proposed revision to this form changes this language dramatically by stating "the parties must discuss and consent in making decisions on the following matters". The "following matters" include enrollment in school, participation in religious activities, mental health counseling, extracurricular activities, and out-of-state travel. This change from "confer" to "consent" would effectively prohibit either parent from any of the above activities without the consent of the other parent. The form provides that a parent who does not obtain the consent of the other for these actions is subject to civil and criminal penalties. Therefore a parent, even one who has minimal physical custody, could prevent the other parent from taking any of these actions by doing nothing and that non-consenting parent would not be exposed to any penalties no matter how unreasonable that parents position would be. The parent who is seeking to take such actions is left in a position of either violating the court order or filing a request to change the order and waiting many weeks until a court hearing. Regardless of the necessity therefore, a parent could not lawfully take the child to child care, school, an extracurricular activity, a church service, a doctor (except in an emergency) or a therapist unless the other parent has consented.	not a major change to the form. The revisions are meant to better reflect the form's original purpose and the language of Family Code section 3083. The Judicial Council approved form FL-341E, *Joint Legal Custody Attachment*, effective January 1, 2004, to allow the court to specify the circumstances under which the *consent* of both parents is required to be obtained in order for them to exercise legal control of the child and the consequences of the failure to obtain mutual consent as required by Family Code section 3083. Family Code section 3083 requires that: In making an order of joint legal custody, the court shall specify the circumstances under which the consent of both parents is required to be obtained in order to exercise legal control of the child and the consequences of the failure to obtain mutual consent. In all other circumstances, either parent acting alone may exercise legal control of the child. An order of joint legal custody shall not be construed to permit an action that is inconsistent with the physical custody order unless the action is expressly authorized by the court.

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Domestic Violence: Request to Modify or Terminate Domestic Violence Restraining Orders; Family Law: Changes to Request for Order Rules and Forms (amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94, 5.151; adopt forms DV-400, DV-400-INFO, FL-303, FL-320-INFO; revise forms DV-115, DV-115-INFO, DV-116, DV-130, DV-200, DV-200-INFO, DV-505-INFO, FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, FL-341, FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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FL-341(E)		
Commentator	**Comment**	**Committee Response**
	Although Family Code section 3083 provides that the court in making an order for joint legal custody shall specify the circumstances under which the consent of both parents is required, nothing in the code suggest that such draconian restrictions are necessary or in a child's best interest. The existing form language provides for a conference before making such decisions which gives notice of such proposed changes and an opportunity to object or propose alternatives or seek court assistance.	To try to correct a misunderstanding in the legal community about the meaning of "joint legal custody"—that it means neither party can act alone in making major decisions about a child—the committee added a notice under the caption to specify that, in exercising joint legal custody, the parties may act alone, as long as the action does not conflict with any orders about physical custody of the children. In addition, the notice explains the proper use of this optional form. It is used only if a party wants the court to specify when the consent of both parties is required to exercise legal control of the children. The form also conforms to the code by noting that an order under Section 3083 must include the consequences for failing to obtain mutual consent.
	The proposed requirement of consent to the above actions would also appear to tread on parents constitutional rights under the 14th amendment that the Supreme Court has ruled on in a number of cases. There is a presumption that fit parents act in their children's best interests, Parham v. J. R., 442 U. S. 584, 602, and there is normally no reason for the State to inject itself into the private realm of the family to further question fit parents' ability to make the best decisions regarding their children, see, e. g., Reno v. Flores, 507 U. S. 292, 304. The fact that the parties have a custody dispute before the court should not in itself be a reason for the court to impose restrictions on	The form reflects the requirements of Family Code section 3083.

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FL-341(E)		
Commentator	**Comment**	**Committee Response**
	parents that are not imposed by law on parents who are not before the court in absence of evidence that a parent is not fit to make such decisions. Additionally in my experience an attorney in family law for 18 years and as a family law bench officer for the past 21 years I have found that having such draconian provisions in court forms encourages a party seeking to control the other parent to insist in having such provisions included in a court order creating an additional obstacle to settlement. Form FL – 341 (E), Joint legal Custody Attachment Paragraph 4b: This provision about each parent having access to children's records etc. (which is also included in the existing form) is required by family code section 3025 and therefore should not be preceded by a checkbox as it is not an optional provision. Additionally, as this provision applies to all custody orders, not just joint custody, it should be included on form FL 341 and not on this form. Having this provision listed as optional on this form is likely to mislead parties to believe that it does not apply otherwise. I also suggest that this provision quote Family Code section 3025 verbatim to avoid any misunderstanding by school or medical facilities.	The optional form reflects the requirements of Family Code section 3083. The committee recommends revising 4b by removing the check box as suggested by the commentator. The committee recommends revising item 4b to state: Both the custodial and noncustodial parent have the right to access records and information about their minor children (including medical, dental, and school records) and consult with professionals who are providing services to the children.
Los Angeles Center for Law and Justice by Diane Trunk Managing Attorney	Comment: page one section 4 -Special decision making designation and Access to children's records- two things there is a typographical error in the heading and we would like to add a subsection "c" to designate tie-breaker	The committee recommends the changes suggested by the commentator regarding the word “access.” The committee does not recommend adding a new

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SPR15-16

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FL-341(E)		
Commentator	**Comment**	**Committee Response**
	authority to one of the parties in case of a conflict. Recommendation: Change the "Access" to "access" the upper case is not required AND add a subsection "4 c. Tie-breaking authority ___ Petitioner _____Respondent." Comment: We agree with the criticism on the joint legal custody attachment, additional problems will arise if parties need to "consent" rather than just "discuss."	section relating to tie-breaking , as it would require resubmitting the form for comment and would require expanding it to two pages. The word “consent” is used to reflect the language of Family Code section 3083.
Superior Court of Los Angeles County	FL 341 (E): This proposal contains a significant change in the language concerning joint legal custody which has the potential for confusion. The large "Notice" box says that the parties may act alone "as long as the action does not conflict with any orders about the physical custody of the children." Paragraph 2, if used by the court, then states "the parties must discuss and consent in making decisions on the following matters". The "following matters" include enrollment in school, participation in religious activities, mental health counseling, extracurricular activities, and out-of-state travel. Use of this box effectively prohibits either parent from any of the above activities without the consent of the other parent. If a court checks portions of Paragraph 2, does this mean that the parent can act alone except as to the checked boxes?	Please see the response to the same comment from California Judges Association and Hon. John Chemeleski.

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Domestic Violence: Request to Modify or Terminate Domestic Violence Restraining Orders; Family Law: Changes to Request for Order Rules and Forms (amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94, 5.151; adopt forms DV-400, DV-400-INFO, FL-303, FL-320-INFO; revise forms DV-115, DV-115-INFO, DV-116, DV-130, DV-200, DV-200-INFO, DV-505-INFO, FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, FL-341, FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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FL-341(E)		
Commentator	**Comment**	**Committee Response**
	Paragraph 4b: This provision about each parent having access to children's records etc. is required by FC 3025 and therefore should not be preceded by a checkbox as it is not an optional provision. Additionally, as this provision applies to all custody orders, not just joint custody, it should be included on Form FL 341. This provision should quote FC 3025 verbatim to avoid any misunderstanding by schools or medical facilities.	Please see the response to the same question from California Judges Association and Hon. John Chemeleski.
Superior Court of Sacramento County	* Comments Comments on ITC, page 21, first sentence under "*Adapting family law forms for use as juvenile court child custody orders*"- "In addition to the above-mentioned changes, forms FL-341(B)-(E) would be revised to include a check box in the caption to make clear that each form may serve as attachments to either *Custody–Juvenile Court–Final Judgment* (form JV-200) or *Visitation Order–Juvenile* (form JV-205). - This is a good revision.	No response required.

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ATTACHMENT A

Comments from proposal SPR13-22 (circulated in 2013)
Family Law: Improvements to Request for Order Rules and Forms

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List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	**Position**	**Comment**	**Committee Response**
1.	California Judges Association Lexi Howard Legislative Director	N/I	See comments on specific provisions below.	See response to specific provisions below.
2.	Hon. John Chemeleski Commissioner Superior Court of Los Angeles County	N	See comments on specific provisions below.	See response to specific provisions below.
3.	Hon. Christine Copeland Commissioner Superior Court of Santa Clara County	AM	See comments on specific provisions below.	See response to specific provisions below.
4.	Christine N. Donovan, CFLS Sr. Staff Attorney Superior Court of Solano County	N/I	**(1) Does the proposal reasonably achieve the stated purpose?** Generally, yes, it does. However, I have concerns regarding specific portions of the proposal, which I discuss in more detail below. **(2) Would this proposal have an impact on public's access to the courts? If a positive impact, please describe. If a negative impact, what changes might lessen the impact?** I think it might. Although the revised FL-300 allows a person to *request* the issuance of an OSC, the only form that includes an *order* mandating an appearance is the Temporary Emergency Orders form	The committee believes that the rules and forms recommended for approval or adoption, effective July 1, 2016 address the commentator's concerns. The recommendations are informed by comments from courts, court professionals, attorneys, legal organizations, and litigants in response to rules and forms in the proposals circulated in spring 2013, winter 2014, and spring 2015. In response to this comment, the committee changed its recommendations relating to rule 5.92 and forms FL-300, FL-300-INFO, and FL-305. The committee does not intend that persons

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

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			(FL-305). This suggests that the intent is to require that all parties who need an OSC go through the temporary emergency order process. The process is delineated in CRC 5.151 et seq., and includes within its scope temporary emergency orders of a procedural nature. (See, e.g., CRC 5.151(b)(3).) The issuance of an OSC is undoubtedly procedural. The temporary emergency order process requires additional time and expense. Instead of being issued immediately, the RFO would instead have to be routed to a judicial officer for review and signature. This adds a day to the process, especially in cases where a RFO is filed after a local court's emergency order submittal deadline. In cases where the only reason for the issuance of the OSC is because of the respondent's non-appearance in the case, the additional delay is unwarranted for the litigant and is an waste of already scarce judicial resources. As for expense, I fear that courts could interpret the new process to mean that regardless of the grounds for the requested OSC issuance, the request would be subject to the same fee as any other ex parte request because of the means through which it is being sought. Thus, the issuance of an OSC due to the respondent's lack of appearance could end up costing the	seeking the personal appearance of a party at the hearing seek a temporary emergency order from the court. Same as above response. In response to this comment, the committee changed its recommendations relating to rule 5.92 and forms FL-300, FL-300-INFO, and FL-305. The committee does not intend that persons seeking the personal appearance of a party at the hearing seek a temporary emergency order from the court.

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			petitioner an additional $60, when such a charge is in no way warranted. Instead, I believe that two separate processes are warranted. One would be a streamlined process enabling a court clerk to ministerially issue an OSC if the respondent has not yet appeared in the case. This is an appropriate delegation of authority because the issuance of an OSC under these circumstances does not require the use of judicial discretion. The other process would be for cases where judicial discretion is warranted in the OSC's issuance, such as whether to order parties to appear at a hearing for testimony or to make temporary emergency orders pending the hearing. This should be done through the emergency order process as originally proposed. **The advisory committee and task force also seek comments from courts on the following cost and implementation matters:** **(1) Would the proposal provide costs savings? If so, please quantify. If not, what changes might be made that would provide savings, or greater savings?** Although I am not responding on behalf of a court, I am a court employee. In my opinion, if the process remains unchanged from what is proposed, the court	The committee recommends that rule 5.92 be amended to permit the court clerk to issue a Request for Order (form FL-300) as a ministerial act. The committee recommends limiting their authority to issuing those orders or notices: (1) For the parties to attend orientation and confidential mediation or child custody recommending counseling; and (2) That may be delegated by a judicial officer and do not require the use of judicial discretion. The committee believes that the rules and forms recommended for approval or adoption, effective

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			will be forced to absorb increased use of the emergency order process to obtain ministerial OSCs. This negatively impacts already scarce resources. I suggest the changes discussed above, namely removing "not-yet-appeared" OSCs from the emergency order process and permitting court clerks to ministerially issue those OSCs. **(2) 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 systems, or modifying case management systems.** Although I am not responding on behalf of a court, I am a court employee. In my opinion, I do not anticipate changes to most docket codes, although the new stand-alone *Temporary Emergency Order* form will require the creation of a new docket code. New codes are not difficult to create or implement. Few changes, if any, will be needed to our court's case management system. Staff training is always needed whenever forms	July 1, 2016 address the commentator's concerns. The recommendations include the suggestions made by this commentator, as well as other comments from courts, court professionals, attorneys, legal organizations, and litigants made in response to rules and forms in the proposal circulated in spring 2013 and then re-circulated in winter 2014, and spring 2015. No response required. No response required.

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			change. The amount of training needed would depend on the procedure ultimately adopted. **(3) Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?** Although I am not responding on behalf of a court, I am a court employee. In my opinion, yes, two months is adequate. **(4) If this proposal would be cumbersome or difficult to implement in a court of your size, what changes would allow the proposal to be implemented more easily or simply in a court of your size?** Although I am not responding on behalf of a court, I am a court employee. In my opinion, I believe the changes I describe above should simplify the process and ensure easier implementation. See comments on specific provisions below.	No response required. The committee believes that the rules and forms recommended for approval or adoption, effective July 1, 2016 address the commentator's concerns. The recommendations include the suggestions made by this commentator, as well as other comments from courts, court professionals, attorneys, legal organizations, and litigants made in response to rules and forms in the proposal circulated in spring 2013 and then re-circulated in winter 2014, and spring 2015.
5.	Family Law Executive Committee Lynette Berg Robe Los Angeles County Bar Association	N/I	See comments on specific provisions below.	See response to specific provisions below.
6.	Debbie Kruse	N	See comments on specific provisions below.	See response to specific provisions below.

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	Deputy Manager, Family Law Superior Court of Orange County			
7.	Legal Aid Foundation of Los Angeles Jimena Vasquez Staff Attorney	A, N	We agree with proposed Rule 5.94 but do not agree with the proposed changes to 5.92 and to the forms. Our primary concern is with the order to appear and the concomitant changes in FL-300, FL-305, and FL-320. Many changes on the FL-300, FL-305, and FL-320 will create further confusion. It appears that the proposed changes to FL-300 and the related forms are designed to help litigants understand the forms and to help court clerks to process them. While the proposal may make it easier for court clerks to process forms, it will create much more confusion for the litigants, especially those who are self represented and who make up the bulk of family law litigants. We are concerned that the request for an order to appear will confuse both the moving and the responding parties. The proposal would confuse moving parties who would believe that when any substantive issue is involved a notice to appear is necessary, making almost any request for order a request for a notice to appear. Responding parties will also be confused as to whether they are required to appear. The proposal therefore will cause more confusion and will not help litigants to understand their rights and responsibilities.	The committee believes that the rules and forms recommended for approval or adoption, effective July 1, 2016 address the commentator's concerns about rule 5.92 and forms FL-300, FL-305, and FL-320. The recommendation are also informed by similar comments and suggestions from courts, court professionals, attorneys, legal organizations, and litigants in response to rules and forms in the proposal circulated in spring 2013 and then re-circulated in winter 2014, and spring 2015.

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			We are concerned that the proposed changes to the forms would negatively impact the public's access to the courts. The proposed changes regarding requesting an order for appearance may have the unintended impact of limiting the public's access to the courts. First, moving parties will not know when it would be appropriate to request an order mandating an appearance of the responding party. Furthermore, moving parties will never get an order to appear unless it is granted on an emergency basis. This will needlessly cause litigants to spend more time filling out paperwork when the relief is almost meaningless. Second, allowing a space for responding litigants to write why they will or will not appear may create a disincentive for people to appear in court and deprive judges of the opportunity to receive the evidence and argument necessary to decide important family law matters. Judges may then be left in the difficult circumstance of granting unnecessary continuances for good cause, that lead to unnecessary delays and cause further strain on our overburdened family law courts. See comments on specific provisions below.	The committee believes that the rules and forms recommended for approval or adoption, effective July 1, 2016 address the commentator's concerns. No rules or forms recommended for adoption require a party to request an order mandating the appearance of the responding party.

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8.	State Bar of California, Standing Comm. on the Delivery of Legal Services S. Lynn Martinez Chair	AM	See comments on specific provisions below.	See response to specific provisions below.
9.	Superior Court of Calaveras County Hugh Swift Court Executive Officer	N	See comments on specific provisions below.	See response to specific provisions below.
10.	Superior Court of Los Angeles County	AM	See comments on specific provisions below.	See response to specific provisions below.
11.	Superior Court of Riverside County Carrie Snuggs Family Law & Juvenile Director	AM	We feel the overall changes to the RFO and instruction sheets will be helpful to customers. See comments on specific provisions below.	See response to specific provisions below.
12.	Superior Court of San Bernardino County Monica Mitchell Supervising Attorney	N/I	See comments on specific provisions below.	See response to specific provisions below.
13.	Superior Court of San Diego County Michael M. Roddy Executive Officer	AM	See comments on specific provisions below.	See response to specific provisions below.
14.	Superior Court of Shasta County Stacy Larson Family Law Facilitator	AM	See comments on specific provisions below.	See response to specific provisions below.
15.	TCPJAC/CEAC Joint Rules Committee TCPJAC/CEAC	A, AM, N	Agree with proposal as submitted for forms FL 306, FL-311, FL 312, FL-337, FL-341(C), FL-341(D), FL-341(E).	No response required.

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			Agree with proposal if modified for Rule of Court 5.92 and 5.94 and forms FL-320 and FL-326. Do not agree with proposal as submitted for forms FL-300, FL-300 INFO, and FL:-305. See comments on specific provisions below. **1. Potential Fiscal Impact** There will be a fiscal impact on court staff training and workload resources. **2. Impact on Existing Automated Systems** If a court has the forms configured for printing, the forms would need to be updated. New codes may need to be added if they do not currently exist. **3. Create the Need for Additional Training, Which Requires the Commitment of Staff Time and Court Resources** Changes to some courts' case management systems may be required, and court users would need to be trained on the changes.	The committee believes that the rules and forms recommended for approval or adoption, effective July 1, 2016 address the commentator's concerns about rules 5.92 and 5.94, as well as forms FL-300, FL-305, and FL-320. The recommendations are also informed by similar comments and suggestions from courts, court professionals, attorneys, legal organizations, and litigants in response to rules and forms in the proposal circulated in spring 2013 and then re-circulated in winter 2014, and spring 2015. The committee understands that there will be costs incurred to implement the recommended changes to the rules and forms. The committee also believes that the changes will save resources by better educating litigants on completing and filing form FL-300 and other associated forms and allowing the court clerks to ministerally issue a request for order under certain circumstances under rule 5.92. The committee agrees that changes to some courts' case management system may be required to implement the committee's recommendations.

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			The proposed changes to reduce court personnel's confusion may not have the desired effect and fails to resolve the underlying variations in local practice among court personnel. The proposed changes will make the forms more difficult for litigants as they are unfamiliar with the meaning and significance of "orders pending hearing", "no appearance by the other party", or "substantive matters at issue". **4. Increase Court Staff Workload** FL-300, Page 2, Item 1.c. authorizes a party to request an order to appear if certain substantive matters are at issue. This section could potentially require an order to appear (additional form FL-305) every time a Request for Order is filed. Virtually every hearing in family law will involve at least one of the issues listed, i.e. child support, custody, visitation, property control, etc. Therefore, even if the responding party has appeared and the applicant seeks no temporary orders, the Request for Order would have to be processed as an order requiring a judge's signature, which requires substantially more work on judicial officers and clerks than processing the Request, which does not require a pre-hearing order to appear..	The committee's recommendations for spring 2015 do not include revising form FL-300 to include the item titled "Attendance at Hearing," The committee's current recommendations for changes to rules and forms, effective July 1, 2016, do not include revising forms FL-300 and FL-305 to require a moving party to request an order for the other party to appear at the hearing on the *Request for Order*. Therefore, the committee believes that the recommendations address the commentator's concerns.

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List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	**Position**	**Comment**	**Committee Response**
			5. Implementation Most recommendations could be handled on the 2-month implementation time. Courts that have the forms in their case management systems may likely need more time, but changes on most of the forms recommended to move forward are minor.	No response required.
			The changes to FL-300 were more complex and JRWG is recommending that this form **not** be approved (see *"Specific Comments"* below). At this point, the proposed rule and form changes do not adequately address the underlying problem and potentially create additional problems.	The committee believes that the recommendations for rules and forms changes, effective July 1, 2016, more adequately address the underlying issues relating to the request for order process than the spring 2013 proposal.
			6. Request for Specific Comments The project sponsor asked whether the suggested changes to FL-300, FL-300-INFO, FL-305, and FL-306 address the issues raised by court personnel as described in this proposal.	No response required.
			Although some of the cosmetic and clarification points to the form would improve the current FL-300, there are modifications as presented that do not solve the main current issues with the form and would likely create additional problems. Courts have created workarounds for using the current FL-300 so instead of adopting some of the changes now and re-tooling the form for approval at a later date, it is	As suggested by the commentator, the committee deferred action on the spring 2013 proposal. Revised proposals circulated in the winter 2014 and spring 2015 cycle. The committee's current recommendations are informed by all comments submitted from courts, court professionals, attorneys, legal organizations, and litigants in response to comments from these prior cycles. The committee believes that the

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List of All Commentators, Overall Positions on the Proposal, and General Comments				
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			recommended that these forms be re-tooled and resubmitted for approval and adoption at a later date. The Family and Juvenile Law Advisory Committee and the Elkins Family Law Implementation Task Force (the "Committees") should have the opportunity to review and consider all comments and recommendations for suggested revisions received in response to the Invitation to Comment. The JRWG anticipates the feedback of court subject matter experts, self-help center staff and family law attorneys will assist the Committees in meeting its objective of developing rules and forms which make the Request for Order process easier to complete and understand. If the Committees decide to proceed to seek approval and adoption of the proposed forms during this comment cycle, the JRWG identified several specific issues of concern with the forms.	recommendations made in the spring 2015 cycle address the commentator's concerns. Same as above response. The committee believes that the recommendations made in the spring 2015 cycle address the specific issues of concerns that the commentator identified in this comment chart.

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Comments from proposal SPR13-22 (circulated in 2013)
Family Law: Improvements to Request for Order Rules and Forms

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Rule 5.92 and 5.94		
Commentator	**Comment**	**Committee Response**
California Judges Association Lexi Howard Legislative Director	*Rule 5.92, like form FL-300, should only require an Order to Show Cause (not an order to appear) where there has not been an appearance by the other party in the proceeding by a response, stipulation, or otherwise. It is not necessary to make the Request for Order into an "Order"(OSC or otherwiswe) for the other reasons listed on the FL-300 (Par. 1 on pg. 2) or in rule 5.92.	As further described in the response to comments about form FL-300, the committee recommends removing the standard order to show cause language from the rule and form.
Hon. John Chemeleski Commissioner Superior Court of Los Angeles County	Same comments as the California Judges Association.	Same as above response.
Christine N. Donovan, CFLS Sr. Staff Attorney Superior Court of Solano County	Modify CRC 5.92 (or another appropriate rule of court) to allow ministerial issuance of an OSC by a clerk when the only reason for the OSC is the respondent's non-appearance. Remove from the emergency order process the "not-yet-appeared" OSC. If, however, the"not-yet-appeared" OSC is kept within the emergency order process, amend Rule 5.170 to add "(8) An order to show cause for a respondent who has not yet appeared in the case as defined by Rule 5.92." This should clarify that such a request is a procedural matter that does not require notice, which in turn should not trigger the additional ex parte fee otherwise required by Government Code section 70617(a). **Regarding rule 5.92, the task force and committee seek comment about the proposed change to the language of 5.92(a)(6)(A)(ii), and whether the use of the term**	The committee prefers to amend rule 5.92 to include a new subdivision that would allow a court clerk to issue form FL-300 as a ministerial act under certain circumstances which do not require use of judicial discretion. The committee recommends alternative language in the rule to clarity procedures for requesting temporary emergency (ex parte) orders.

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Rule 5.92 and 5.94		
Commentator	**Comment**	**Committee Response**
	"appearance" helps clarify when personal service of the request for order is required. If it does not, how might this part of the rule be reworded to avoid confusion? The term appearance helps clarify it somewhat, but not entirely. The CRCs use the term "appearance" in different ways. Rule 5.62 says that a respondent makes an appearance in the case by filing one of four described pleadings in the case. Rule 5.9 refers to an "appearance" by telephone, which is simply someone participating at a hearing or trial over the telephone. Thus, the same word is used interchangeably to mean different things.	The committee recommends amending rule 5.92 to include that personal service on a party is required if the party has not yet appeared in the case as described in rule 5.62.
	I could see confusion as to whether personal service of a RFO is required on someone who has previously appeared at hearings but has not "appeared" in the sense of Rule 5.62.	Same as above response.
	I suggest that the rule be reworded to clarify that the appearance referred to is the type of appearance described in Rule 5.62.	Same as above response.
	Rule 5.92 I suggest the following additional modification: (a) *** (7) If the respondent or other party has not yet made an appearance in the case as defined by Rule 5.92, the *Request for Order* shall include an Order to Show Cause requiring the respondent or other party to appear at the hearing and show cause why the relief sought should not be granted. (8)(7) The documents served must include a blank copy of the	Because the committee recommends revising form FL-300 to remove the order to show cause language, the committee does not recommend the changes to rule 5.92 suggested by the commentator.

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Rule 5.92 and 5.94		
Commentator	**Comment**	**Committee Response**
	following: 5 (A)Responsive Declaration to Request for Order (form FL-320); (B)Income and Expense Declaration (form FL-150) or Financial Statement (Simplified) (form FL-155) when completed declarations are among the papers required to be served.	The committee recommends that the rule be amended to claritywhen form FL-150 or form FL-155 must be completed.
Family Law Section Los Angeles County Bar Association Lynette Berg Robe, Chair	Same comments as the California Judges Association.	See above response to California Judges Association.
Legal Aid Foundation of Los Angeles Jimena Vasquez Staff Attorney	**The term "appearance" alone does not clarify when personal service of the request for order is required** We believe the term "appearance" is still ambiguous because a litigant can appear in a number of ways, some of which could necessitate personal service and some that would not. For example, even if the moving party obtains temporary orders, it would be preferable to personally serve the temporary order but it should not require personal service in all instances. Personal service should only be required when the other party has not made an appearance or when a statute mandates, or the court orders, such service. To improve clarity we suggest adding: (ii) The request for order includes a request for the responding party to attend the hearing and *that party has not made a formal*	To improve clarity, the committee recommends amending rule 5.92 to provide a new, separate subdivision to address service requirements of the *Request for Order* (form FL-300). Personal service would be required when: the court grants temporary emergency orders pending the hearing; the responding party has not yet appeared in the case as described in rule 5.62; or the court ordered personal service on the other party. The committee prefers to refer to rule 5.62 to describe the term "appearance" instead of the language suggested

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Rule 5.92 and 5.94		
Commentator	**Comment**	**Committee Response**
	appearance by filing a petition, response, request for order, or stipulation.	by the commentator.
Superior Court of Calaveras County Hugh Swift Court Executive Officer	**Rule 5.92** The rule refers to service pursuant to CCP 413.10 et seq. A more useful and direct reference may be to CCP Sections 415.10 – 415.95, which describe the various ways in which a summons and complaint may be served. The following language change to Rule 5.92 (a) (6) (A) is also recommended: Rule 5.92(a)(6)(A) The Request for Order (form FL-300) and appropriate attachments must be served in the manner specified for the service of a summons in Code of Civil Procedure section 413.10 et seq. if: (i) The Court granted the request for temporary emergency orders pending the hearing; (ii) The responding party has not made an appearance in the action; or (iii) The court orders such service. The recommended changes are requested because: 1. The proposed language is confusing (The request for order includes orders); and,	The committee recommends amending rule 5.92 as suggested by the commentator. The committee recommends amending rule 5.92 to incorporate the change suggested by the commentator. See above response. The committee believes that the above-recommended amendments will avoid confusion to parties.

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Rule 5.92 and 5.94		
Commentator	**Comment**	**Committee Response**
	2. Personal service of the request for order on a party who has not made an appearance in the action is required regardless of whether the Court orders the responding party to attend the hearing.	The committee agrees with the commentator's statement and recommends changes to the rule consistent with the comment.
Superior Court of Los Angeles County	**Rule 5.92:** One of the stated goals of the revisions is to clarify in which cases a party is or should be ordered to appear at a Request for Order (RFO) hearing. A related goal is to clarify when the responding party can be served by mail and when they must be personally served with the RFO. Per the proposed rule, the responding party must be personally served if 1) the RFO includes temporary emergency orders, 2) the responding party is ordered to attend the hearing, and he or she has not appeared in the action, and 3) the court so orders. Items 1 and 3 are self-explanatory. However, the revised rule does not clarify what is meant in item 2 by "if the responding party is ordered to attend the hearing," because it does not explain when a responding party should or will be ordered to attend the hearing. Will the responding party be ordered to attend the RFO hearing in any RFO where custody and visitation is requested and mandatory mediation is scheduled? Or is it any RFO where any substantive relief is requested, e.g. child support, spousal support, etc. Or is it any RFO where the moving party checks the box asking for an order that the other party attend the hearing. What if the RFO seeks substantive relief but the moving party does not check the box that the responding party be ordered to attend the hearing? Will they be ordered to attend the hearing regardless?	No response required to this statement. To avoid confusion, the committee recommends deleting the provision that personal service on the other party is required if that party is ordered to attend the hearing.

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Rule 5.92 and 5.94		
Commentator	**Comment**	**Committee Response**
	The proposed rule also does not seem to match up with the "Appearance at Hearing" box on the new FL-300. The FL-300 lists the reasons why the responding party should be ordered to attend the hearing as follows: a) applicant has requested temporary emergency orders pending the hearing, b) The other party has not yet made an appearance in the case, c) Substantive matters are at issue, such as child custody, visitation, parentage, etc. and d) Other. Item a lines up with proposed rule 5.92(a)(6)(A)(i). Items b-c, however, don't seem to line up with the proposed rule. The rule could be revised to line up with the form such that (i) remains the same, but (ii) is changed to "The responding party has not yet appeared in the case and the request for order includes requests for substantive issues such as child custody visitation, parentage, child support, spousal or partner support, or the characterization or control of property or debts that may require the person's testimony." This seems the best match between what the rule and the form are stating. Reading both the rule and the form, we are still uncertain about when a party can obtain a court order for the responding party to attend the hearing, thus requiring personal service. It is clear that when an ex parte RFO is filed, personal service is required. But this has long been the rule. The question is whether every RFO that includes a request for custody and visitation, and is therefore scheduled for a mandatory child custody mediation appointment is considered to "include a court order for the responding party to attend the hearing" Or, is the other party only ordered to attend the hearing when the moving party requests it. And if the moving party requests this order, who	To avoid confusion, the committee no longer recommends including the "Appearance at Hearing" item on page 2 of form FL-300. To avoid confusion, the committee no longer recommends including the "Attendance at Hearing" item on page 2 of form FL-300. Further, the committee recommends deleting the subdivision of rule 5.92 which states that personal service on the other party is required if the other party is ordered to attend the hearing. To avoid confusion, the committee no longer recommends including the "Attendance at Hearing" item on page 2 of form FL-300. Further, the committee recommends deleting the subdivision of rule 5.92 which states that personal service on the other party is required if the other party is ordered to attend the hearing. In addition, the committee recommends that form FL-300-INFO be revised to include information about how a moving party may obtain the attendance and testimony or the responding party at the hearing.

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Rule 5.92 and 5.94		
Commentator	**Comment**	**Committee Response**
	decides whether it is granted or not? The clerk? Clarification would be very helpful here. **Rule 5.94:** One of the most confusing parts of the newly created RFO was the inclusion of the term request for "Temporary Emergency Order" in the center box of the RFO form. There really is no provision in the rules or law for "Temporary Emergency Orders." There are ex parte rules and procedures, but this form creates a new category of relief with no rules or structure for its application. The term "Temporary Emergency Orders" should be removed from the RFO form. Short of that, the procedures proposed in the modification of Rule 5.94 assist in the use of the new forms.	The Temporary Emergency Orders section of form FL-300 corresponds to rules 5.151 through 5.169 of the California Rules of Court, which were adopted effective July 1, 2013. For clarification,the committee recommends using the term "temporary emergency (ex parte) order. For the reason stated above, the committee does not recommend the changes suggested by the commentator.
Superior Court of San Bernardino County Monica Mitchell Supervising Attorney	**Rule 5.92:** The change in the Rule of Court to clarify when a Request for Order needs to be served personally is a helpful revision. With the proposed change to FL-300 that the 1st page no longer includes a signed court order for the other party to appear upon request, does that revision impact the language in Section (a)(6)(A)(ii): *"The request for order includes a court order for the responding party to attend the hearing and the responding party has not made an appearance in the action"*?	The committee recommends revising the rule to remove the language: "The request for order includes a court order for the responding party to attend the hearing."
Superior Court of San Diego County Michael M. Roddy Executive Officer	Agree that the proposed revisions to rule 5.92 and 5.94 and to the forms reasonably achieve the stated purpose. The changes to the forms are helpful. Our Family Law Facilitators have the following comments on the proposed revisions to CRC, Rules 5.92 and 5.94 as follows:	No response required.

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Rule 5.92 and 5.94		
Commentator	**Comment**	**Committee Response**
	(their comments are in [italics]) **1) <u>Proposed Revisions to Rule 5.92 – Request for court order; response</u>:** *A.* (a)(6)(A) – states service must be in the manner specified for service of a summons if includes a temporary emergency order, requests the responding party to attend the hearing and the responding party has not made an appearance in the action, or the court orders such service. *There is nothing in this section that states if a mandatory custody services appointment is scheduled, service must be in the manner specified for service of a summons. If the only thing checked in the "Court Order" section of the RFO is the child custody appointment, and nothing else, the rule should clearly state that service by mail according to FC 215 is sufficient.* **2) <u>Proposed Revisions to Rule 5.94 – Reissuance of orders; order shortening time; other filing requirements:</u>** *A.* (c)(1)(A) – This section states that if an RFO is not timely served on the other party and includes temporary emergency orders, to appear at a hearing, or other orders specified by the court, and *an order to attend mandatory child custody services* (appointment) to use FL-306 to reissue the RFO.	An order for mandatory mediation or child custody recommending counseling does not always require personal service. For example, if the party has already made a personal appearance in the case, then service may be by mail, unless the court orders personal service. The committee does not recommend revising the rule to state that service of the order to attend mediation may be accomplished by mail under Family Code section if such an order is the only item checked in the court order section because Family Code section 215 only applies to post-judgment modification cases. The committee no longer recommends amending the rule to include the language in (c)(1)(A). Therefore, the committee does not recommend the additional language (in italics) suggested by the commentator.

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Rule 5.92 and 5.94		
Commentator	**Comment**	**Committee Response**
	This rule does not speak to service of the reissuance. Is it to be made in the same manner specified for service of a summons? What if the only thing checked in the "Court Order" section is the child custody services appointment – that may not necessarily have to be served in the same manner specified for service of a summons, especially in a post judgment modification situation. B. (c)(2) – Continuance of Request for Order *There is currently no Judicial Council form for this. Does the Judicial Council anticipate creating such a form in the future?*	The committee recommends amending rule 5.94 to include language about the method of service. The committee does not recommend a statewide form for continuances at this time.
Superior Court of Shasta County Stacy Larson Family Law Facilitator	**CRC 5.92** Subsection (5) has not been revised. However, it states that an FL-150 Income & Expense Declaration must be filed with a Request for Orders (RFO) if relevant to the relief requested. It does not specify the consequences for failure to do so. Clarification would be helpful to achieve some degree of uniformity in how this issue is handled—some bench officers drop the motion as lacking sufficient grounds absent a valid FL-150; others continue the hearing to allow for an FL-150 to be filed, which preserves the retroactivity of a family-support order but may prejudice one of the parties from obtaining a timely order; etc. Subsection (6) requires that the RFO be filed prior to service. If the RFO is the equivalent of a noticed motion rather than an OSC, why does it have to be filed prior to service? As a	To permit judicial discretion on the matter, the committee prefers not to recommend amending rule 5.92 to specify the consequences for failure to file an *Income & Expense Declaration* (form FL-150) with the *Request for Order* (form FL-300). Under rule 5.92, the Judicial Council adopted new procedures relating to the filing of form FL-300, effective July 1, 2012. Requiring the original form to be

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Rule 5.92 and 5.94		
Commentator	**Comment**	**Committee Response**
	practical matter, this means that litigants must file their motion, then go have the motion served, then come back to file a proof of service. In the traditional noticed-motion context, which is not signed/issued by the judge prior to filing/serving, the litigants could have the noticed motion served, then have it timely filed with the court along with a valid proof of service.	filed first allows the moving party to obtain copies for service that are file-stamped by the court clerk before service. This would avoid any uncertainty on the part of the responding about the form's authenticity as a court document.
	Subsection (a)(6)(A): We should add one more provision that explains that service must be consistent with CCP §413.10 et seq.; such service is required if the other party has not yet made an appearance in the case even if the other party is not ordered to appear at the actual noticed-motion hearing.	The committee recommends that the rule provide that personal service is required if the other party has not yet made an appearance as described in rule 5.62. Since the committee prefers not to include language in the rule about an order for a party to attend the hearing, the committee does not recommend the additional language suggested by the commentator.
	CRC 5.94 Subsection (1)(A): The typographical error on line 1 should be corrected—"other" rather than "othe"	The committee recommends the suggested typographical correction.
	Subsection (1)(B): Our court allows reissuances to be submitted after the scheduled court date as well. This provision would seem to prevent that, and it's unclear why we would prevent parties from filing a request for reissuance after the hearing has passed. The sad reality is that many of our family-law litigants are unfamiliar with the law and are unlikely to read this provision or seek help prior to the hearing. If they are unrepresented and do not seek help prior to the hearing, they will not know that they are required to submit the reissuance five days before the hearing or show up at the hearing. Some litigants come from distant locations or have	The rule provides that the party *should* file form FL-306 no later than 5 court days before the scheduled hearing or presented at the court. This language is permissive and does not prevent the court from processing the request after the date of the hearing. Further, rule 5.94(d) *(now proposed as (c))* provides that "No moving or responding papers relating to a request for order may be rejected on the ground that it was untimely submitted for filing."

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Rule 5.92 and 5.94		
Commentator	**Comment**	**Committee Response**
	emergencies that prevent them from appearing at the hearing, but they would be severely prejudiced if they could not file a reissuance to reactivate their temporary orders and obtain a new court date. If this provision is meant to preclude them from submitting a reissuance after the hearing, they would have to file a brand new Request for Orders. Subsection (1)(D): It would be helpful to add a phrase that emphasizes that these documents must be served upon the other party within the timelines provided by law or as ordered by the Court. Subsection (1)(F): It would be helpful to add a phrase that explains the fees that will be charged for the fourth or subsequent reissuance (or at least references the code section controlling this fee). Subsection (2): The reference to "other orders as described in (1)" would be more clear if we specify "other orders as described in (1)(A)" Subsection (2): It would be helpful to explain the procedure the parties may use to request a continuance when they choose not to use the FL-306 or reference controlling codes.	The committee recommends the amendments suggested by the commentator, with minor changes. To be consistent with Family Code section 245 (amended by Assembly Bill 1081, effective July 1, 2016), the committee does not recommend the suggested changes. The committee recommends amending the rule to better clarify items that must be served with form FL-306 To be consistent with Family Code section 245 (amended by Assembly Bill 1081, effective July 1, 2016), the committee does not recommend the suggested changes.
TCPJAC/CEAC Joint Rules Committee TCPJAC/CEAC	**JRWG recommends that the following rules and forms be approved with modifications:** **Rule 5.92** JRWG recommends the following language change to Rule	The committee recommends amending rule 5.92 as

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Rule 5.92 and 5.94		
Commentator	**Comment**	**Committee Response**
	5.92 (a) (6) (A): The *Request for Order* (form FL-300) and appropriate attachments must be served in the manner specified for the service of a summons in Code of Civil Procedure section 413.10 et seq. if: (i) The ~~request for order includes~~ Court granted the request for temporary emergency orders pending the hearing; (ii) The ~~request for order includes a court order for~~ responding party has not made an appearance in the action; or (iii) The court orders such service. **Rule 5.94** Recommend deleting sentence in (1) (B) "Otherwise, the moving party may also appear in court on the hearing date to request the reissuance." This is confusing language and appears to be redundant to the sentence preceding. Recommend deleting the word 'original' from (1) (D) so it will read: *A filed copy of form FL-306 must be attached as the cover page of the Request for Order documents and orders and served on the party to whom the orders are directed.* The use of the word 'original' is unclear. The Court typically has the original documents. Recommend modifying (1) (E) by deleting the words 'may use' and replacing them with 'must repeat' so it will read: *The moving party must repeat the reissuance procedure in this rule if he or she fails to timely serve the filed FL-306, FL-300, and*	suggested by the commentator, with minor alterations. The committee recommends amending rule 5.92 as suggested by the commentator, with minor alterations. Same as above response. Same as above response. To be consistent with Family Code section 245 (amended by Assembly Bill 1081, effective July 1, 2016), the committee does not recommend the suggested changes. The committee recommends the amending the rule as suggested by the commentator, with minor alterations. The committee recommends the amendments suggested by the commentator, with minor changes.

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Rule 5.92 and 5.94		
Commentator	**Comment**	**Committee Response**
	supporting orders and documents.	

Form FL-300		
Commentator	**Comment**	**Committee Response**
California Judges Association Lexi Howard Legislative Director	This proposed form is still confusing in the use of the terms "appear" and "appearance" and as to when or if the court should order an "appearance" and what the effect is of such an order. Historically a party may make an "appearance" in a proceeding by filing a response or other documents. A party may "appear" (but not testify) at a hearing through an attorney and in some circumstances by telephone. A party can testify and "appear" at a motion hearing by declaration. Under civil law (including family law) an Order to Show Cause (OSC) is necessary when a motion (which includes most requests for orders other than at trial) is made prior to the appearance of the other party.	Based on the number of comments received during this cycle opposing certain changes to form FL-300, the committee no longer recommends including a specific item on page 2 of form FL-300 for a party to request the personal appearance of the responding party at the hearing.
	Lay persons may consider this form to require them to be present at the hearing causing hardship to those who may live hundreds of miles away and not having counsel (not an unusual circumstance). Parties should be advised that they are not required to be present and of the other alternatives. A party should only be required to be personally present at a hearing by subpoena or notice in lieu or subpoena under existing law.	The committee recommends changes to form FL-300 consistent with the commentator's suggestions.
	This form should only require an Order to Show Cause (not an order to appear) where there has not been an appearance by the other party in the proceeding by a response, stipulation, or otherwise. It is not necessary to make the Request for Order	To avoid confusion, the committee recommends deleting the Order to Show Cause language on page 1 of form FL-300.

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Form FL-300		
Commentator	**Comment**	**Committee Response**
	into an Order to Show Cause for the other reasons listed on the FL-300 (Par. 1 on pg. 2) or in Rule 5.92. Whether or not the court makes temporary orders pending to the hearing does not affect what the court can or cannot do at the hearing or what form of notice of that hearing is required. Personal service of the temporary order pending hearing may be necessary or preferable for enforceability but should not be a factor in determining what notice is required for the hearing and thereby placing persons who obtain such temporary orders in a more difficult position than persons who do not obtain such temporary orders. Whether or not the so-called substantive issues are involved also does not require an Order to Show Cause. That reason alone would make almost every request an OSC except for discovery and some enforcement motions (both of which are probably less than 5% of the total requests). If the objective is to make all such requests an OSC then it would be easier to have every request be an OSC instead of having it as a confusing option. The "Court Order" portion on page 1 should have an option box stating:"The court finds that the person(s) in paragraph 1 above have not formally appeared in this action (case) by way of a petition, response, request for order, stipulation or otherwise and therefor the court is required to sign this request to authorize the setting of the hearing on this request." Another problem with this form, as on the current version, is	To avoid additional workload for court clerks and judicial officers at the filing of every FL-300, the committee does not recommend including changing the form to require that the court make a finding about the general appearance of the other party. The committee recommends including additional fillable space in the form for a party to describe the child

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Form FL-300		
Commentator	**Comment**	**Committee Response**
	that there is no space to list any details of the child custody parentage/visitation plan without using the FL-311 form or the space under par. 11 (Facts in Support). There are many requests for easily described or relatively minor changes to existing custody plans that could be set forth in this request which is now expanded to 4 pages, leaving the FL-311 as an option rather than using all 7 pages of both forms. It would make it easier to understand what is being requested without having to go back and forth between these two forms to compare what the existing order is with what is requested. The two forms are often mixed up with the numerous other forms submitted with the request. Another possibility would be not to have any custody information on the FL-300 (other than a check box to see the attached FL-311) and have all that information on the FL-311, making it easier for the reader to compare the existing order with what is requested. The FL-311 should also clearly state that it is not a court order. The continued increase in the number of pages and forms is self-defeating in that the chances of the pages getting mixed up or lost and therefore misunderstood or ignored increases to the point where any benefit from the addition information is lost. An effort needs to be made to decrease the number of forms and pages to reduce the confusion and frustration caused by this seemingly excessive volume of paper that litigants and others involved in the process are confronted with in even relatively minor disputes. It would also make it more likely that they will actually be read.	custody visitation plan and orders. The additional fillable space on the form recommended by the committee will help to address the issue raised by the commentator.

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Form FL-300		
Commentator	**Comment**	**Committee Response**
Hon. John Chemeleski Commissioner Superior Court of Los Angeles County	Same comments as the California Judges Association.	See response to California Judges Association.
Hon. Christine Copeland Commissioner Superior Court of Santa Clara County	1. FL-300 page 1, item 2 below the caption: I really don't like the term "child custody services" sounds like CPS and it sounds like they've done something bad just because they might not agree on how to share parenting time. How about calling it mandatory dispute resolution, or parenting time dispute resolution? If it's changed, then you will need to make phrasing in item 5 conform. 2. FL-300 page 3, item 4- doesn't seem to be enough room to enter more than 2 or 3 kids. Also under item 4 (child support), you should add a prompt that an FL-150 or FL-155 is a must.	Family Code section 3170(a) provides: If it appears on the face of a petition, application, or other pleading to obtain or modify a temporary or permanent custody or visitation order that custody, visitation, or both are contested, the court shall set the contested issues for mediation. Based on this language, the committee recommends that the references on the form include the phrase "mandatory child custody mediation." In addition, the committee recommends that "child custody recommending counseling" be included to be consistent with the language in Family Code section 3183(a), which provides in pertinent part: " If the mediator is authorized to submit a recommendation to the court pursuant to this subdivision, the mediation and recommendation process shall be referred to as "child custody recommending counseling" and the mediator shall be referred to as a "child custody recommending counselor." The committee recommends that the form be made fillable to accommodate information about four children in the child support section of the form. The committee also recommends revising the form to include an item requiring that the moving party include a form FL-150 or FL-155 with all requests for orders about child support.

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Comments from proposal SPR13-22 (circulated in 2013)
Family Law: Improvements to Request for Order Rules and Forms

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Form FL-300		
Commentator	**Comment**	**Committee Response**
	3. FL-300 page 4 item 10- I would specify after number of days to be filled in that it's calendar days, not court days.	The committee recommends revising the order shortening time section of the form to specify the number of days as "court days" as specified in Code of Civil Procedure section 1005(b).
Christine N. Donovan, CFLS Sr. Staff Attorney Superior Court of Solano County	Add language to page 1 of the FL-300 in the "Court Order" section along the following lines: "a. Respondent Other party a party who has not yet appeared in this case, is ordered to appear at the hearing in this court to give any legal reason why the relief sought in the attached *Request for Order* should not be granted. Personal service of this *Request for Order* and all accompanying documents is required."	The committee prefers to recommend striking the OSC language from the first page of form FL-300.
	Define "appearance" in Item 1(b) on page 2 of the FL-300. Thus, a modified Item 1(b) could read as follows: "The person has not yet made an appearance in the case because the person has not filed a *Response*, written notice of appearance, a motion to strike, or a motion to transfer the proceedings."	The committee recommends not including the proposed revisions to this form at item 1, which circulated for public comment in spring 2013. The committee agrees with the majority of commentators that the proposed item does not help streamline the process of filing the Request for Order and would cause confusion to litigants.
	With these modifications, the process ideally would go as follows: (a) A litigant would check the appropriate boxes in item 1 on page 2 of the FL-300 and submit the RFO for filing. (b) Upon reviewing the RFO, the clerk would note the reasons given for the OSC issuance.	Same as above response. Based on the number of comments received during this cycle opposing certain changes to form FL-300, the committee no longer recommends including a specific item on page 2 of form FL-300 for a party to request the personal appearance of the responding party at the hearing.

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Form FL-300		
Commentator	**Comment**	**Committee Response**
	If the only reason for the OSC issuance is due to the respondent's non-appearance, the clerk would ministerially issue the OSC by checking the box on page 1 of the FL-300 next to the following language: "a. Respondent Other party who has not yet appeared in this case is ordered to appear at the hearing in this court to give any legal reason why the relief sought in the attached *Request for Order* should not be granted. Personal service of this *Request for Order* and all accompanying documents is required." If the litigant give any other reason for the OSC issuance, the RFO would go through the emergency order process. **Re: Form FL-300 and FL-305- The proposal currently suggests removing item 4 on page 1 of the form (the check box and language ordering a responding party to appear in court) and placing the order on a separate order (form FL-305) along with other temporary orders that would be served on the other party. Would these changes adversely impact the courts or court users? Should current item 4 remain on form FL-300 instead of, or in addition to appearing on form FL-305?** For the reasons discussed in response to Question (2), I believe placing this exclusively on the FL-305 form forces litigants to go through the temporary emergency order process. I therefore suggest that the order to appear be placed on both the FL-300 and the FL-305. Please see the more specific comments elsewhere in this response. **Page 1:**	Although the committee does not agree with the suggested process, the committee does recommend a change to rule 5.92 to specify the circumstances in which a court clerk may issue the *Request for Order* (form FL-300) as a ministerial act. The committee prefers to recommend striking the OSC language from form FL-300. Further, the committee no longer recommends revising form FL-305 to include the OSC language on this form. This would avoid requiring a party to go through the temporary order process to request an order for a party to appear at the hearing.

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Form FL-300		
Commentator	**Comment**	**Committee Response**
	I suggest that the checkbox before the words "Court Order" be eliminated. If the other boxes in that section are checked, it seems unnecessary to require that this box also be checked.	The committee recommends eliminating the check box before words "Court Order" as suggested by the commentator.
	I suggest that current Item 4 (shortening of time for service or hearing) be eliminated and placed only on the FL- 305. Ideally it could be part of Item 1 on the FL- 305. Since the FL- 305 has to be included anyway and because the FL- 305 gives the date/time of the hearing, it makes sense to include the order shortening time for service or hearing on the FL- 305 itself.	Because parties may file form FL-300 for the sole purpose of requesting an order shortening time, the committee recommends maintaining the order on the face page of form FL-300. This will eliminate the need to complete and file a separate order form for the court to sign if the order is granted.
	Page 2: I suggest that in Item 3(c), the language be modified to read, "One or more domestic violence restraining/protective orders are now in effect between□ Petitioner □ Respondent □ Other Parent/Party." This would clarify who is subject to the restraining order listed or disclosed in Item 3(c).	The committee recommends revising the form as suggested by the commentator.
	Page 3: Item 4(d): The word "file" should be "filed." Item 5(a)(2): The word "file" should be "filed." Item 5(a)(3): The word "file" should be "filed."	
	Page 4: All items need to be renumbered because of the numbering on page 3. Thus, 8 should be 9, 9 should be 10, and so forth.	The committee recommends that the form be corrected as suggested by the commentator
	Current number 10 permits a person only to ask for an order shortening time for service. However, the person should have	The committee agrees to renumber the items on the form as needed to reflect the changes recommended to the

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Form FL-300		
Commentator	**Comment**	**Committee Response**
	the ability to ask for an order shortening time for hearing as well. I suggest the following change: **11. ~~10.~~ a.** □**I request** that time for service of the *Request for Order* and accompanying papers be shortened so that these documents may be served no less than *(specify number):* _____days before the time set for the hearing. I need to have this order shortening time because of the facts specified in item 12~~11~~ or the attached declaration. b. □ **I request** that time for hearing on the Request for Order and accompanying papers be shortened. I need to have this order shortening time because of the facts specified in item 12 or the attached declaration.	Judicial Council. The committee agrees to revise the form as suggested by the commentator. Same as above response. The committee agrees to revise the item as suggested by the commentator.
Family Law Section Los Angeles County Bar Association Lynette Berg Robe, Chair	Same comments as the California Judges Association.	See above response to the California Judges Association.
Debbie Kruse Deputy Manager, Family Law Superior Court of Orange County	Although our FL Clerk's Office staff and the public have expressed a desire for form revision, I feel this current revision does not resolve the most difficult problem: in what instances should the responding party be ordered to appear. Currently that decision is left to the moving party, who is most often self-represented. This is insufficient. Even attorneys inquire at Clerk's Office windows regarding this issue. Section 1, on page 2, attempts to answer the question of appearance, however it remains vague ("Substantive matters	The committee recommends not including the proposed revisions to this form at item 1, which circulated for public comment in spring 2013. The committee agrees with the majority of commentators that the proposed item does not help streamline the process of filing the Request for Order and would cause confusion to litigants. Same as above response.

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Form FL-300		
Commentator	**Comment**	**Committee Response**
	are at issue") and actually creates additional workload in that a separate order (included on form FL-305) is now proposed to order the appearance (the order to appear was previously included within the content of the FL-300.)	
	Suggested Modifications: Header – Include a box titled "Motion". This may assist courts when calendaring and could assist in determining when the responding party is ordered to appear.	Because the Judicial Council has revoked the *Notice of Motion* (form FL-301), the committee does not recommend revising form FL-300 to include the term "motion."
	3. Attachments and other documents to be served with this Request for Order. – add "and other documents" to clarify. The documents listed are not Attachments; they may be separately filed depending on how they are presented to the clerk and Court preference.	The committee recommends revising form FL-300 to delete the item on the face page which lists other documents to be served with form FL-300. Instead, the committee recommends including a reference to form FL-300-INFO, which would include a more complete list of possible documents a moving party could have served on the other party.
	Add Witness List, form FL-321, to the list of documents. This form is mentioned in FL-300-Info, however is not included.	The committee recommends including *Witness List* (form FL-321) on form FL-300-INFO instead of on form FL-300.
	COURT ORDER section- Include wording instructing the moving party to leave this section blank; this is included in the FL-300-Info, however should be stated on the form for ease.	The committee recommends adding a note on the form that the court order section is for court use only. The committee also recommends revisingform FL-300 to specifically refer to the instruction sheet (form FL-300-INFO).
	5. The parties are ordered to attend mandatory child custody mediation services as follows: Add "mediation" to the	The committee recommends adding "mediation and child custody recommending counseling to this section

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Form FL-300		
Commentator	**Comment**	**Committee Response**
	statement as this is the language used in the FC.	to be consistent with the language used in Family Code sections 3170 and 3183.
	6.a.- You are ordered to comply with the orders made in Temporary Emergency Orders (form FL-305) attached. Suggest the word "attached" be eliminated; form FL-305 is not an "attachment" it is a separately filed document. Courts handle "attachments" differently; in our court documents receiving a filed stamp are not attached to other documents; they are recorded into the Register of Actions as separate documents.	The committee recommends that form FL-300 be revised to state: "The orders in *Temporary Emergency (Ex Parte) Orders* (form FL-305) apply to this proceeding and must be personally served with all the documents filed with this Request for Order.
	REQUEST FOR ORDER AND SUPPORTING DECLARATION section	
	1. - See comments in 1st paragraph. The issue of appearance needs to be addressed legislatively or by court rule; asking the moving party to determine this issue is insufficient, is not addressed consistently by the courts, and is the cause of great confusion for court staff and the public (including attorneys.)	The committee no longer recommends the proposed changes to item 1 on page 2, which were circulated for comment in the spring 2013 cycle.
	2. d.-As requested in attached form. The listed forms are attachments; suggest "attached" be added to the statement.	The committee recommends revising form FL-300 as suggested by the commentator.
	2. e. and throughout the remainder of the form – Suggest eliminating all sections, "ordering (specify):" from the form. Asking the party to restate the court orders will not assist the Court and adds a burden to the filer. Judicial officers will not rely on the statement of a party, particularly a self-represented party, as to the current court order; they will look into the official court file for that information. Including that info on	The committee recommends revising the form to provide additional fillable space to complete information about the orders requested.

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Form FL-300		
Commentator	**Comment**	**Committee Response**
	the form will not serve the intended purpose. In several sections there may not be enough space allowed to fully answer. For instance, visitation; is the filer to repeat a full holiday/vacation schedule? 4. 5. and 6. – Under 5.c. the party is instructed to attach an Income and Expense Declaration, however this requirement is not stated under the Child Support (4) or Attorney Fees and Costs (6) sections. It should be listed under each of these sections or as a separate item that refers to these sections.	The committee recommends revising the section for child support to require the party to complete and file an *Income and Expense Declaration* (form FL-150) or, if eligible, a *Financial Statement (Simplified)* (form FL-155). The committee also recommends reformatting the attorney fees and costs section so the requirement to file a form FL-150 is more obvious.
	Item 4 on FL-300 should remain on page 1 Due to our concern about the adverse impact on self-represented litigants, we believe that the language ordering the responding party to appear should remain on Page 1 of the FL-300. Furthermore, moving the request for appearance makes the relief almost fictional. Only in the rare circumstance that temporary court orders are granted would the court grant the relief of ordering the responding party to appear. Otherwise, an order will likely be illusory, as the court will only grant it on the day of the hearing when the litigant will know if the responding party has appeared or not. We suggest leaving item 4 on the FL-300 or removing it entirely. If a party desires to have an order requiring the other party appear, than the moving party can file a notice to appear Furthermore, despite the confusion among the clerks and the court, the self-represented litigants have not noticed much difference in the new FL-300 forms and continue to appear	The committee recommends striking the requirement that the court must issue an order for a party to appear at the hearing of the *Request for Order* because the party has not yet made an appearance in the case. In addition, the committee recommends revising the rules and forms necessary to inform the parties that personal service of the *Request for Order* is required if the responding party has not yet made an appearance in the action. The committee further recommends providing information to the parties on form FL-300-INFO and on the California Courts Online Self-Help Center about use of Notices in Lieu of Subpoenas and Civil Subpoenas to compel parties and other witnesses to testify at the hearing. The committee recommends revising the notice on form FL-300 to the person served with the Request for Order. The new language will inform him or her of the

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Form FL-300		
Commentator	**Comment**	**Committee Response**
	without being ordered to by the court. We are concerned however, that with the proposed changes, litigants will not appear.	consequences of not filing a response and appearing at the hearing.
State Bar of California, Standing Comm. on the Delivery of Legal Services S. Lynn Martinez Chair	Re Form FL-300, which requires that the party check a box if s/he wants the other party to be ordered to appear creates confusion for self-represented litigants and court clerks. Litigants assume that by setting a hearing and having the other party served, that the other party is ordered to appear so that the matter may be legally resolved. The form should start with that premise and allow the party to check a box if the party should not be ordered to appear. Also, to reduce confusion it would be helpful to add a check box for motions for those courts that calendar motions separately and any/all additional and appropriate changes on the form that would follow from this addition. The box should appear in the section below the names of the parties after "Attorneys Fees and Costs." There are some formatting issues on pages 2-4 of the revised form such that some of the boxes appear to be in bold font and others do not. This does not appear to be intentional.	The committee does not recommend the changes to the form at item 1 (page 2) that were proposed in the invitation to comment, which circulated in the spring 2013 cycle. Because the Judicial Council revoked the *Notice of Motion* (form FL-301), effective July 1, 2012, the committee does not recommend revising form FL-300 to include the term "motion." The committee recommends correcting formatting errors before submitting the report to the Judicial Council.
Superior Court of Calaveras County Hugh Swift Court Executive Officer	Form FL-300 continues to include both a request for order(s) and court order(s) in a single document. This use of a dual purpose form may be a source of the frustration litigants and court staff experience when completing and processing the form. In almost all other case types the order form is a separate document from the pleading in which the relief sought is requested. Specifically, it is recommended:	The committee believes that maintaining some court orders at the bottom of form FL-300 can help streamline the filing of certain cases. For example, parties may file form FL-300 for the sole purpose of requesting an order shortening time. Maintaining the order on the face page of form FL-300, will eliminate the need to complete and file a separate order for the court to sign.

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Form FL-300		
Commentator	**Comment**	**Committee Response**
	All pre-hearing orders should be removed from FL-300. Form FL-305 should be modified to include orders pending hearing, as well as temporary emergency orders. The modified form should include orders shortening time for service and hearing. (FL-300, p. 1, Item 4.a.)	Same as above response.
	Family Code Section 3170 requires parties to attend child custody services (mediation) before a hearing involving child custody or visitation. Therefore, an order to attend is not necessary. (FL-300, p. 1, Item 4.a) Item 2 provides sufficient notice of the parties' statutory obligation to attend mediation. If the Request for Order seeks relief requiring attendance at mediation, FL-300 should be modified to provide a space for notice of the date, time and location of the mediation.	The committee prefers to maintain on form FL-300 a check box to order parties to attend child custody mediation or child custody recommending counseling, as well as information about the date, time, and location for the services.
	An order to comply with the orders in the Temporary Emergency Orders is unnecessary. (FL-300, p.1, Item 6.a.) The orders included on the Temporary Emergency Order form (FL-305) stand alone.	The committee recommends revising the form to indicate that the court issued temporary emergency orders in form FL-305, that the orders apply to the proceeding, and must be served with the documents filed with form FL-300.
	FL-300, p.1, Item 6.b., should be restated as a notice provision. It should also be expanded to advise the moving party that personal service is also required if the other party has not yet appeared in the action.	The committee recommends that the form be revised to specify that temporary emergency orders must be personally served on the other party.
	In addition, FL-300, p. 2, Item 1, "Attendance at Hearing" raises other issues and questions.	The committee recommends not proceeding with the proposed changes to item 1 on page 2, which were previously circulated for comment in the spring 2013 cycle, and which included adding a new item 1 on page

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Form FL-300		
Commentator	**Comment**	**Committee Response**
		2 titled "Attendance at Hearing." The committee agreed with the majority of commentators that the proposed revision raised too many issues and would not achieve the goal of making the form easier for parties to understand and complete.
	The section identifies at least three, independent grounds upon which the moving can request the court to issue an order requiring the other party to appear at the hearing. However, unless the Court makes temporary emergency orders, it is unclear how the other party would receive notice of the Court's order to attend the hearing. Proposed Form FL-300 does not include a check box item under the "Order" section on page 1 to use if the only basis for ordering an appearance was the fact the other party has not appeared (Item 1.b.) or substantive maters are at issue (Item 1.c.). The only other form to use for pre-hearing orders is FL-305, which appears to be intended for use only when the temporary emergency orders are made.	Same as above response.
	Item 1.c. - When the traditional OSC process was used, the Court ordered the responding party to appear and show cause why the relief requested by the other party should not be granted. However, this section of the proposed form seems to go beyond the scope of the traditional OSC by asking the court to find the other party's attendance is "required" because the applicant believes the other party's testimony is "needed" as it relates to a particular substantive issue.	In response to similar comments, the committee re-circulated a proposal to revise FL-300, which did not include an item on page 2 to request an order to require a party's attendance at the hearing.
	Typically, the other party's presence is not needed or required solely because the orders requested involve matters such as custody, visitation or support. However, self-represented	The committee recommends not proceeding with the proposed changes to item 1 on page 2, which were previously circulated for comment in the spring 2013

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Form FL-300		
Commentator	**Comment**	**Committee Response**
	litigants, unfamiliar with law and motion procedures, may not understand a Request for Order can be granted in the other party's absence and check the box in an abundance of caution. As drafted, the current form may cause a party to request an order for the personal appearance solely because substantive issues are the subject of the request. The order to attend may be requested even if the other party has appeared and no temporary orders made. This may needlessly increase the number of filings requiring processing as a request for an order to attend, which will increase staff and judicial workload. Furthermore, a request for an order to attend made on the grounds substantive matters are at issue, will require a much higher level of judicial review than required if the order is sought because temporary orders are issued or the other party has not yet appeared. Furthermore, there is no statute or rule of court which authorizes a Court to order a party to attend a hearing based on a representation of the moving party that the motion involves a substantive issue which might require the other party's attendance and/or testimony. Not ever proposed Rule 5.92 lists this as a basis upon which a court may order a party's attendance. To that extent, the form appears to exceed the scope of existing law and raises the issue of a court's authority to make such an order. The proposed rules and forms seem to focus on obtaining pre-hearing orders compelling a party to attend family law hearings in matters at which personal attendance was never required. In	cycle, and which included adding a new item 1 on page 2 titled "Attendance at Hearing." The committee agreed with the majority of commentators that the proposed revision raised too many issues and would not achieve the goal of making the form easier for parties to understand and complete. Same as above response. The committee recommends not proceeding with the proposed changes to item 1 on page 2, which were previously circulated for comment in the spring 2013 cycle, and which included adding a new item 1 on page 2 titled "Attendance at Hearing." The committee agreed with the majority of commentators that the proposed revision raised too many issues and would not achieve the goal of making the form easier for parties to understand and complete. The committee recommends revising form FL-300 to include a warning to the person served with form FL-300 that the court may make orders without his or her

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Form FL-300		
Commentator	**Comment**	**Committee Response**
	the traditional OSC process, the Court ordered the party to appear and show good cause why the relief requested should not be granted. When personally served, the OSC satisfied due process concerns as it provided the non-appearing party with the constitutionally required notice and opportunity to be heard. If, at the time of hearing only the moving party appeared, the Court proceeded to rule on the request as an uncontested matter.	input.
Superior Court of Los Angeles County	Would it be helpful to have a note above or next to the "Court Order" box near the middle of the page, that indicates that the clerk of court will complete items 4-7? Also, at the box at the bottom of page 1, it is not always the case that no filing fee is charged for filing a Responsive Declaration. In our court, litigants may be charged a first appearance fee if the Responsive Declaration is the first document they are filing in the case. Also, at the box at the bottom of page 1, it is not always the case that no filing fee is charged for filing a Responsive Declaration. In our court, litigants may be charged a first appearance fee if the Responsive Declaration is the first document they are filing in the case.	The committee recommends revising the form to indicate that the "Court Order" area of the form is for court use only. The committee recommends revising the form to remove the language: "You do not have to pay a filing fee to file the *Responsive Declaration to Request for Order* (form FL-320) or..." For the reasons specified by the commentator, the committee recommends removing the language: "You do not have to pay a filing fee to file form FL-320.
Superior Court of Riverside County Carrie Snuggs Family Law & Juvenile Director	We feel the overall changes to the RFO and instruction sheets will be helpful to customers.	No response required.
Superior Court of San Bernardino County Monica Mitchell	**FL-300** The proposed format for Questions 4-7 is much cleaner and avoids the question of who needs to check the "You Are	No response required.

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Form FL-300		
Commentator	**Comment**	**Committee Response**
Supervising Attorney	Ordered to Appear" box and when it must be checked. On Page 2, Question 1, there is still some uncertainty regarding when a person must check the box. A person might not be concerned about whether the other party is present. There may be no legal or practical reason to keep in Question 1. The need to appear based upon temporary orders has already been taken care of in the revised FL-305. Additionally, the new warning on the 1st page that orders may be made that effect your marriage/domestic partnership, custody, property or finances lets people know it is important to show up.	 The committee revised the proposal for changes to form FL-300 and no longer recommends that the form include the item titled "Attendance at Hearing." No response required.
Superior Court of San Diego County Michael M. Roddy Executive Officer	*Request for Order* (Form FL-300); the check box next to "Court Order" continues to be confusing on when it is to be checked and by whom even with the reference to Form FL-300. Alternatives to consider are: instead of having the option of checking the box next to "Court Order" perhaps the language regarding a court order can be incorporated elsewhere on the form and/or designating a portion of the form for "court use only". Typos on *Request for Order* (Form FL-300); Page 3 of 4 of the form (page 14 of the invitation to comment); Section 5.a.(2) and (3): Change "Modify existing order *file* on (date):" to "Modify existing order **filed** on (date):" Our Family Law Facilitators have the following comments	The committee recommends revising the form to indicate that the "Court Order" area of the form is for court use only. The committee agrees to correct the typographical errors indicated by the commentator. The committee agrees to correct the typographical errors indicated by the commentator.

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Form FL-300		
Commentator	**Comment**	**Committee Response**
	about *Request for Order* (FL-300): 1. (Page 1 of 4 of the form, Page 12 of the SPR13-22 invitation to comment): The caption advising the litigant of the date, time, dept. etc. should be separate from any information about filing a responsive declaration. That language can go below the box. The most important thing for the litigant to focus on is that there is a court hearing and that should pop out in a text box. I have attached some suggestions on changes to the proposed RFO separately.	The committee has incorporated this suggestion in the revisions being recommended to the Judicial Council.
	2. (Page 1 of 4 of the form, Page 12 of the SPR13-22 invitation to comment): I think the Court Order section should be changed to specifically state it should not be filled out and that the court will fill out that section. The instructions for the form, which are separate, state that. You tell individuals to read the form before for more information about the section but you don't state not to fill it out. It should be plainly stated on the form.	The committee agrees to include the commentator's suggestions with the revisions being recommended to the Judicial Council.
	Also, there is confusion about what type of service is required when the box in Item 5 is checked for mandatory child custody services. The order to attend mandatory child custody services is included in the court order portion. Does this mean the RFO has to be personally served when this box is checked? What if both parties have appeared in the action and jurisdiction has already attached? How does FC 215 fit in? It allows for service by mail (with address verification) in post judgment modification of custody and visitation motions.	The committee recommends specific changes to rule 5.92 and form FL-300-INFO to help litigants determine how to serve form FL-300. Checking the order to attend mediation does not always require personal service of form FL-300. The requirements for personal service will be specified in the rule and information sheet.

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Form FL-300		
Commentator	**Comment**	**Committee Response**
	I note that Item 6.a. specifically states that personal service is required if the court grants temporary emergency orders. That is very helpful to have stated directly on the form. No such information is provided with respect to Item 5. It would be helpful to litigants and attorneys to have some instruction and guidance in this respect. The information sheet is not clear as to this issue.	The committee agrees to revise form FL-300 and FL-300-INFO to include this information suggested by the commentator. Checking the order to attend mediation does not always require personal service of form FL-300. Therefore, the committee does not recommend that the item include a statement specifying a particular kind of service.
	3. If no Response has been filed and no first appearance fee has yet been paid, why wouldn't the filing of a Responsive Declaration generate a filing fee? The statement that no fee is due makes perfect sense if there has already been an appearance and fee paid/waived. But if this is the first appearance, shouldn't the fee be due?	The committee recommends revising the form to remove the language: "You do not have to pay a filing fee to file the Responsive Declaration to Request for Order (form FL-320) or..."
	4. Other changes to the form are set forth on the attached suggestions pages for pages 1 through 3. I believe they are self-explanatory. **Page One** (Page 1 of 4 of the form, Page 12 of the SPR13-22 invitation to comment): [Caption ok as proposed] 1. TO (name): (ok as is) 2. A COURT HEARING WILL BE HELD AS FOLLOWS: (change formatting and some words)	No response required. The committee agrees to revise this item as suggested by the commentator.

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Comments from proposal SPR13-22 (circulated in 2013)
Family Law: Improvements to Request for Order Rules and Forms

ATTACHMENT A

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

Form FL-300		
Commentator	**Comment**	**Committee Response**
	Date: Time: ☐Dept: ☐Room: Address of court: ☐same as noted above ☐ other (specify):	
	If you do not file and serve a Responsive Declaration to the Request for Order (form FL-320) and appear at the hearing, the court may make orders without your input that affect your marriage or domestic partnership, the custody of your children, your property, or finances. **If child custody or visitation is an issue in this proceeding, Family Code section 3170 requires parties to attend a mandatory child custody services appointment before or on the same day as the hearing (See Item 5).**	The committee recommends revising the form so that the notice to the recipient of the request for order is placed as a warning following the date, time, location of the hearing. The committee recommends deleting the bolded language about required mediation since it will be covered in the court order section if there are issues of child custody and parenting time.
	3. Attachments to be served with this Request for Order ….. (ok as is)	No response required.
	DO NOT FILL OUT ANYTHING BELOW – FOR COURT USE ONLY	The committee recommends revising the form to specify the area marked as "Court Order" is for court use only.
	(Read the Information Sheet for Request for Order (form FL-300-INFO) for information about this section)	The committee recommends revising the form to include a note that party should read form FL-300-INFO for information about completing form FL-300.
	4. (ok as is)	
	5. ☐ The parties are ordered to attend a mandatory child custody services appointment as follows:	The committee prefers to recommend using the terms mediation and child custody recommending counseling to be consistent with Family Code sections 3170 and 3183.

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Form FL-300		
Commentator	**Comment**	**Committee Response**
	6. ☐ You are ordered to comply with the orders set forth in the attached Temporary Emergency Orders (form FL-305). Personal service of the Request for Order is required if this box is checked. 7. ☐ Other (specify): To the person who was served this Request for Order: If you wish If you wish to respond to this Request for Order, you must file a Responsive Declaration to Request for Order (form FL-320) and serve a copy on all other parties at least nine court days BEFORE the hearing date, unless the court has ordered a shorter period of time. You do not have to pay a filing fee to file the Responsive Declaration to Request for Order (form FL-320) or any other declaration, including an Income and Expense Declaration (form FL-150) or Financial Statement (Simplified) (form FL-155). Question: what if this is the first appearance for the party – why not a filing fee? **Page Two** (Page 2 of 4 of the form, Page 13 of the SPR13-22 invitation to comment): 1. Ok as is	The committee recommends revising the form to state: "The orders in *Temporary Emergency Orders* (Form FL-305) apply to this proceeding and must be personally served with all documents filed with this Request for Order." The committee recommends deleting the box at the bottom of form FL-300 and moving it to item 3 on page 1, to state: **WARNING to the person served with this Request for Order:** The court may make the requested orders without you input if you do not file a *Responsive Declaration to Request for Order* (form FL-320), serve a copy on the other parties at least nine court days before the hearing (unless the court has ordered a shorter period of time), and appear at the hearing. (See form FL-320-INFO for more information.) The committee recommends revising the form to remove the language: "You do not have to pay a filing fee to file the Responsive Declaration to Request for Order (form FL-320) or..." because it is not applicable in all cases. No response required.

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Form FL-300		
Commentator	**Comment**	**Committee Response**
	2. Child Custody: Ok as is #a through #c. #d, Other (Attachment 2d): When you specify Attachment 2d, people are going to be looking for a form entitled "Attachment 2d". It would be better to use language that is used in the DV forms when you need to attach another page – □ Other: (**Attach a sheet of paper and write "FL-300, Other Custody Arrangement Requested)** [like the language in JC Form DV-140, Item 4.d.(3)] 3. Re-arrange the items in 3.a and only have two options: #1 would be Child Custody and Visitation Application Attachment (FL-311) #2 would be Other. Since there is no form Attachment 3a, and people may think it is a form and look for it, suggest you use similar language as above - **(Attach a sheet of paper and write "FL-300, Other Visitation/Parenting Time Arrangement Requested)** [like the language in JC Form DV-140, Item 4.d.(3)] **<u>Page Three</u>** (Page 3 of 4 of the form, Page 13 of the SPR13-22 invitation to comment): 4. Ok as is.	No response required. The form follows the style approved by the Judicial Council for all standard forms. Given the space limitations on form FL-300, the committee does not recommend the suggested use of the "plain language" style, which is used for DV and other forms. The committee decided to maintain the three options. Form FL-300 is drafted in the "standard" style approved by the Judicial Council. The committee does not recommend changing to the style used in DV forms during this cycle. No response required.

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Form FL-300		
Commentator	**Comment**	**Committee Response**
	5. 5a and 5b ok. Change 5c as follows: "An Income and Expense Declaration (form FL-150) is attached. (Mandatory)"	The committee recommends revising the form as suggested by the commentator to require a party to attach a form FL-150.
	6. Add a parenthesis after the first sentence. (An Income and Expense Declaration . . . .)	The committee recommends reformatting the item to make is easier to read so that a party can identify the forms that must be completed when requesting orders for attorney's fees and costs.
	7. Change: (These are requests, not orders yet) a. The petitioner / respondent be restrained . . . The applicant l tol be notified at least five days… and an accounting of such be made to the court. However the parties to be allowed to use community property . . .	The committee recommends revising the language in this item so that the subitems do not read as court orders but as requests for court orders.
	b. Both parties be restrained . . .	Same as above response.
	c. Neither party to incur any debts . . .	Same as above response.
	8. Change: a. The petitioner / respondent be given the exclusive . . . b. The petitioner / respondent be ordered to make . . . 9. Ok as is. 10. Ok as is.	The committee recommends revising the language in this item so that the subitems do not read as court orders but as requests for court orders. No response required. No response required.

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Comments from proposal SPR13-22 (circulated in 2013)
Family Law: Improvements to Request for Order Rules and Forms

ATTACHMENT A

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Form FL-300		
Commentator	**Comment**	**Committee Response**
Superior Court of Shasta County Stacy Larson Family Law Facilitator	Page 1, Item (2): It is confusing that we have the sentence "A COURT HEARING WILL BE HELD AS FOLLOWS:" and then the information that follows the colon has nothing to do with the date/time/place of hearing, instead explaining what happens if the litigant does not appear at the hearing or file a response. I suggest we move the information that follows the colon below the bracketed date/time/place of hearing.	The committee recommends revising the item on form FL-300 as suggested by the commentator.
	Page 1, Item (3)(e): The place to specify "other" documents is too small to be useful. We commonly attach the FL-311 Child Custody & Visitation Attachment, MC-031 Declaration, and MC-020 Additional Page. We are not able to type in these attachments at Item (3)(e) due to space limitations, and there is insufficient space to handwrite them in. Our only remaining option is to write "Please see MC-025 Attachment 1" and include another page for listing attachments, which is not efficient. It would be helpful if we had checkboxes for these common attachments. Perhaps to make room, we could delete the reference at Item (3)(d) as points and authorities are not required and rarely attached. The points and authorities could be referenced at "other" if applicable in a given situation.	The committee recommends revising the proposal to delete item 3 on page 1. This section is too small to be useful. Instead, the committee recommends that form FL-300-INFO include an extensive list of additional forms which may apply to the party depending upon the nature of the request.
	Instruction "Read Information Sheet for Request for Order (form FL-300-INFO) for information about the following section:" that appears below bracket but above "COURT ORDER": I understand the motivation for including this instruction, but I don't agree that we should include it as it takes up additional space, clutters the first page, and will not resolve the confusion litigants experience. If litigants are confused about how to fill out any part of the form, they should review the FL-300-INFO, which will clarify what to do with	The committee recommends revising the form so that the reference to form FL-300-INFO appears above the court order section of page 1.

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Form FL-300		
Commentator	**Comment**	**Committee Response**
	this section. Page 1, Item (6): A provision should be added regarding when the temporary orders expire. This provision should appear on either the FL-300 or the FL-305, or preferably both. A frequent scenario is that a parent receives a temporary order reversing custody and ordering no visitation for the other parent as a temporary order. The new custodial parent provides a copy of the temporary order to the child's school, and the other parent is no longer able to pick up the child at school nor be on campus for visitation purposes. The new custodial parent fails to have the documents served or follow through with the RFO, and at the noticed hearing, the RFO is dropped with the previous "permanent" custody/visitation order restored. However, the other party has to prepare a Findings and Order after Hearing and have it signed by a bench officer to prove to the school that the former order is restored as schools frequently do not understand that the temporary order expired on the day of the noticed hearing or that, upon expiration, the former order is restored. Page 2, Item (1)(a): It is not clear why an applicant would necessarily request the other party's appearance at the noticed hearing simply because he/she has requested temporary emergency orders pending the hearing. The procedure in our court is that (1) the applicant will submit this paperwork (2) attend an ex parte hearing regarding temporary orders or order shortening time; (3) pick up the papers the next court day at which time they will have been filed and a noticed-hearing date set; (4) have the papers properly/timely served on the other party; (5) file a proof of service; (6) attend the noticed	The committee recommends revisingform FL-305 (instead of form FL-300) to indicate when the temporary orders expire. To avoid confusion, the committee does not recommend revising form FL-300 to include a specific item for a party to request that the other party appear at the hearing.

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Form FL-300		
Commentator	**Comment**	**Committee Response**
	hearing. Subsection (a) is likely to mislead litigants into believing that they must request that the court order the other party present at the noticed hearing any time they request temporary orders. I suggest we delete this provision.	
	Page 2, Item (2)(a): It would be helpful if the space for the first child's name listed under subsection (a) was on the same line as the place where we designate legal and physical custody. When requests are made pertaining to more than one child, the lines often do not line up properly, causing confusion.	The committee recommends revising form FL-300 as requested by the commentator.
	Notice at bottom of Page 2: On the second line, we should clarify ". child is 18 and graduates from high school."	The committee recommends removing this information from the form and placing it on new form FL-320-INFO.
	Page 2, Item (3)(b); Page 3, Item (4)(d), Item (5)(a)(2) & (3): We should correct the typo "file" to read "filed."	These typos have been corrected in the form being recommended for the Judicial Council's approval.
	Page 3, Item (4) (*now page 3, item 3*): A provision like the one at page 3, item (5)(c) should be included under this section pertaining to child support as the FL-150 is required for RFOs pertaining to child support as well.	The committee recommends revising the form as requested by the commentator.
	Page 3, Items (4), (5), and (6) *(now items 3, 4, and 5):* Applicants make requests for emergency temporary orders pertaining to family support and attorney's fees/costs. It would seem that we should have the checkbox for "Applicant requests temporary emergency orders" for these sections as well.	The committee prefers to limit the check boxes to those requests with specific Family Code citations to support the application for a temporary emergency order.
	Page 4, Item (9) *(now item 8):* The "Other Relief" section is	The committee recommends revising the form as

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Form FL-300		
Commentator	**Comment**	**Committee Response**
	too small to write in the common requests for other relief. It would be helpful to make the space for filling in other relief larger, so we don't have to write "Please see attached MC-025 Attachment" so often, attaching another entire page for a brief paragraph. Page 4, Item (10): An order shortening time (OST) can apply to service of the documents or also to the setting of the hearing itself pursuant to CRC 5.94(a). Both should be referenced here, so it will be clear whether the litigant is requesting an OST for service or for the hearing date, or both.	requested by the commentator. The committee recommends revising the form as requested by the commentator.
TCPJAC/CEAC Joint Rules Committee TCPJAC/CEAC	For the proposal that circulated for comment in 2013, JRWG recommended that form FL-300 NOT be approved. JRWG also recommended that changes be limited to those necessary to correct serious defects in present forms and that any perceived benefits of the proposal be weighed against RUPRO's policy of limiting rule proposals to critical rule and form proposals that are mandated by statute or case law, or are otherwise deemed urgent and necessary.	Due to the numerous concerns raised by courts, court professionals, attorneys, and legal organizations in response to rules and forms in the proposal circulated in spring 2013, the committee decided to defer action on form FL-300 and associated rules and forms. Deferring the matter allowed the committee to thoroughly consider the comments, propose changes to the rules forms that are responsive to the comments, and circulate a revised proposal for public comment in winter 2014, and again in Spring 2015. The committee believes that form FL-300 has been improved by the revisions made in response to the comments received in the spring 2013 and winter 2014 cycles.

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Comments from proposal SPR13-22 (circulated in 2013)
Family Law: Improvements to Request for Order Rules and Forms

ATTACHMENT A

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Form FL-300-INFO Following the spring 2013 comment period, the committee made extensive formatting and substantive changes to this form, including expanding it from two to four pages.		
Commentator	**Comment**	**Committee Response**
Hon. Christine Copeland Commissioner Superior Court of Santa Clara County	FL-300-INFO page 2- under "Service by Personal Delivery" instead of "give"in the first bullet, I would say "hand-deliver" or "hand over" so SRLs get the point that "give" involves one set of hands to another, and doesn't mean leaving at the doorstep or on the windshield. Under the third bullet and under "Service by Mail " fourth bullet- is there a requirement now that the POS be filed 5 court days before? I had no idea that rule extended outside of the small claims context.	The committee recommends revising the form as suggested by the commentator. Rule 5.94(b) states that a proof of service of the Request for Order (form FL-300) and supporting papers should be filed five court days before the hearing date.
Debbie Kruse Deputy Manager, Family Law Superior Court of Orange County	In item 3 indicate all of the forms that you have completed and will filed with the court. Suggest changing the wording to "will file" as these forms have not yet been filed. For example: - The bullets are off in this section. Note: Do not use Request for Order (FL-300) if you are filing a motion or order to show cause: Suggest the words "motion or order to show cause" be stricken. This could be confusion being that the 1st sentence of this form says FL-300 is replacing motion and order to show cause forms. The wording in the bullets following this statement can be adjusted to indicate what form to use for the specific requests listed. The last bullet in this section should be reworded to speak of "hearings" rather than "cases": Other types of cases	The committee recommends that the language in the form reflect future actions. The committee recommends reformatting this section so that it does not include bullet points. The committee recommends deleting references to a notice of motion or to an order to show cause to avoid confusion. The committee recommends deleting this language to avoid confusion.

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Form FL-300-INFO Following the spring 2013 comment period, the committee made extensive formatting and substantive changes to this form, including expanding it from two to four pages.		
Commentator	**Comment**	**Committee Response**
	requests/actions for which there are other Judicial Council forms just for those cases types of hearings. General Information About Personal Delivery – Suggest also including a blank Responsive Declaration to the forms that might also be served.	The committee recommends that the form include that a party must serve a blank form FL-320 when serving form FL-300.
Superior Court of Calaveras County Hugh Swift Court Executive Officer	The section entitled "General Information About Personal Delivery Service" is confusing as it is not clear when service by personal delivery or mail service is acceptable. This confusion is compounded by the next section labeled, "Service by Personal Delivery", which seems to be limited to service as described in CCP 415.10. Furthermore, Rule 5.92 and Form FL-300 do not use the terms "Personal Delivery Service" or "Personal Delivery".	The committee recommends clarifying the meaning of the term "Personal Service" in the form, as well as providing information about when service must be effected by personal service and when service by mail is acceptable. Same as above response.
Superior Court of Los Angeles County	Item 2. The last sentence should say "Check the Temporary Emergency Order**s** box…." There are some formatting issues at the bottom of column 1 starting with "For example." This paragraph and heading should be moved to the left to line up flush with the margin, in line with all of the numbers above, as this example does not specifically apply only to item 10. Also, the bullet points are not aligned appropriately. Bullets should appear before "If" and "Complete." Bullets should be removed from the lines before "custody," "page 1" and "Fl-305"	The committee agrees to make this change wherever appropriate on the form. The committee recommends extensive reformatting of form FL-300-INFO, which will also address the formatting issues raised by the commentator.

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ATTACHMENT A

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Commentator	Comment	Committee Response
Form FL-300-INFO Following the spring 2013 comment period, the committee made extensive formatting and substantive changes to this form, including expanding it from two to four pages.		
	In column 2, line 5, add an "s" to Order, as the box is entitled "temporary Emergency Orders."	The committee recommends making the suggested change wherever appropriate throughout the form.
	On page 2 – Instructions for Giving the Other Party Notice – the Responsive Declaration (FL-320) should be included as a blank document to attach to the service set.	The committee agrees to include this change at item 11 of the form being recommended for approval by the Judicial Council.
	Service by Personal Delivery. The instructions here seem to imply that the circumstances listed are the only ones under which personal service of an RFO is required. However, the list is not comprehensive and does not include, for example, those cases where the other side has not made an appearance and should be personally served. Same comment about the Service by Mail portion. The description of when to serve by mail is not comprehensive. It is my understanding that you cannot serve the other party by mail if he or she has not made an appearance.	To address this concern, the committee recommends expanding form FL-300-INFO to include a new item to help litigants decide how service of the *Request for Order* should be accomplished.
	To clarify this, a note could be added under each section stating "Personal service may be required for additional reasons. If you are not sure how to serve the Request for Order, consult with an attorney or the self-help center in your county."	The committee agrees to include the suggested statement in the form.
	Formatting issue – a space should be added between the paragraph that begins "You can ask" and the paragraph beginning with "If you filed" in column two.	The committee believes that the revised format of this form covers the issue raised by the commentator.
Superior Court of Riverside County Carrie Snuggs	While this revision appears to address the initial confusion about combining OSCs and motions (mostly the service	To address this concern, the committee recommends expanding form FL-300-INFO to include a new content

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Comments from proposal SPR13-22 (circulated in 2013)
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Form FL-300-INFO

Following the spring 2013 comment period, the committee made extensive formatting and substantive changes to this form, including expanding it from two to four pages.

Commentator	Comment	Committee Response
Family Law & Juvenile Director	question), the Information sheet (FL-300 Info, page 2) is unclear. Rule 5.92 (a) (6) (A) (ii) says service of the RFO must be by personal means if "the request includes a court order for the responding party to attend the hearing and the responding party has not made an appearance in the action." But the Information sheet makes no reference to the second part of the sentence "and the responding party has not made an appearance in the action".	to help litigants decide how service of the *Request for Order* should be accomplished.
	Also on page 2 of the Information Sheet, we would suggest clarifying that personal service is required if the court has granted temporary emergency orders (as stated on FL-300, page 1).	The committee agrees to include this suggestion along with other recommendations being made to the Judicial Council about this form.
	On page 2 of the Information Sheet, Service by Mail, under the second bullet, we would include a reference to FL-334 concerning post-judgment address verification.	The committee agrees to include reference to form FL-334 on the information sheet.
Superior Court of San Bernardino County Monica Mitchell Supervising Attorney	Page 2 Instructions for Service: The first subtitle "General Information About Personal Delivery" is confusing since this section talks about both personal and mail service. I would recommend deleting this first subheading.	The committee recommends revising and reformatting the headings in the section of the form relating to service
	The "Service by Personal Delivery" section is a little confusing in the first paragraph. The structure of that paragraph does not exactly mimic the first paragraph of the "Service by Mail" section – there is a comma missing between "attend the hearing and the judicial officer" under Personal Delivery. The confusion might also stem from the fact that the revised FL-300 no longer includes a signed order from the judicial officer on	The committee recommends extensive revisions to the form relating to service to clarify the meaning of "personal service" and "service by mail." In addition, the committee recommends expanding form FL-300-INFO to include new content to help litigants decide how service of the *Request for Order* should be accomplished.

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Form FL-300-INFO

Following the spring 2013 comment period, the committee made extensive formatting and substantive changes to this form, including expanding it from two to four pages.

Commentator	Comment	Committee Response
	the request to have the other party attend the hearing, thereby making that particular "and" questionable. Suggestion: "If you have asked the court for temporary emergency orders or other orders that will go into effect before the hearing; OR the other party has not filed a Response to the Petition or otherwise has "appeared" in this case as set forth in Code of Civil Procedure Section 1014 and Code of Civil Procedure Section 418.10 and Family Code Section 2012, …"	
Superior Court of San Diego County Michael M. Roddy Executive Officer	Our Family Law Facilitators have the following comments on the formatting and/or content of FL-300-INFO: Page 2 of 2 of the form, page 16 of the SPR13-22 invitation to comment: First Section at Issue on Form General Information About Personal Delivery 1. First bullet, first sentence. "After you file the Request for Order and other forms with the court clerk, you will get them (change to "copies back") . . . Second Section at Issue on Form Service by Personal Delivery I still have the same question regarding service when only the mandatory child custody services appointment box is checked. Would that be considered an "order that goes into effect before the hearing?" necessitating personal service? If so, it should be	The committee agrees to include the suggested changes to the form. An order to attend mediation or child custody recommending counseling is not an emergency order within the meaning of the Family Code. Therefore, personal service would not be required solely on this

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Form FL-300-INFO Following the spring 2013 comment period, the committee made extensive formatting and substantive changes to this form, including expanding it from two to four pages.		
Commentator	**Comment**	**Committee Response**
	clearly spelled out. Third Section at Issue on Form Service by Mail Under the second bullet, it references being able to serve by mail if you are asking for orders after the judgment was entered in the case or after permanent orders were made in the case and it talks about address verification, but the address verification process only applies to modifications of custody, visitation, and child support. That should be clarified. Maybe here is where you could clarify about what type of service is necessary where the mandatory child custody services appointment has been ordered.	ground. The committee recommends that the form refer to "temporary emergency orders instead of "an order that goes into effect before the hearing." Same as above response.
Superior Court of Shasta County Stacy Larson Family Law Facilitator	Page 1, Item (1): We should also inform the litigants that they must provide their telephone number. Page 1, Item (3): The names of all other parties should be listed at #1 of the FL-300. It may help to revise this instruction to read, "List the names of the other party or parties in your case in item 1. The names of the other parties must exactly match their names as they appear in the case caption." Page 1, Item (4): In a traditional noticed-motion format, the	The committee recommends revising form FL-300 as suggested by the commentator to indicate that the party completes the form by also providing their telephone number. The committee agrees to include the commentator's suggestions, with changes, along with the recommendations being made to the Judicial Council. The committee recommends that the information

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Form FL-300-INFO

Following the spring 2013 comment period, the committee made extensive formatting and substantive changes to this form, including expanding it from two to four pages.

Commentator	Comment	Committee Response
	parties could fill in their own court date/time/place and have the motion served prior to filing. This is different than an OSC, which must be issued/scheduled by the Court. It would seem that this dual-purpose FL-300 should allow for this option.	provided in the optional information sheet instruct litigants that the clerk will provide the details about the hearing, so that litigants understand that they may not select the date arbitrarily.
	Page 1, Item (11: It is not clear to me why the FL-300-INFO requires the parties to file the Request for Orders (RFO) before having it served (when it's the equivalent of a motion rather than an OSC that has to be issued by the judge). In the traditional noticed-motion format, the parties could prepare their paperwork, insert the court dates for the noticed motion hearing, have it served on the other party, and then timely file it along with a proof of service with the court. The noticed-motion did not have to be signed/issued by the judge prior to service. It would seem that the FL-300 should allow for this option. Otherwise, the parties must prepare their paperwork, have it filed, then have it served, then return to the court to file their proof of service. This is less efficient, and it's not clear why it would be required in a noticed-motion format.	Under rule 5.92, the Judicial Council adopted new procedures relating to the filing of form FL-300, effective July 1, 2012. Requiring the original form to be filed first allows the moving party to obtain copies for service that are file-stamped by the court clerk before service. This would avoid any uncertainty on the part of the responding party about the form's authenticity as a court document.
	Page 1, bottom of first column, "For example" bullet: the bullets in these sections do not line up with the appropriate line of text.	The committee's recommended changes to the form cover the formatting errors described by the commentator.
	Page 1, bottom of first column, "For example" section: This "for example" section does not pertain to item (1) under which it appears. These examples are helpful but should be moved below item (2) or (1) or be given their own heading such as	The committee prefers to provide a general note to complete pages 2-4 on form FL-300 so that the space can be used to provide substantive information about service.

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ATTACHMENT A

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Form FL-300-INFO

Following the spring 2013 comment period, the committee made extensive formatting and substantive changes to this form, including expanding it from two to four pages.

Commentator	Comment	Committee Response
	"Ensuring your Caption Matches the Relief Requested in your FL-300." Page 1, "For example" section, first bullet: The litigants should be reminded to explain in their declaration in detail why the requested order is in the best interest of their child. Page 1, "Other Forms to file with this Request for Order": this section seems to overlap with the "For example" section. Perhaps the two sections could be integrated or headings could better distinguish them (?). Page 1, "Other Forms to file with this Request for Order": It may be helpful to make clear that this is not an exhaustive list of other forms needed with an explanation regarding how the "other forms" work, such as "Depending on the relief you are requesting, you may need to file additional forms. Some of these forms are referenced on the FL-300 to provide guidance. Although not an exhaustive list, here are some examples:" • Page 2, General Information about Personal Delivery: We should add at line 8, ". . . you are asking the court to make or temporary emergency orders the court has already made at your request." • Page 2, General Information about Personal Delivery: The litigants should also be instructed that a blank FL-320 must be served on the other party so he/she can respond to the paperwork.	Same as above answer. The committee recommends revising page 1 of this form to include a list of forms that a party would file with form FL-300 depending on the relief requested. Same as above response. The recommendations by the committee about this form cover the requested changes suggested by the commentator. The recommendations by the committee about this form cover the requested changes suggested by the commentator.

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Form FL-300-INFO

Following the spring 2013 comment period, the committee made extensive formatting and substantive changes to this form, including expanding it from two to four pages.

Commentator	Comment	Committee Response
	• Page 2, General Information about Personal Delivery: The heading is misleading as it refers to "personal delivery" but the last bullet refers to service by mail. Perhaps the heading should be changed to "General Information about Service" or omitted altogether as the overall heading "Instructions for Giving the Other Party Notice (Service)" may be sufficient.	The recommendations by the committee about this form cover the requested changes suggested by the commentator.
	• Page 2, General Information about Personal Delivery, second bullet: When service is by mail out of state, it requires ten additional days. If the service is by mail to an address out of state, it requires certified mail, restricted delivery, etc. This bullet is a bit misleading as it oversimplifies the rules, which may lead to great confusion for the litigants. It also may lead to the inference that the litigants have an option between the two types of service when they don't always have that option. I suggest that we replace the second sentence with something like "In some circumstances, you are allowed to have your documents served by mail. Additional time is required for service by mail. If you are unsure about the timelines, seek assistance through an attorney or your Court's Family Law Facilitator's Office. The Court cannot grant your request if your Request for Orders is not timely and properly served."	The committee recommends revising the form by adding new content to pages 3 and 4 to describe when the *Request for Order* (form FL-300) is required to be personally served or when it may be served by mail. The committee recommends the changes suggested by the commentator.

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Form FL-300-INFO		
Following the spring 2013 comment period, the committee made extensive formatting and substantive changes to this form, including expanding it from two to four pages.		
Commentator	**Comment**	**Committee Response**
	• Page 2, Service by Personal Delivery: Another provision should be added to explain that personal service is necessary if the other party has not previously appeared in the case. • Page 2, Service by Mail: Another provision should be added to clarify that mail service is not proper if the other party has not made an appearance in the case previously. • Page 2, Service by Mail second bullet: This provision should include a reference to the FL-334 Address Verification form.	Same as above response. The committee recommends the changes suggested by the commentator. The committee agrees to include reference to form FL-334 on the information sheet.
TCPJAC/CEAC Joint Rules Committee TCPJAC/CEAC	JRWG recommends that form FL-300-INFO NOT be approved.	The committee believes that form FL-300-INFO has been improved by the revisions made in response to the comments received in the spring 2013, winter 2014, and spring 2015cycles. The committee believes that it has addressed the concerns of the commentator and recommends that the form be approved by the Judicial Council.

Form FL-305		
Commentator	**Comment**	**Committee Response**
Christine N. Donovan, CFLS Sr. Staff Attorney Superior Court of Solano County	I suggest that an order shortening time for service or hearing be placed only on the FL-305. Since the FL-305 has to be included anyway and because the FL-305 gives the date and time of the	The committee recommends that the ordering shortening time remain only on form FL-300. This will help avoid the perception that parties have to complete and file

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Form FL-305		
Commentator	**Comment**	**Committee Response**
	hearing, it makes sense to include the order shortening time for service or hearing on the FL-305 itself: 1. A hearing on the *Request for Order* filed by *(specify)*_____*:* on *(date):* will be held on: a. (Date, time, etc.) b. Address of court □ same as noted above □ other *(specify):* c. Time for□ service □ hearing is shortened. Service must be on or before (date): d. Any responsive declaration must be served on or before (date):	form FL-305 when seeking only an order shortening time. If other emergency orders are sought, the court could use form FL-305 ("Other Orders") to include the order shortening time and deadline for filing and serving responsive declarations.
Debbie Kruse Deputy Manager, Family Law Superior Court of Orange County	It is suggested that this item remain on form, FL-300. Moving the order to appear to a form separate from the FL-300 will be an additional workload for court staff and produce an addition document for judicial review. The change, as currently proposed, will result in a great percentage of FL-300 filings now being accompanied by the FL-305 for the sole purpose of ordering the other party to appear. For this reason it is suggested that all orders concerning the hearing itself, such as order shortening time, parties ordered to appear, order to attend mediation, stay on the FL-300 and only orders not relating the conduct of the hearing be included on the FL-305.	For the reasons specified in the comment chart for form FL-300, the committee recommends deleting the order to show cause language from form FL-300. The committee does recommend that orders to attend mediation and orders shortening time remain on form FL-300.
Superior Court of Riverside County Carrie Snuggs Family Law & Juvenile Director	The *Temporary Emergency Order* (FL 305) has a place for the judicial to sign if granted, but it would be helpful if there was a place to indicate if the judicial officer denies the request for temporary orders. We also prefer not to have the FL-305 as a separately filed document.	The committee prefers that form FL-305 remain consistent with the style of other court order forms which do not include the check boxes suggested by the commentator. Form FL-305 is currently used as an attachment to the FL-300. This has caused confusion. Because the orders on the form are customarily attached as the last page of FL-300, they may be perceived as additional requests

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Form FL-305		
Commentator	**Comment**	**Committee Response**
		from the party and overlooked by the responding party. To increase the chances that the responding party take notice of the temporary court orders on form FL-305, and that it is properly entered into the court's registry of actions, the committee recommends revising the form to include the standard captions of other stand-alone forms and a section for the court's file stamp. This way, the completed order could be served as a separate document from the *Request for Order* (form FL-300).
Superior Court of San Diego County Michael M. Roddy Executive Officer	*Temporary Emergency Orders* (Form FL-305); Page 1 of 2 of the form (page 17 of the invitation to comment); Section 4.d.(4) The current version of the form has the following language: "**Penalties for violating this order: If you violate this order, you may be subject to civil or criminal penalties or both.**" Why was "or both" not included in the proposed amended version of the form at the end of the sentence?	The language was inadvertently omitted from the form that was circulated for comment. The committee recommends reinserting the language in the form submitted for the Judicial Council's approval.
Superior Court of Shasta County Stacy Larson Family Law Facilitator	Page 1, Item 2: This section should clarify that the temporary orders automatically expire on the date of the hearing, and that previous orders are reinstated upon expiration of the temporary orders unless new orders are entered. For example, "which are effective immediately. These orders expire on the date of the hearing referenced in Item (1). Upon expiration of the temporary order, the previous order is reinstated unless a new order is made by the Court."	The committee recommends that the form provide that the temporary orders on form FL-305 automatically expire at the end of the hearing on the request for order.

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Form FL-305		
Commentator	**Comment**	**Committee Response**
	Page 1, Item (4)(a): It's a great idea to add a line for the name and age of the child or children to whom the temporary pertains on the FL-305, so it will be clear to the parties and law enforcement who try to enforce the temporary order. Page 1, Item (4)(c): Our court interprets this provision (and similar provisions on the FL-311, etc.) as pertaining to only moving the child out of the state or county for purposes of changing residency. If this is the intent, the provision should be reworded to avoid the confusion this causes litigants who believe that on their own parenting time, they cannot take the child out of county/state to visit family, attend events, etc. Page 2, Item (7): More room is needed to write in additional orders, at least room for 3-4 lines of text, so we don't have to include an entire page as Attachment 7 when the additional order is only a few lines long.	The committee recommends revising the form as suggested by the commentator. The item is not meant to pertain only to move-away cases. Therefore, the committee does not recommend these revisions to form FL-305. The committee recommends revising the form to provide more space for the judicial officer to write additional orders.
TCPJAC/CEAC Joint Rules Committee TCPJAC/CEAC	JRWG recommends that form FL-305 NOT be approved.	The committee believes that form FL-305 has been improved by the revisions made in response to the comments received in the spring 2013, winter 2014, and spring 2015cycles. Therefore, the committee recommends that the form be revised as submitted to the Judicial Council, effective July 1, 2016.

Form FL-306		
Commentator	**Comment**	**Committee Response**
Hon. Christine Copeland	FL-306- under 6b, we use "court mediator" or "family court	The committee recommends revising the form so that

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Form FL-306		
Commentator	**Comment**	**Committee Response**
Commissioner Superior Court of Santa Clara County	services" but does the phrasing used here need to conform with what we use in FL-300 items 2 and 5 ("child custody services")?	the reference is consistent with the language used in *Request for Order* (form FL-300).
Superior Court of Los Angeles County	At item 3 on the form, we propose that the language be changed to say "The orders were originally issued on, *or* the Request for Order was originally filed on (Date) :" This is clearer in those instances where no temporary orders were issued. Similarly, at item 4, we propose that the language be changed to read "The last scheduled hearing date was (date) :" This is clearer in those instances where no hearing has yet been held, there has just been a hearing scheduled.	The committee recommends that the language be changed to state "The temporary emergency orders were originally issued on *(date):* " The committee recommends revising the form as suggested by the commentator.
Superior Court of Shasta County Stacy Larson Family Law Facilitator	The FL-306 should include a box in which the bench officer re-approves the former Order Shortening Time (OST). Too often, an OST is granted for good cause with the initial Request for Orders (RFO), but the reissuance has nowhere to request a second OST with the reissuance. Unless the litigant is savvy enough to go to the bottom of the form and write in the judge's order for an OST, he/she loses the OST provision, frequently making it impossible to accomplish timely service. It would be helpful to include a note on this form, perhaps at the bottom of the page, instructing litigants (again) that a copy of this form must be attached to the original moving papers and served on the other party or parties.	The committee recommends revising the form as suggested by the commentator. The committee recommends revising the form as suggested by the commentator.
TCPJAC/CEAC Joint Rules Committee TCPJAC/CEAC	JRWG recommends that form FL-306 be approved as presented.	No response required.

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Form FL-306		
Commentator	**Comment**	**Committee Response**

Form FL-320		
Commentator	**Comment**	**Committee Response**
Hon. Christine Copeland Commissioner Superior Court of Santa Clara County	FL-320 page 2, the box at the bottom calls the DV-120 an Answer, but it's a Response.	The committee recommends that the notice about domestic violence cases be corrected and moved to form FL-320-INFO.
Christine N. Donovan, CFLS Sr. Staff Attorney Superior Court of Solano County	I would not include the proposed revisions to item 1 on the form. OSCs are jurisdictional, e.g. they give the court the jurisdiction to subject a person or entity to its orders. In fact, so long as the OSC was properly issued and served on the other party, the other party's intended appearance or non-appearance does not affect the court's jurisdiction to issue orders binding on that person. I'm not aware of any other kind of case where a party is permitted (expected?) to advise in their response whether or not they intend to appear. I believe nothing is gained from including this on the form; therefore, I would remove it.	The committee agrees with the commentator and has decided to retract the proposed revision to item 1, which circulated for comment.
Debbie Kruse Deputy Manager, Family Law Superior Court of Orange County	The intent of this section is unclear. What action is expected from the Court based on this section? If a party enters information indicating they will not appear due to work or illness might they expect that the Court will continue their matter? If there is no action to be taken based on the information, it is not needed and could lead to misinterpretation. Suggest it be removed.	The committee has decided to retract the proposed revision to item 1 of this form, which circulated for comment.
Legal Aid Foundation of Los Angeles Jimena Vasquez Staff Attorney	Item 1 from FL-320 should be removed from the form Item 1 allows the responding party to indicate whether he or she will appear at the hearing. For the reasons we give above, we believe that the Judicial Council should not	The committee agrees with the commentator has retracted the proposed revision to item 1 of this form, which circulated for comment.

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Form FL-320		
Commentator	**Comment**	**Committee Response**
	incorporate this proposed change into FL-320.	
State Bar of California, Standing Comm. on the Delivery of Legal Services S. Lynn Martinez Chair	Re Form FL-320, there should be a check box in number 1 to request a telephonic appearance and if the party will not appear, add another check box to request that the court allow the party to submit on his/her responsive declaration.	In response to the numerous concerns raised by courts, court professionals, attorneys, and legal organizations about revising FL-300 and FL-320 to identify the method of a party's appearance in the case, the committee decided to retract the proposed change to item 1.
Superior Court of Calaveras County Hugh Swift Court Executive Officer	FL-320 – Responsive Declaration, Item 1.a. and 1.b.- Assuming the Court orders the personal attendance of a party, a form which expressly provides the respondent with the option to attend, seems inconsistent with the Court's order and may be confusing. It is not entirely clear why the information regarding the other party's intent to appear would be helpful to the court. A party who states in his or her responsive declaration an intent to appear, may not appear and vice versa.	In response to the numerous concerns raised by courts, court professionals, attorneys, and legal organizations about revising FL-300 and FL-320 to identify the method of a party's appearance in the case, the committee decided to retract the proposed change.
Superior Court of Los Angeles County	**Responsive Declaration to Request for Order (FL-320)** We oppose having a box that states "I will not appear." This implies that a party has an option not to appear when ordered. This will create numerous problems.	Same as above response.
Superior Court of Shasta County Stacy Larson Family Law Facilitator	FL-320: It would be helpful to add a heading and space for a "Request for Affirmative Relief" on this form.	The form currently conforms to rule 5.92(b)(2), which provides that "[t]he responding papers may request relief related to the orders requested in the moving papers. Unrelated affirmative relief must be sought by filing a

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Form FL-320		
Commentator	**Comment**	**Committee Response**
		separate request for order as specified in (a).” The check box which states “but I consent to the following order” can be used to request relief related to the orders requested. Otherwise, for unrelated affirmative relief, responding party must file his or her own FL-300.
	Page 1, Item (4): Items (4)(b) and (4)(c)(1) appear duplicative.	The committee recommends revising the form to avoid redundancy.
	Page 2, Item (5), (6), (7), (8), (9): The language here should mirror former sections: “I do not consent to the order requested, but I consent to the following order:”	The committee agrees to incorporate some of the commentator’s suggestions into the changes being recommended to the Judicial Council relating to form FL-320.
TCPJAC/CEAC Joint Rules Committee TCPJAC/CEAC	**FL-320 – Responsive Declaration, Item 1.a. and 1.b.-** More information is needed regarding the drafter’s intent of this portion of the form For example, What happens if the respondent changes his or her mind about appearing (or not appearing) at the hearing? Is the Court to assume the respondent “consents’ to the orders requested by indicating an intent not to appear? Assuming the Court has the authority to order personal attendance based on the grounds set forth in FL-300, page 2, Item 1, a form which provides the respondent with the option to appear is inconsistent with the order to appear and creates confusion.	In response to the numerous concerns raised by courts, court professionals, attorneys, and legal organizations about revising FL-300 and FL-320 to identify the method of a party’s appearance in the case, the committee decided to retract the proposed change to item 1.

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Forms FL-311, FL-312, FL-336, FL-337, FL-341(C), FL-341(D) and FL-341(E)		
Commentator	**Comment**	**Committee Response**
California Judges Association Lexi Howard Legislative Director	**Form FL-311** There is no space on form FL-300 to list any details of the child custody parentage/visitation plan without using the FL-311 form or the space under par. 11 (Facts in Support). There are many requests for easily described or relatively minor changes to existing custody plans that could be set forth in this request which is now expanded to 4 pages, leaving the FL-311 as an option rather than using all 7 pages of both forms. It would make it easier to understand what is being requested without having to go back and forth between these two forms to compare what the existing order is with what is requested. The two forms are often mixed up with the numerous other forms submitted with the request. Another possibility would be not to have any custody information on the FL-300 (other than a check box to see the attached FL-311) and have all that information on the FL-311, making it easier for the reader to compare the existing order with what is requested.	The committee recommends providing additional space on form FL-300 (item 2) for a party to include details of the child custody parenting plan.
	FL-311 should also clearly state that it is not a court order.	The committee recommends revising the form to state that it is not a court order.
	Form FL-341(D), ADDITIONAL PROVISIONS — PHYSICAL CUSTODY ATTACHMENT. This form should be eliminated. Except for items 1 and 2, most of these "provisions" impose on the constitutionally protected custodial rights of fit parents to raise their children under US Supreme Court case law (including *Troxell v. Granville*) and should only be ordered by the court where there has been a finding based on the evidence that a parent is not fit or capable of making appropriate decisions on such issues or where the	The committee does not recommend that form FL-341(D) be eliminated. The Judicial Council approved form FL-341(D) as an optional form, effective July 1, 2004, to allow parents to obtain orders on common issues such as safety, child care, and phone contact. In its report to the Judicial Council, the committee noted that the form was developed to address the concern that many unrepresented litigants have difficulty getting guidance on how to construct an enforceable child

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	court has assumed jurisdiction in a dependency case or where the parties have knowingly and intelligently waived such rights by agreement in mediation. The family court is required to resolve disputes over child custodial arrangements based upon what arrangements appear to be in the children's best interests and is not to impose restrictions on parents in a family law proceeding to which parents not involved in such a proceeding would not normally be subject just because such provision would be best for the child. These provisions are also subject to being used coercively in negotiations by litigants seeking to control the actions of the other parent (i.e. "you can have custody only if you agree to my list of demands"). Such orders (most of which are too vague to enforce) can lead to unnecessary and seldom successful, time consuming, contempt proceedings creating additional expense for the court, including appointment of defense counsel. In the event the parents wish to agree to such provisions they should not be made into court orders but should be prefaced with an admonition that, although not enforceable as an order, a violation of such agreement could be a basis for the court modifying the child custodial arrangements. **Form FL-341(E), JOINT LEGAL CUSTODY ATTACHMENT.** Item 2(b) should be deleted. The court should not, except in	custody order. The committee anticipated that these forms would assist many litigants and ultimately save time for family court services offices.[1] Maintaining the form's availability to parties would not preclude the court from making child custody orders that are applicable to the specific facts of a case and in a child's best interests. The Judicial Council approved form FL-341E, *Joint Legal Custody Attachment*, effective July 1, 2004, to allow the court to specify the circumstances under which

[1] Judicial Council of Cal., Family and Juvenile Law Advisory Com.Rep., *Family Law: Child Custody and Visitation Orders (revise forms FL-311 and FL-341; approve forms FL-341C, FL-341D, FL-341E, and FL-355)* (Sept. 10, 2003), p. 3.

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	extraordinary circumstances where there is proof of harm to the children, be making orders restricting either parents rights concerning "Participation in particular religious activities or institutions", nor should the court be encouraging disputes concerning such provisions by reference thereto in any court form.	the *consent* of both parents is required to be obtained in order for them to exercise legal control of the child and the consequences of the failure to obtain mutual consent as required by Family Code section 3083.[2]" The check box relating to religious affiliation is a common area for discussion between parents in mediation or child custody recommending counseling. It is not meant to encourage disputes. Therefore, the committee recommends that the check box remain on the form.
	Item 3 should be modified. Line 3 states: "If a parent does not obtain the required consent of the other parent to the decisions checked in item 2:" etc. However, nothing in item 2 requires consent, it simply requires that the parties confer. The line should read: "If a parent does not obtain the consent of the other parent to any decisions in which such consent is required by a court order:" etc.	The committee recommends revising the last sentence in the opening paragraph of item 2 to state: " The parents must discuss and <u>consent</u> in making the decisions on the following matters:"
Hon. Christine Copeland Commissioner Superior Court of Santa Clara County	**Form FL-336** A fee waiver application is confidential, as is a hearing about whether you get your fee waived. I am concerned about confidentiality given that the process here instructs the moving party to serve the other side with the motion for hearing (item c, page 2). Also, at such a hearing, if the other side shows up, which they should do if they are the one being asked to pay the other party's now unwaived fees, this changes things too: instead of a closed courtroom involving one litigant, you'd have	Form FL-336 was adopted by the Judicial Council to reflect a change to Government Code section 68637. This section does not relate to hearings about the initial fee waiver application, which are confidential. The statute concerns the court recovering fees that were initially waived but, after entry of a support order or judgment, are found to be payable by one of the parties. The statute does not preclude a judicial officer from closing the courtroom to hear the matter in private.

[2] [2] Judicial Council of Cal., Family and Juvenile Law Advisory Com.Rep., *Family Law: Child Custody and Visitation Orders (revise forms FL-311 and FL-341; approve forms FL-341C, FL-341D, FL-341E, and FL-355)* (Sept. 10, 2003), p. 3.

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	two there. I am not hip to whatever changes occurred to bring about this new form/procedure, so I apologize for being out of it, but if rules were not changed so that fee waivers are still completely confidential, including hearings on whether they are granted or taken away, then there may be a problem.	
Hon. John Chemeleski Commissioner Superior Court of Los Angeles County	Comments regarding forms FL-311, FL-341(D) and FL-341(D) are the same as the comments by the California Judges Association.	See above response to the comments submitted by the California Judges Association.
Family Law Section Los Angeles County Bar Association Lynette Berg Robe, Chair	Comments regarding formsFL-311, FL-341(D) and FL-341(E) are the same as the above comments by the California Judges Association.	See response to California Judges Association.
Superior Court of Calaveras County Hugh Swift Court Executive Officer	**Form FL-336** The use of "support obligor" may not be necessary. Outside of governmental child support actions, it is unlikely the support obligor would be someone other than the Petitioner or Respondent If a child support action is initiated by the local child support agency (Petitioner) against the non-custodial parent (Respondent), the custodial parent is referred to as the "Other Parent." (See Form FL-600.)	The committee and task force recommend revising page 2 of form FL-336 to clarify its meaning and delete the term support obligor.
Superior Court of Los Angeles County	**Child Custody and Visitation Application Attachment (FL-311)** – We propose that the Judicial Council add "or Responsive Declaration to Request for Order" at the top as an option following Request for Order. This addition could be its own box, as done in the other form revisions, or be linked with the box for Request for Order. There are other discrepancies between the FL Custody attachments that could be made consistent. For example, on the FL-311, "Petition or Response" is listed as one	The committee agrees to recommend adding a checkbox for *Responsive Declaration to Request for Order* at the top of the form as an option. The committee recommends the revisions to the forms that are suggested by the commentator.

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	option, whereas on the other attachments such as the FL-341(D), Petition and Response are listed as two separate options. Perhaps this is beyond the scope of the changes being made now, but we thought it worth mentioning as a formatting issue. **Request for Child Abduction Prevention Orders (FL-312) -** All other FL Custody attachments list the Responsive Declaration by its full name "Responsive Declaration to Request for Order," so we suggest the Judicial Council make this form consistent with the others. Consistency makes the forms easier to fill out. **Proposed technical changes to related forms** **Notice and Acknowledgment of Receipt (FL-117) –** Although not included in the list of forms to be modified, we propose that the Judicial Council modify the Notice & Acknowledgment of Receipt (FL-117) form, which still refers to the Order to Show Cause, Application for Order and Supporting Declaration, and Responsive Declaration to Order to Show Cause forms. This form should be modified to refer to the Request for Order and the Responsive Declaration to Request for Order.	The committee recommends the revision to form FL-312 suggested by the commentator. The requested technical changes to form FL-117 were posted to the California Courts Web Site effective July 1, 2013.
Superior Court of San Diego County Michael M. Roddy Executive Officer	**Form FL-311** Our Family Law Facilitators have the following comments on the formatting and/or content of FL-311: Page 1 of 2 of the form, page 20 of the SPR13-22 invitation to comment Item 2.e.(4), page 1: Instead of a box that says "See Attachment 2e(4) (which isn't a form) – use the language used on the DV forms, i.e. "Check here and attach a separate piece	The committee recommends revising form FL-311 at item 2.e.(4) so that it states: "See Attachment 2e(4) (You may use Attached Declaration (form*MC-025)* for this

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	of paper if there are other visitation days and times, like holidays, birthdays, sports events. List dates and times. Write "FL-311" for a title." [This is the language used on DV-140] **Form FL-312** Our Family Law Facilitators have the following comments on the formatting and/or content of FL-312: This form is supposed to be an application/request for a child abduction prevention order, yet it reads like a questionnaire from the court to the litigant. Suggest the following: 1. Delete 2. Change to "I think the other parent might take the children without my permission to: ☐ another county in California: _____ (name of county) ☐ another state: _____ (name of state) ☐ a foreign country: _____ (name of country) ☐ The other parent is a citizen of that country ☐ The other parent has family or emotional ties to that country. Facts in support of the above: 3. I think the other parent might take the children without	purpose)." This would conform to the language in other standard FL- forms. DV- forms use a different "plain language" style that is not generally used for drafting standard family law forms. The committee recommends revising form FL-312 so that it reads more like an application or request instead of a questionnaire. Same as above response.

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	my permission because: a – e : okay 4 – 13: Okay.	No response required.
	Comments on FL-336: It appears that page 2, item #5 could be improved. Line two is poorly worded and difficult to comprehend and line three "court fees and costs" is out of place with no apparent purpose or explanation related thereto. Perhaps " 5. NOTICE TO: " should only be followed by the parties as set forth in the following two lines and there should be a #6 which addresses "COURT FEES AND COSTS: "	The committee recommends substantial revisions to page 2 of the form to clarify the purpose of the notice under Government Code section 68637.
	Comments on FL-341(C), Children's Holiday Schedule Attachment: The form only identifies the parties as petitioner and respondent. Many times this is not who the parties are who have custody of a child or children. It would be better to have choices as to the title of the litigants who have custody of a child or children.	The committee recommends revising the form to also reference "Other Parent/Party."
	There is too much on this form. The names of the holidays are too close together and it is too difficult to read across the form to line up which party would have the child or children for a particular holiday. It would be better if the holidays were numbered and the associated box has the same number. In the alternative, having a space between each holiday would make it easier to ascertain which holiday is with which party.	The committee recommends expanding the form to 2 pages to improve the ability to complete and read the information on the form. The recommended changes include providing more space between the each holiday listed in item 1's table, creating a new table for parties to include other holidays, and moving item 2 to the second page.

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	It may improve the layout for holiday parenting to have the space of an entire page. Vacation clauses could be on page 2 of the form and this would allow for better layout of this section. **<u>Form FL-341(D)</u>-Additional Provisions-Physical Custody Attachment** The form only identifies the parties as parents. It would be better to have choices as to the title of the litigants who have custody of a child or children. Boxes should be lined up better with wording. **Form FL-341(E) – Joint Legal Custody Attachment** The form only identifies the parties as parents. It would be better to have choices as to the title of the litigants who have custody of a child or children.	See above response. The committee recommends revising form FL-341(D) by deleting references to "parents" and replacing them with party designations "Petitioner," "Respondent," and "Other parent/party." The committee recommends formatting changes as suggested by the commentator. The committee recommends revising form FL-341(E) by deleting references to "parents" and replacing them with party designations "Petitioner," "Respondent," and "Other parent/party."
Superior Court of Shasta County Stacy Larson Family Law Facilitator	**Form FL-311** Page 1, Item (1): It would be helpful if the first line typed for the child's name aligned properly to the first line under each custody column. Page 1, Item (2)(c): Our court is a recommending county; it is not appropriate to refer to "mediation" and can be confusing to litigants. Perhaps we could change this to "mediation or child custody recommending counseling." Page 1, Item (2)(e), (2)(e)(2), (2)(e)(3): It would be helpful to add a box for "Other Party" as the other parent is often listed as the "other party" if the case originated as a child-support case	The committee recommends the suggested formatting revision to form FL-311. The committee recommends revising item 2c to also refer to child custody recommending counseling. The committee recommends revising this for to include entries for "Other parent/party."

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

	filed by the LCSA. Also, when grandparents seek visitation, they are the "other party" or "claimant."	
	Page 1, Item (1)(2) and (3): Previous drafts of the form did not allow enough room to type "after school" or "before school" in the "time" box. It would be helpful if this space could be added as exchanges often occur after or before school.	The committee recommends revising items (1)−(3) to include check boxes for "start of school" and "after school."
	Page 1, Item (2)(e)(2) & (3): It is not clear why we need the "petitioner" and "respondent" boxes in these sections as the checkboxes at Item (2)(e) would appear to carry over throughout all subsections.	The committee recommends revising item 2e(2) and (3) as suggested by the commentator.
	Page 1, Item (2)(e)(4): More space would be useful here to type in customized arrangements without adding an additional page for a mere 3-4 lines of text.	The committee recommends revising item 2e(4) to allow parties additional space to write their parenting time arrangements.
	Page 2, Item (4)(e): This item should not be a checkbox item. It is not a checkbox item on the FL-341, and the two forms should be similar—either both checkboxed items or both not checkboxed items.	The committee recommends revising the form to delete the check box in front of item 4e and renumber it 4a.
	Page 2, Item (5): Our court interprets this provision (and similar provisions on the FL-311, etc.) as pertaining to only moving the child out of the state or county for purposes of changing residency. If this is the intent, the provision should be reworded to avoid the confusion this causes litigants who believe that on their own parenting time, they cannot take the child out of county/state to visit family, attend events, etc.	Item 5 (Travel with the children out of state) is not meant to pertain only to move-away cases. Therefore, the committee does not recommend these revisions to form FL-311.
	Form FL-341(C) Christmas Eve, Christmas Day, and Easter should be listed separately. I assume they are deleted due to political	The committee prefers to recommend revising the form to provide a blank holiday table so that parties can list

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	correctness; however, these are major holidays to a large number of litigants, and their absence on the form (except in general terms of "winter" or "spring" break) means they are omitted in many circumstances, causing much conflict when those holidays are approaching. When children are not yet in school, the winter/spring breaks appear irrelevant to the litigants.	the holidays that are observed in their families.
TCPJAC/CEAC Joint Rules Committee TCPJAC/CEAC	JRWG recommends that forms FL-311, FL-312, FL-337, FL-341 (C), FL 341 (D), and FL-341(E) be approved as presented. **FL-336** Modify 1 of form to move boxes noting 'default or uncontested', 'by declaration under Family Code section 2336' and 'contested' to add as a new item 'e.' in the list of items. These references are generally used with Trials; including them with the Request for Order is confusing. Item 'e' should note a box for 'trial' and then the above noted descriptors. The current item 'e' should be relabeled to 'f' and 'f other' should be relabeled to 'g'. Cosmetic changes – on page 2 the item labeled 5 should be 4. Also in that area, the words 'court fees and costs' should be lined up under the corresponding box. We recommend using a more user-friendly term than "obligor" for the general public. This is not a user-friendly term for the general public, even though it is a term used in many Family Law areas and forms. There may not be an easier way to state this.	No response required. The committee prefers to list the types of proceedings at the beginning of the form. Therefore, they recommend moving the *Request for Order* information (currently item e) to the second line of item 1. The committee recommends revising the check box in item 1 to read "Contested or Trial." The committee recommends various changes to page 2 of the form, including renumbering the items relating to the notice. The committee agrees to replace "support obligor" with "the party ordered to pay the initial fee waiver recipient's previously waived court fees and costs."

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ATTACHMENT B

Comments from proposal W14-12 (circulated in 2014)

Family Law: Changes to Request for Order Rules and Forms (Amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94; 5.151, and 5.170; adopt form FL-303; and revise forms FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, Fl-341, FL-341(A), FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	**Position**	**Comment**	**Committee Response**
1.	Aderant Victoria Katz Rules Attorney	N/I	See comments on rule 5.63 below	See response to specific provisions below
2.	Hon. John Chemeleski Commissioner Superior Court of Los Angeles County	D	See comments on specific provisions below	See response to specific provisions below
3.	Harriett Buhai Center for Family Law Meredith Alexander Staff Attorney	AM	**Proposed Global Revision to delete all references to parents and replace with parties:** We believe that adding other parent/party to all the forms is confusing and will make the forms difficult for self-represented litigants to complete. In most cases, the Petitioner and Respondent are the parents. In actions involving local child support agencies, different forms are often used. Self-represented litigants may list the Respondent or Petitioner as the Other Parent/Party by mistake. This will end up with their requests being confusing to the court, and/or orders that are misleading and difficult to enforce. See additional comments on specific provisions below.	The commentator refers to the proposed changes to the attachments to form FL-300: FL-341(C), FL-341(D), and FL-341(E). Revising these forms by including an entry for Other Parent/Party will make them consistent with caption in the main *Request for Order* (form FL-300), which already contains these party references. In addition, this change would improve these forms by allowing for cases in which the petitioner may not be a parent, such as in actions involving a local child support agency (who may be listed as the petitioner in the case), or cases in which the court grants custody or visitation rights to a child's grandparent or another relative. The fact that a party can cross-check the party titles against the *Summons*, *Petition*, *Response*, *Request for Order*, when completing any one of the above forms increases the possibility that a party will complete them correctly.
4.	Kristen E. Hoadley Senior Court Staff Attorney Superior Court of San Francisco	N/I	See comments on specific provisions below	See response to specific provisions below
5.	Virginia Johnson	N/I or	See comments on specific provisions below	See response to specific provisions below

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List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	**Position**	**Comment**	**Committee Response**
	Staff Attorney Superior Court of San Diego County	AM?		
6.	Stacy Larson Family Law Facilitator Superior Court of Shasta County	AM	See comments on specific provisions below	See response to specific provisions below
7.	Mark W. Lomax Attorney at Law	AM	See comments on form FL-300 below	See response to specific provisions below
8.	Los Angeles Center for Law and Justice Suma Mathai, Esq. Supervising Family Law Attorney	AM	See comments on specific provisions below	See response to specific provisions below
9.	Los Angeles County Bar Association Family Law Section Seth Kramer, Chair	N/I	See comments on specific provisions below	See response to specific provisions below
10.	State Bar of California Family Law Section Saul Bercovitch Legislative Counsel	AM	See comments on specific provisions below	See response to specific provisions below
11.	The State Bar of California Office of Legal Services Standing Committee on the Delivery of Legal Services Elizabeth Bluestein, Chair	N/I or A?	The changes to the Form FL-300 address most of the concerns raised previously about the form and are very necessary. The proposed form as amended will make it easier for self-represented litigants to ask for court orders. They will need to distinguish between a motion and other types of orders. Similarly, the addition of a check box for "Temporary Emergency Orders" and language about an appointment with Family Court Services will make it clearer for the litigant and easier to process for court staff, which is important in terms of court resources.	No response required to this general comment.

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List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	**Position**	**Comment**	**Committee Response**
			The references to related optional forms are very helpful. SCDLS agrees with the proposed changes to the rules as necessary and language used will be more easily understood by self-represented litigants. As a result, the changes will improve how the forms are completed by parties and processed by the courts.	Same as above response.
12.	Superior Court of Los Angeles County	AM	See comments on specific provisions below	See response to specific provisions below
13.	Superior Court of San Joaquin County Erica A. Ochoa Court Records Manager	N/I	The proposed changes are basic and will provide much needed clarification to courts while still allowing individual autonomy to make necessary changes to current practices in order to implement the new forms. It is difficult to quantify the cost savings to the court, mainly because it would require time keeping mechanism to track current processing time vs. processing time when the forms change. We can see that changes to the forms will streamline processing which manifests itself as saved time which in turn converts to saved money. In our situation we will not need to make any changes to our current CMS. The proposed change will only affect staff training and manual processing.	See response to specific provisions below No response required. No response required.

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List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	**Position**	**Comment**	**Committee Response**
			Two months is enough time to implement changes, train staff, and replace forms. See additional comments on specific provisions below	No response required. See response to specific provisions below.
14.	Superior Court of Santa Barbara County Deborah Mullin Family Law Facilitator	AM	See comments on specific provisions below	See response to specific provisions below
15.	Superior Court of Santa Clara County Christine Copeland Commissioner	A	See comments on specific provisions below	See response to specific provisions below
16.	Superior Court of Sonoma County Joyce MacLaury Family Law Facilitator	AM	See comments on rulr 5.62 below.	See response to specific provisions below
17.	Hon. Rebecca Wightman Commissioner Superior Court of San Francisco County	N/I	See comments on specific provisions below	See response to specific provisions below
18.	Hon. Charlotte Walter Woolard Supervising Judge Superior Court of San Francisco County	N/I	See comments on specific provisions below	See response to specific provisions below

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Rules 5.12		
Commentator	**Comment**	**Committee Response**
Stacy Larson Family Law Facilitator Superior Court of Shasta County	Subdivision (a): The CCP sections are referenced beginning and end (e. g., "under Code of Civil Procedure sections 2016.010 through 2036.050") but does not do so for the reference to the Family Code (e. g., "and Family Code section 2100 et seq. regarding disclosure of assets and liabilities"). For uniformity and clarity, it would be helpful to reference beginning and end of the relevant Family Code sections (e. g., "and Family Code section 2100 through 2113 regarding disclosure of assets and liabilities").	The committee recommends revising rule 5.12 as suggested by the commentator.
Superior Court of Los Angeles County	Agree with proposed changes.	No response required.

Rules 5.62		
Commentator	**Comment**	**Committee Response**
Virginia Johnson Staff Attorney Superior Court of San Diego County	*Rule 5.62 (a)(5), should be made clear if it includes filing an opposition to a request for order, whether agreeing or disagreeing with the requested relief.	Based on the comments received opposing the proposed amendment to the rule, the committee recommends not amending rule 5.62 to include item (a)(5).
Stacy Larson Family Law Facilitator Superior Court of Shasta County	I agree with the proposed changes.	No response required.
Superior Court of Los Angeles County	We have significant concerns about this proposed rule of court, specifically the use of the phrase "or stipulation" at item (a)(1) and item (a)(5) in its entirety. We strongly object to adopting these changes as is, although we appreciate the intention of the drafters to make the court process more accessible to self-represented litigants. (a) Appearance	Based on the comments received opposing the proposed amendment to the rule, the committee recommends not amending rule 5.62 to include item (a)(5).

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Rules 5.62		
Commentator	**Comment**	**Committee Response**
	(1) Do Not Agree with proposed changes. COMMENTS: The phrase "or stipulation" is overbroad and ambiguous. Do the drafters intend that any stipulation in a case, even a Conciliation Court Agreement will constitute a general appearance? As discussed further below, we are concerned about expanding the manner in which respondents are deemed to make a general appearance when they have not knowingly and intentionally file documents designed to make such an appearance. We recommend that the language be amended as follows: Replace "stipulation" with the words "stipulation for general appearance." OR, Delete the words "or stipulation"	Based on the comments received opposing the proposed amendment to the rule, the committee recommends not amending rule 5.62 to include item (a)(5). The committee recommends deleting the word "stipulation" from rule 5.62(a)(1).
	(2) Agreed. (3) Agreed. (4) Agreed. (5) Do Not agree with proposed changes. COMMENTS: We believe that this rule is overbroad. Nearly any court appearance or document filed could constitute "seeking to obtain a ruling or court order that goes to the merits of the case." Filing a Request for Order appears to fall under this rule, as does filing a Responsive Declaration. What about appearing at a court hearing or mediation appointment? Or signing a Conciliation court / settlement agreement?	Based on the comments received opposing the proposed amendment to the rule, the committee recommends not amending rule 5.62 to include item (a)(5).

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Rules 5.62		
Commentator	**Comment**	**Committee Response**
	Presumably the litigant is appearing at the court to obtain a ruling or court order. We ask that if the drafters continue with this rule change, that they clarify which actions constitute a general appearance under the new parameters. We believe that the drafters of this rule may be trying to protect some respondents who, due to their lack of understanding of basic civil procedure, appear repeatedly at hearings in a matter, but never file a response. As a result, they can be defaulted out of the case. We appreciate and share this concern. However, we think this rule overreaches and could harm both parties at the expense of trying to protect respondents. Moreover, we believe that respondents should have the right to decide whether they want to make a general appearance and when they want to participate in only a portion of the action. Additionally, we believe that this rule will lead to inefficiencies in the court system, require additional hearings and trials, and that it implicates changes to the Family Code, Code of Civil Procedure and numerous court forms and instructional materials. The proposed rule does not anticipate nor offer suggestions for these necessary related changes. Impact of Proposed Rule on the Court: Dissolution of Marriage/Domestic Partnerships Cases (Legal Separation and Nullity)	Based on the comments received opposing the proposed amendment to the rule, the committee recommends not amending rule 5.62 to include item (a)(5). See above response.

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Rules 5.62		
Commentator	**Comment**	**Committee Response**
	a) The proposal may be designed to reduce the number of litigants who file numerous RFOs seeking to obtain ruling or court orders on the merits of the case without filing a Response to the Petition. Therefore, possibly promoting decreases in court appearances, court filings, and tasks for court staff to perform. However, although the respondents in such situations will be deemed to have made a general appearance, the rule does not limit the number of times they come to court.	Based on the comments received opposing the proposed amendment to the rule, the committee recommends not amending rule 5.62 to include item (a)(5).
	b) Self-represented litigants need to be advises or warned about the face that filing certain forms or appearing at court hearings will result in a general appearance. The current Summons (FL-100) indicates that only the filing of a Response (FL-120) will prevent the entry of a default. However, the proposed rule indicates that default cannot be entered where respondent appears at conciliation court, any court hearing, or files a Responsive Declaration or Request for Order. Therefore, these forms would also need to be modified to include a warning or advisement that signing or filing these documents will constitute a general appearance.	Same as above response.
	c) Moreover, given the large number of self-represented litigants in family court, the term general appearance" should be explained in layman's terms, e.g. a default cannot be entered against you, or you will be required to fully participate in the case, etc.	Same as above response.
	d) Default filings/Default judgments could decrease as a result of the proposed rule because respondents making a general appearance in a case will not have a default	Same as above response.

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Rules 5.62		
Commentator	**Comment**	**Committee Response**
	entered against them. e) At first it might appear that the Court could see a decrease in the staff and bench time spent reviewing and processing proposed default judgments as a result of decreased filings of default judgments. However, this rule also burdens the court administrative staff who process defaults and default judgments. Under current law, default can be entered as long as there is a valid Proof of Service of Summons and no Response. However, because the Rule lists numerous other acts that now constitute a general appearance, court staff will be required to review every minute order to see if the respondent appeared at a hearing and carefully read the case summary to see if any conciliation court agreements or other stipulations have been entered, or if any relief was sought by respondent on any merits of the case. f) While cases proceeding by default will decrease, more complicated contested cases will increase. Any case in which parties have reached a partial settlement or have obtained temporary orders will now be considered a contested case. g) In contested cases, both parties are required to file preliminary and final declarations of disclosure, appear at a Trial Setting Conference, attend mandatory mediation, attend trial, and possibly be assigned the task of preparing a judgment. h) Should the respondent not comply with these obligations, he or she will be subject to sanctions. As a result, a simple dissolution case in which both parties	Based on the comments received opposing the proposed amendment to the rule, the committee recommends not amending rule 5.62 to include item (a)(5). Same as above response. Same as above response. Same as above response.

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Comments from proposal W14-12 (circulated in 2014)
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Rules 5.62		
Commentator	**Comment**	**Committee Response**
	have acted in their own interest to reach a settlement agreement on some issues, now results in a lengthy and expensive court process as described in the following scenario: A. Both parties are now forced to miss work and/or school, find child care, pay for travel expenses and parking. Both must pay court fees and fees for legal assistance. B. Should respondent decide not to fully participate in the action, fail to file his disclosures, and miss court hearings, petitioner now bears the burden of trying to seek compliance from a party who never intended to participate in the first place. C. Instead of simply preparing a default judgment, a process that rarely requires a court appearance, the petitioner must now attend several trial setting conferences and obtain a waiver of respondent's preliminary and final declarations of disclosure. D. Additionally, having never filed a response, the respondent's true contentions are unknown. The judgment reached will ultimately be a default judgment as only the petitioner will be present to make argument.	Based on the comments received opposing the proposed amendment to the rule, the committee recommends not amending rule 5.62 to include item (a)(5).
	i) The proposed language will increase case management tasks for court staff and Judicial Officers now that both parties have appeared in the case (and a judgment	Same as above response.

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Rules 5.62		
Commentator	**Comment**	**Committee Response**
	cannot be obtained by default). Paternity Cases j) The proposed language will have a similar effect in parentage cases. It could increase case management tasks for court staff and Judicial Officers. Family Code 3040 provides for a child to have more than two parents. Although petitioner could default one parent, petitioner would have to finalize their case by entering a stipulation (settlement) or trial for the third parent. ***Impact of Proposed Rule on Self-Represented Parties****:* k) The proposed language will reduce the ability of respondents to avoid a general appearance by choosing not to file a Response in a case. This promotes the involvement of both parties in the resolution of the merits of their case. However, it also takes away a respondent's choice about whether to participate in a portion of the case without being obligated to participate fully in the action. l) By filing a response or a notice of appearance, a respondent is knowingly and deliberately seeking to participate in the court process. By filing a Responsive Declaration contesting a petitioner's custody request, a respondent is seeking only to contest a specific issue in the case. He or she may only be trying to protect his right to visit with his children, without any desire to contest other issues in the case. However, the proposed rule treats all respondents the same. m) As noted above, once respondent has made a general appearance, he or she will be required to file necessary	Based on the comments received opposing the proposed amendment to the rule, the committee recommends not amending rule 5.62 to include item (a)(5). Same as above response. Same as above response.

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Rules 5.62		
Commentator	**Comment**	**Committee Response**
	forms/pleadings and to appear/participate in the process necessary to complete the judgment phase of their case (e.g. filing PDD and/or FDD, MSC, etc.) n) When parties file Requests for Orders seeking pendente lite relief, the request will not address the merits of the entire case (e.g. characterization of assets and debts, division of community assets and debts, separate property contentions, and claims of credits or reimbursement in their case). However, the respondent who participates in the RFO process will be deemed to have made a general appearance, without having specifically responded to all issues. **To remedy the potential deficiency, Rule 5.62 could include the following language.** Add subsection 6 to the proposed rule to state the following: "A Response must be filed when a respondent or defendant files forms seeking to obtain a ruling or court order that goes to the merit of the case." o) As noted above, respondents who are reluctant or have no true intentions to participate in the overall merits of the case will now be forced to participate in the action in its entirety. This includes respondents who would have otherwise agreed to a default. p) The proposed language could increase delays in obtaining judgments because a general appearance will obligate respondents who would otherwise be in default to comply with disclosure requirements,	Based on the comments received opposing the proposed amendment to the rule, the committee recommends not amending rule 5.62 to include item (a)(5). Therefore, the committee does not recommend adding the proposed subdivision (a)(6).

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ATTACHMENT B

Comments from proposal W14-12 (circulated in 2014)

Family Law: Changes to Request for Order Rules and Forms (Amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94; 5.151, and 5.170; adopt form FL-303; and revise forms FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, Fl-341, FL-341(A), FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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Rules 5.62		
Commentator	**Comment**	**Committee Response**
	discovery, subpoenas, trial setting conferences, etc.	
Superior Court of Sonoma County Joyce MacLaury Family Law Facilitator	I would agree with the proposed changes if it included clarification as to what specific filings would constitute an appearance because the rule as stated is vague and likely to cause confusion as to when a party has actually made an appearance. Under CRC 4.501, default is allowed against anyone who has failed to make such an appearance, and given the uncertain nature of the language, this would require that a determination be made each time a default is sought. How would a self-represented person make such a determination? Other parts of the rule refer to specific filings – a Response, Motion to Strike, motion to transfer, or notice of appearance. If the proposed rule referred added clarifying language referring to specific filings, for example, by filing a Request for Order and clarified whether it included a Responsive Declaration to a Request for Order, or other specific filing.	Based on the comments received opposing the proposed amendment to the rule, the committee recommends not amending rule 5.62 to include item (a)(5).

Rules 5.63		
Commentator	**Comment**	**Committee Response**
Aderant Victoria Katz Rules Attorney	According to the W14-12 Invitation to Comment, CRC 5.63 "would be amended to delete the reference to 'motions. Instead, 'motions' would be replaced with 'request for order'." In section (b) of this Rule, however, it seems that one reference to "motion" inadvertently was not changed. As set out in W14-12, p. 16, proposed CRC 5.63(b) says:	The committee recommends amending the rule to include the commentator's suggestions.

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Rules 5.63		
Commentator	**Comment**	**Committee Response**
	The ~~motion~~ request for order to quash must be served in compliance with Code of Civil Procedure section 1005(b). If the respondent files a ~~notice of motion~~ request for order to quash, no default may be entered, and the time to file a response will be extended until 15 days after service of the court's order denying the motion to quash. The deadline in last sentence continues to state the deadline therein as "15 days after service of the court's order denying the ***motion*** to quash." [Emphasis added.] We respectfully request that this reference to "motion" be replaced with "request for order."	The committee recommends amending the rule to include the commentator's suggestions.
Stacy Larson Family Law Facilitator Superior Court of Shasta County	I agree with the proposed changes.	No response required.

Rules 5.92		
Commentator	**Comment**	**Committee Response**
John Chemeleski Superior Court Commissioner Superior Court of Los Angeles County	**Proposed Changes to Rule 5.92(b)(4):** Court order for other party to personally attend the hearing. The proposed rules and forms do not adequately inform the parties of whether or not their personal appearance is required or the consequences of not appearing in person. This is especially significant for parties who live far away from the courthouse and/or have limited transportation options. The parties should be informed that they may appear by counsel and/or by submitting the matter on the basis of the declarations and other documents and in some circumstances appear (but not testify) by telephone.	The committee does not recommend the language at rule 5.92(b)(4) that circulated for comment in the winter 2014 cycle relating to an order to appear. The committee recommends revising *Request for Order* (form FL-300) instead of rule 5.92 to inform a responding party about the consequences of serving and filing a *Responsive Declaration to Request for Order* (form FL-320-INFO) and not appearing at the hearing. The committee futher recommends a new information

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Comments from proposal W14-12 (circulated in 2014)
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Rules 5.92		
Commentator	**Comment**	**Committee Response**
		sheet (form FL-320-INFO) to provide more guidance to a responding party about how to complete and process form FL-320.
	To help clarify this, the forms and rules should provide that personal appearance should only be compelled by subpoena.	The committee recommends revising form FL-300-INFO to provide information about using a notice in lieu of subpoena or a civil subpoena to compel the attendance of the other party at the hearing. The committee also recommends that the Center for Families, Children & the Courts develop content for the California Courts Online Self-Help Center to provide information about these tools.
	Rule 5.92(d)(1(A)) would require that any RFO containing a "temporary emergency order" (TEO) be served in the same manner as a summons including persona; service. This puts a party who obtains a TEO in a more difficult position than one who serves an RFO without the TEO (which can be served as a motion if the other part has made an appearance). Although the requesting party should be advised that the TEO may not be enforceable if not personally served that party should still be able to proceed with the RFO if service can otherwise be completed under 5.92(d)(3) under CCP sec.1010 et seq.	Rule 5.92(d)(1)(A) is a recommended amendment to clarify the meaning of current rule 5.92(a)(6), which requires service in the manner of a summons if the request for order being served contains court orders pending a hearing.
Virginia Johnson Staff Attorney Superior Court of San Diego County	*We often get RFOs from both attorneys and SRLs where we have no idea what statute or rule of court is being relied upon for the relief, particularly in sanctions, attorney's fees and set asides. It would be very helpful if the moving party is at least asked to state the legal basis for the relief.	Rule 5.92 permits the court to require the filing of a memorandum of points and authorities on a case-by-case basis.

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Family Law: Changes to Request for Order Rules and Forms (Amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94; 5.151, and 5.170; adopt form FL-303; and revise forms FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, Fl-341, FL-341(A), FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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Rules 5.92		
Commentator	**Comment**	**Committee Response**
	[Therefore, subdivision (b)(1) should be revised as noted:] The *Request for Order* (form FL-300) must set forth facts sufficient to notify the 2 other party of the declarant's contentions in support of the relief requested and should include the statutory or legal basis for the relief sought.	The rule currently provides that a *Request for Order* does not require the submission of a memorandum of points and authorities, unless required by the court on a case by case basis. A blanket requirement that a party submit the statutory or legal basis for the relief sought is tantamount to requiring points and authorities. For this reason, the committee does not recommend the change suggested by the commentator.
	Subdivision (b)(3)(B) should be revised because the language might cause some confusion. It might be better to have a separate subsection (see proposed language below) for orders shortening time. Complete and include a proposed *Temporary Emergency Orders* (form FL 305) with the *Request for Order* (form FL-300), ~~except when the moving party only seeks an order shortening time~~; (4) If the moving party seeks only an order shortening time and no *Temporary Emergency Orders*, the moving party must: (A) Complete the *Request for Order* (form FL-300) including item #9; and (B) Comply with the specified local court procedures and/or local court rules about reserving the day for the emergency hearing, submitting the paperwork to the court, and use of local forms. (C) The moving party is ***not*** required to give notice to the other party as describe in rules 5.151 through 5.169	The committee recommends amending the rule to add a separate subdivision (f) relating to requests for an order shortening time. The committee recommends that the court be permitted to use form FL-300, in the "Court Order" section, to reflect orders shortening time granted at the moving party's request. The committee recommends that rule 5.92 require that a party seeking an order shortening time to comply with the requirements for requests for temporary emergency Orders under rules 5.151 through 5.169. This will reflect the current procedures in local courts.

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Rules 5.92		
Commentator	**Comment**	**Committee Response**
	Subdivision (b)(3)(C): Requiring the procedures to be in the local rules is often problematic because of timing and procedures that may need to be changed mid-year for unpredictable reasons.	The committee recommends deleting the reference in rule 5.92 to local rules.
	(C) Comply with specified local court procedures and/or ~~specified in~~ local court rules about reserving the day for the emergency hearing, submitting the paperwork to the court, and use of local forms.	The committee recommends amending the rule as suggested by the commentator.
	Subdivision (b)(4)(A): Regarding the rule that states the moving party is not required to pay an additional filing fee if requesting a court order for the other party to appear at the hearing. Does this mean the court cannot charge the party for the ex parte appearance to get the OST plus charge for the RFO itself? If so, it should be deleted. My understanding is that the Govt. Code allows the court to charge for the two separate matters.	In response to the comments opposing the language in subdivision (b)(4)(A), the committee deleted it from the proposal that recirculated for comment in spring 2015.
	Subdivision (b)(4)(C): About the requirement that a moving party is not required to complete a proposed form FL-305 when requesting an order for the other party to appear at the hearing, How does the court make the order without the moving party requesting it by ex parte application?	In response to the comments opposing the language in subdivision (b)(4)(C), the committee deleted the language from the proposal that recirculated for comment in spring 2015.
	Subdivision (c)(2): Is the language in this rule meant to allow the judge to delegate to the clerk the authority to order the appearance of the other party if requested in the RFO which would eliminate the need for the ex parte appearance?	The language was not meant to allow the judge to delegate to the clerk the authority to do any act that requires judicial discretion.

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Rules 5.92		
Commentator	**Comment**	**Committee Response**
Stacy Larson Family Law Facilitator Superior Court of Shasta County	**Subdivision (b)(2):** It is definitely helpful to clarify that the FL-150 Income and Expense Declaration (I & E) must be filed with any Request for Orders "when relevant to the relief requested" (regardless of whether a current form is on file with the court, as stated in the previous version). However, there is a vast disparity in how individual courts handle a party's failure to concurrently file an FL-150 Income and Expense Declaration. Some clerks' offices refuse to file the Request for Orders unless an I & E is attached; some judges deny the motion as incomplete and lacking evidentiary supporting facts, requiring litigants to refile their motions and lose their "effective" date for modification/establishment of support orders; other courts simply grant a continuance and require the parties to file their updated I and E. It would be helpful to include information regarding how the omission (or late filing) will be remedied.	The committee prefers not to recommend amending rule 5.92 to specify the consequences for failing to file an *Income & Expense Declaration* (form FL-150) with the *Request for Order* (form FL-300). A judicial officer has the discretion to make that determination on a case-by-case basis.
	Subdivision (b)(3): The clarification regarding seeking temporary emergency orders outlined in this section is very helpful.	No response required.
	Subdivision (b)(4): The information provided in this section is helpful; however, more clarification regarding how a litigant would obtain a court order for the other party to attend the noticed hearing on the regular calendar is needed. Oftentimes, the reason the moving party is requesting that the Court order the other party to appear is that the other party has not yet appeared in the case.	In response to the comments opposing the language in subdivision (b)(4), the committee deleted the language from the proposal that recirculated the rule for comment in spring 2015. The committee recommends revising information sheets and providing new web content about notices in lieu of subpoena and civil subpoenas, which are tools a party can use to compel the other party to appear at the hearing.

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Rules 5.92		
Commentator	**Comment**	**Committee Response**
	When this is done as part of the emergency temporary order process, the initial petition/summons, RFO, and temporary order can all be personally served on the respondent at the same time, giving the Court jurisdiction over the respondent and ordering the respondent to appear at the subsequent noticed hearing for referral to child custody recommending counseling, etc. When no emergency temporary order is sought, this code section in conjunction with CRC 5.170 seems to state that the litigant can submit the RFO to the court for "issuance" of the RFO with a court order that the other party personally appear in the case. Since this would be a separate ex parte request made by the party, it would be helpful to bench officers if the factual basis supporting the request was separate from the declaration explaining the factual basis for all other orders requested. These ex parte requests for a court order that the other party personally appear need to be processed quickly so that the RFO can be issued, a court date set, and the papers timely served prior to the court date. Self-represented litigants are likely to not provide a factual basis to support this ex parte order for personal appearance or are likely to bury the factual basis in a voluminous, difficult-to-read declaration that explains their reasoning for seeking custody/parenting time orders, child support changes, etc.	In response to the comments opposing the language in subdivision (b)(4), the committee deleted the language from the proposal that recirculated the rule for comment in spring 2015. The committee recommends revising information sheets and providing new web content about notices in lieu of subpoena and civil subpoenas, which are tools a party can use to compel the other party to appear at the hearing.
	Subdivision (b)(5): Previously, at CRC (a)(6), the rule clarified that "The moving party must file the documents with the court to obtain a court date and then serve a copy on the responding party." Similar language now appears at Subdivision (b)(5). This causes a great deal of needless work as it required litigants to wait in the long lines of our Family Law Facilitator's Office	In the report to the Judicial Council dated January 5, 2012, the Family and Juvenile Law Advisory Committee and the Elkins Family Law Implementation Task Force acknowledged receipt of comments suggesting that the rule clarify that the *Request for Order* must be filed with the court to obtain a court date or to obtain ex parte court

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Rules 5.92		
Commentator	**Comment**	**Committee Response**
	to obtain help with preparing their Request for Orders (RFO), go upstairs and stand in the long lines of our Civil Division to file the documents and have the court date filled in, then come back downstairs to obtain assistance in serving the other party. Local private attorneys have also complained as the prior procedure of having the documents filed/served all at once was more efficient and allowed motion-type RFOs to be mail served on litigants more quickly than waiting for the filed RFO to be returned to them via their "will call" boxes before serving it. It is not clear why the papers (when they are in the form of a motion rather than Order to Show Cause) must be filed before they are served nor is it clear why the parties must file the papers to obtain a court date when many courts (like ours) allow the parties to set their own dates on the appropriate calendar. I suggest omitting this requirement; if deemed necessary, we could replace it with more generic instruction such as "The moving party must file the documents with the court clerk and have them served on all parties to the case within the timelines required by law." As a side note, it is helpful to clarify that the moving party must have the documents served rather than "serve a copy on the responding party" as this language can be misconstrued to allow the moving party to personally serve the documents rather than having them served by a person over the age of eighteenwho is not a party to the case. **Subdivision (c)(1):** This subdivision may be misconstrued to allow the court clerk to issue an RFO for the parties to attend orientation and confidential mediation or child custody	orders before service on the responding party. The committee and task force also acknowledged that, in some courts, the practice has been to allow attorneys to obtain court dates for motions without filing the motion first. The committees decided that the better practice was to require filing before service and made that change. The report is found at http://www.courts.ca.gov/documents/jc-20120124-itemA5.pdf (see page 5). The committee recommends amending the rule to avoid the perception that the moving party is able to serve the other parties with the request and supporting documents. The purpose of the rule is to authorize the court clerk to issue the *Request for Order* for the parties to attend orientation and confidential mediation or child custody

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Rules 5.92		
Commentator	**Comment**	**Committee Response**
	recommending counseling in all courts. Our court does not allow referral to child custody recommending counseling and orientation prior to the noticed hearing. This could be easily clarified by adding some language such as "For the parties to attend orientation and confidential mediation or child custody recommending counseling if authorized by the local court rules and procedures; and" § Subdivision (d)(1): The proposed additions here are very helpful.	recommending counseling in all courts. The rule does not mandate that court clerks perform these functions in all courts.
	Subdivision (d)(1): The proposed additions here are very helpful.	No response required.
	Subdivision (d)(2): For the purposes of completeness, it would be helpful to add "petitions or custody and support" to our laundry list of cases that may have been taken to judgment, triggering this requirement. Because voluntary declarations of paternity have become so prevalent, our court is seeing a large increase in cases initiated by petitions for custody and support and a significant decrease in filing of UPA actions. There seems to be a longstanding misconception across the state that petitions for custody and support cannot be taken to judgment, but there is no authority to support this view. The FL-230/FL-250/etc. forms are designed to take both paternity (UPA) and petitions for custody/support to judgment. CRC 5.83, governing case management for family-law cases, leaves out petitions for custody and support, leading some bench officers to not include them in the "family centered case resolution process." These are the cases that are most often dismissed under the failure to- prosecute statutes for not being served within three years or not being brought to judgment within 5	After further consideration, the committee does not recommend adding actions for custody and support to the list in rule 5.92 because those actions are not specifically covered in Family Code section 215. Even though forms FL-230 and FL-250 are designed to take custody and support petitions to judgment, the committee believes that a legislative solution may be needed to address the issue raised about actions for custody and support and requiring entry of a judgment in those actions to prevent their dismissal under the law for failure to prosecute.

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Rules 5.92		
Commentator	**Comment**	**Committee Response**
	years. Unfortunately, litigants frequently obtain custody orders in these cases and think they are done. If not included in the case management process, they are never told that they need to take their cases to judgment, and their cases are ultimately dismissed for failure to prosecute, dissolving their hard-won custody orders. **Subdivision (e) *(now (g))*:** In the first sentence, it would be helpful to clarify "have served" rather than "must complete, file and serve . . ."	The committee recommends the change to rule 5.92 suggested by the commentator.
Los Angeles County Bar Association Family Law Section Seth Kramer, Chair	Rule 5.92(d)(l(A)) would require that any RFO containing a "temporary emergency order" (TEO) be served in the same manner as a summons including personal; service. This puts a party who obtains a TEO in a more difficult position than one who serves an RFO without the TEO (which can be served as a motion if the other part has made an appearance). Although the requesting party should be advised that the TEO may not be enforceable if not personally served that party should still be able to proceed with the RFO if service can otherwise be completed under 5.92(d)(3) under CCP sec.lOlO et seq.	Rule 5.92(f)(1)(A)) reflects rule as it was adopted by the Judicial Council effective July 1, 2012. The committee does not recommend the changes proposed by the commentator.
State Bar of California Family Law Section Saul Bercovitch, Legislative Counsel	This rule tells the Respondent the FL-150 or FL-155 must be filed along with the Responsive Declaration *"when relevant to the relief requested.*" This language might be unclear for those not experienced in family law. We recommend the rule be changed to read that an FL-150 or FL-155 must be filed "*when a party seeks relief such as spousal support, child support or attorney's fees*."	Because a party may not complete form FL-155 when requesting orders for attorney's fees and costs and spousal or partner support, the committee does not recommend revising the form as suggested. To address the commentator's concerns, the committee recommends amending rule to clarify when a party must use form FL-150 and when FL-155 may be used.

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Rules 5.92		
Commentator	**Comment**	**Committee Response**
Superior Court of Los Angeles County	Agree with proposed changes only if modified. COMMENT: The titles used in this Rule are ambiguous and do not follow the content of the rule. The following suggestion harmonizes the title with the content of the rule and its subsections. a) The title should be renamed from "Request for court order; response" to "Request for court order; Procedures for Application and Response" b) Subsection (a)'s title should be renamed from "Request for order; procedures" to "Application" c) Subsection (b)'s title should be renamed from "Required forms; filing procedure" to "Required forms and filing procedure" d) We propose deleting subsection (b)(4) because it contains ambiguous language. The purpose of this rule is unclear. Question: Is the purpose of this rule to create a Notice to Appear? If so, we would propose that a form be created rather than this rule. Or, that a box be added to form FL-300 that requests an order that the other side appear as an alternative to using this language.	 The committee recommends renaming the title of the rule to "Request for court order; responsive declaration." This will avoid confusion due to the use of the term "application" in the heading in (a). The committee recommends this amendment. The committee recommends amending subsection (b)'s title to Request for order; required forms and filing procedure." The committee recommends deleting the version of the rule at subdivision (b)(4), which circulated for comment in winter 2014.
Superior Court of San Joaquin	(b)(4)(A), (B), (C) – Implies that moving party doesn't need to	The committee recommends deleting the version of the

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Rules 5.92		
Commentator	**Comment**	**Committee Response**
County Erica A. Ochoa Court Records Manager	do these things. Little confusing, Need clarification, is this referring to a 2nd RFO requesting respondent to be present? (d)(1)(c) Does this refer to contempt, order shortening time?	rule at subdivision (b)(4), which circulated for comment in winter 2014. The committee recommends amending the rule to cover procedures relating to orders shortening time.

Rules 5.94		
Commentator	**Comment**	**Committee Response**
Virginia Johnson Staff Attorney Superior Court of San Diego County	**Subdivision (c)(1):** Include the following changes to this text: (1)(A) Notify the court as soon as possible before the date assigned for the court hearing and request a new hearing date to allow additional time to serve the *Request for Order* (FL-300), any temporary orders, and supporting documents~~; and~~ using the following procedure. **Subdivision (c)(2)(A):** The court needs to know the reason to avoid tactical maneuvers by the moving party to delay the hearing so the TEOs will be the controlling orders. Therefore, I recommend the following changes: The *Application and Order for Reissuance* (form FL-306) must include an explanation for inability to timely serve the *Request for Order* and should be filed no later than five court days before the scheduled hearing date or presented at the hearing.	The committee recommends reformatting and amending the rule's content to better indicate the procedures for applying to the request to reissue (extend) the orders. The form currently requires the moving party to specify why the reissuance is needed. Form FL-306 already includes an item for a party to explain why the reissuance is needed.

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Rules 5.94		
Commentator	**Comment**	**Committee Response**
	What about continuances which have been an on-going issue since the switch to RFOs? If continuances are going to be relegated to local rules, which would be the easiest approach, it would be helpful to state that in the CRCs.Therefore, I suggest including the following new rule : **Rule 5.95. Continuance of Hearing on Request for Order with no Temporary Emergency Orders** If a request for order has been timely and properly served, does not include any *Temporary Emergency Orders* and either party wishes to continue the hearing date, the party must comply with specified local court procedures and/or local court rules.	The committee does not recommend adopting a new rule for general continuances.
Stacy Larson Family Law Facilitator Superior Court of Shasta County	**Subdivision (c)(1(A) :** It would be helpful to clarify "have served" rather than ". . . to allow additional time to serve . . ." This would help emphasize that the moving party cannot serve the papers himself or herself but rather must have them served. **Subdivision (c)(2):** When the Request for Order (FL-300) form was created, it replaced the prior "Order to Show Cause" (prior FL-300) and "Notice of Motion" (FL-301) forms. As we may expect any time we make a positive step in the right direction to consolidate forms and procedures, this creates some ambiguity regarding when the Request for Reissuance can be used. If the FL-300 Request for Orders is used to request an order shortening time (OST), emergency temporary orders, or otherwise used as an OSC, it would typically need to be "issued" by the Court prior to filing. When used as a "notice of motion," it would not typically need to be "issued" by the court but rather could be filed, setting a noticed hearing date. If	The committee recommends this change to rule 5.94. The committee recognizes that court procedures differ on the processing of requests for reissuances. The committee recommends that the language of rule 5.94 continue to permit the widest judicial discretion relating to the processing of a request to reissue a *Request for Order* and *Temporary Emergency Orders* while complying with the requirements of Family Code section 245.

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Comments from proposal W14-12 (circulated in 2014)
Family Law: Changes to Request for Order Rules and Forms (Amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94; 5.151, and 5.170; adopt form FL-303; and revise forms FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, Fl-341, FL-341(A), FL-341(B), FL-341(C), FL-341(D), and FL-341(E))
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Rules 5.94		
Commentator	**Comment**	**Committee Response**
	"issued" with emergency temporary orders, OST, or order for the other party to appear to begin with (like our former OSC), it would seem that obtaining a new court date can be easily accomplished by submitting a request for reissuance (FL-306). However, if not "issued" with emergency temporary orders, OST, or order for the other party to appear to begin with, it would seem that obtaining a new court date requires filing an "amended" request for orders. This code section seems to blend the two procedures, requiring that parties who need a new court date due to lack of service have their papers "reissued" even if they were not "issued" to begin with. The mandatory "must" language used in this section indicates that the only way to obtain a new court date due to lack of timely service is through the reissuance form (FL-306). The party has a few options such as filing an amended motion, a stipulation for continuance, or the reissuance procedure. A possible revision would be to rework the last sentence of this provision to read, "To do so, the moving party may submit an amended request for orders, a stipulation for continuance, or complete and submit to the court an Application and Order for Reissuance (form FL-306)." **Subdivision (c)(2)(A):** It is helpful to have a guideline for when the reissuance should be requested (at the latest). However, this guideline lacks substance since it says the form "should be filed no later than five court days before the scheduled hearing date or presented at the hearing." Essentially, it seems to say that the court would like to have the form five days before the hearing, but there is no consequence for failing to do so. It also seems to encourage the parties to show up at	The committee recognizes that court procedures differ on the processing of requests for reissuances. The committee recommends that the language of rule 5.94 continue to permit the widest judicial discretion relating to the processing of a request to reissue a *Request for Order* and *Temporary Emergency Orders* while complying with the requirements of Family Code section 245. The committee recommends amending the rule so that it conforms to the language of Family Code section 245 (as amended by Assembly Bill 1081, effective January 1, 2016).

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Comments from proposal W14-12 (circulated in 2014)
Family Law: Changes to Request for Order Rules and Forms (Amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94; 5.151, and 5.170; adopt form FL-303; and revise forms FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, Fl-341, FL-341(A), FL-341(B), FL-341(C), FL-341(D), and FL-341(E))
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Rules 5.94		
Commentator	**Comment**	**Committee Response**
	the hearing to submit the reissuance, perhaps misleading the litigants into thinking that their reissuances can be processed at the hearing itself. Our family-law calendars are huge. There are not enough seats in the courtroom for all the litigants. The bench officer is under great pressure to get through the cases prior to the courthouse closing at 5:00 p. m. There is no time to process these requests in court. Our law-and-motion calendar for self-represented litigants begins at 1:30 p. m. Due to budget cuts, our civil division clerks office closes at 2:00 p. m. By the time the litigants' cases are called, our clerks office has already closed, and it is too late to turn in their reissuance forms. Having the litigants in court simply to turn in their reissuance forms unnecessarily congests the courtroom and slows the processing time for these reissuance forms, sometimes causing days to go by before the emergency temporary orders are reinstated. It makes sense that we should not impose unnecessary consequences on self-represented litigants who already have enough difficulty navigating through their family-law cases. However, if we wish to keep this "five day" guideline, we should provide some guidance and uniformity regarding the consequences of turning in these requests for reissuance "late." For example, it could be reworked to read, "The Application and Order for Reissuance (form FL-306) should be filed no later than five court days before the scheduled hearing date. Although these forms will not be rejected if turned in less than five court days before the hearing, processing may be delayed, causing a lapse in temporary orders, if any.	The committee recommends amending the rule to better clarify the procedure for reissuing the temporary emergency orders granted before the hearing on the Request for Order. The committee recommends amending the rule to better clarify the procedure for reissuing the temporary emergency orders granted before the hearing on the Request for Order.

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ATTACHMENT B

Comments from proposal W14-12 (circulated in 2014)

Family Law: Changes to Request for Order Rules and Forms (Amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94; 5.151, and 5.170; adopt form FL-303; and revise forms FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, Fl-341, FL-341(A), FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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Rules 5.94		
Commentator	**Comment**	**Committee Response**
	Subdivision (c)(2)(B): This clarification of the process after reissuance is helpful. It may also be helpful to rework this provision to clarify that the FL-306 and original Request for Orders (RFO) must be served on all parties in the case, not just the party to whom the orders are directed. A common scenario is that RFOs are filed to address custody/parenting time orders. The "party to whom the orders are directed" is generally the other parent. However, the moving papers must be served on all parties, including Department of Child Support Services if the agency has intervened. Slight reworking would help emphasize this for the litigants and less-experienced family-law attorneys or document preparers. **Subdivision (c)(2)(3):** As discussed above, it would be helpful to clarify that the reissuance procedure is the only procedure for reissuing an RFO with emergency temporary orders, order shortening time, or ordering for personal appearance (our traditional "OSC"); however, it is not the only (or even recommended) procedure for obtaining a new court date for our traditional "notice of motion."	The committee recommends amending the rule to better clarify the procedure for reissuing the temporary emergency orders granted before the hearing on the Request for Order. The committee recommends amending the rule to better clarify the procedure for reissuing the temporary emergency orders granted before the hearing on the Request for Order.
State Bar of California Family Law Section Saul Bercovitch Legislative Counsel	**Rule 5.94(c)(1) and (2):** These rules instruct how to obtain a re-issuance. That one must "*notify the Court as soon as possible"* and "*submit to the court an application*…." But, those instructions are unclear as to how to "notify" the Court. Does one just call the department on the phone, or file the form in the department and then wait while a new date is obtained? Specifically, how are those "notifications" and "applications" to be made? These directions seem incomplete and we recommend added language with more specific instructions.	The committee recommends amending the rule as required to reflect the amendments made to Family Code section 245, which take effect on January 1, 2016.

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ATTACHMENT B

Comments from proposal W14-12 (circulated in 2014)

Family Law: Changes to Request for Order Rules and Forms (Amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94; 5.151, and 5.170; adopt form FL-303; and revise forms FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, Fl-341, FL-341(A), FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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Rules 5.94		
Commentator	**Comment**	**Committee Response**
	Agree with proposed changes only if modified. Subsection (c) (1): a) The language regarding notice to the court is ambiguous. The language could imply that a party is to give notice to the department staff either in person or by telephone.	The committee recommends amending rule to reflect amendments to Family Code section 245, effective January 1, 2016.

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ATTACHMENT B

Comments from proposal W14-12 (circulated in 2014)

Family Law: Changes to Request for Order Rules and Forms (Amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94; 5.151, and 5.170; adopt form FL-303; and revise forms FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, Fl-341, FL-341(A), FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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Rules 5.151		
Commentator	**Comment**	**Committee Response**
Kristen E. Hoadley Senior Court Staff Attorney Superior Court of San Francisco	The requirement that FL-300 be used to submit an application for ex parte (emergency) orders is very confusing. We have found that attorneys and self represented litigants (SRLs) are confused about how to use the FL-300 when it comes to , among other things, indicating the date, time and place of the ex parte hearing/ submission. There is no place to indicate the date, time and place of the ex parte hearing/ submission on the FL- 300. The place to indicate date, time and place on the FL-300 is intended to used for the law and motion hearing date not the ex parte date. While the forms may work for many courts, they are very confusing for courts that give the parties a "date" for the submission / hearing of the ex parte request. SRLs are instructed to serve of copy of the application for emergency orders (FL-300) on the opposing party. The problem is that when the opposing party gets the FL-300 it does not state a date time and place of the ex parte hearing. The only "notice" they receive is a phone call stating the date time and place of the ex parte submission / hearing ….nothing on paper to refer back to. The forms may work for cases with two attorneys but it is extremely confusing for SRLs. I suggest / request that the Judicial Counsel develop a stand alone optional form to request ex parte/emergency orders that will enable the court to write in the date time and place of the ex parte hearing.	Most courts require a written notice regarding the method by which the moving party gave the other party notice of the ex parte hearing – or the basis for waiving that notice. The committee will propose an optional form that courts can use to provide this notice which can be adapted by courts to address their ex parte hearing procedures. It appears that the procedure indicated would be considered as an order shortening time for a hearing in many courts and might be granted in that way. The committee will propose a new form that allows for notice and can be adapted by local courts.

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Comments from proposal W14-12 (circulated in 2014)
Family Law: Changes to Request for Order Rules and Forms (Amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94; 5.151, and 5.170; adopt form FL-303; and revise forms FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, Fl-341, FL-341(A), FL-341(B), FL-341(C), FL-341(D), and FL-341(E))
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	This optional form can also be used in cases where there is no need to set the matter on the Family Law law and motion calendar because the emergency orders are for a single event ….for example "mother may remove the child from the Bay Area counties for the weekend of 2/1/14 to attend a family reunion in San Diego". A FL-300 would not be needed in the above example as no further hearing is necessary.	
Stacy Larson Family Law Facilitator Superior Court of Shasta County	**Subdivision (c)(4):** There is an extra parenthese after "purpose" that should be omitted.	The committee recommends deleting the extra parenthesis in the rule.
Hon. Rebecca Wightman Commissioner Superior Court of California, County of San Francisco	While it is true the RFO form has been in existence – and mandatory – for several years, exclusive use of the RFO form itself for ALL Ex Parte Applications for Emergency Orders was not mandatory until the CRC Rule change to CRC 5.151 effective July, 1, 2013. Ironically, what is out for comment only briefly mentions CRC 5.151, and only in connection with an optional notice form, and does not seem to consider the operational issues that surround the many different types of Ex Parte emergency situations that arise at the trial court level. What seems to be lacking in the current proposed package is an understanding of the **distinction** between "temporary orders" (which usually are sought to be in place pending a full hearing and can be viewed as emergency orders, but aren't necessarily so) and true "emergency orders" (which are not necessarily "temporary" in the sense that there is not necessarily a subsequent hearing. **By requiring the use of the RFO form for the latter situations, it creates confusion, notwithstanding the intent to "simplify" and/or create**	The committee will propose an optional form setting out the method of service of the ex parte order or rationale for waiver of the service of that order. The local court can modify that form to identify key items for the court to consider on an ex parte basis if that is required. Since there are very few items that can be considered on an ex parte basis, and since many of those items may need to be reviewed and considered at a later hearing, the committee does not think that it is appropriate to separate forms for these procedures.

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	greater "efficiency". **In other words, by "shoe-horning" the use of a single form (the RFO-FL-300) for anything and everything – including true emergency situations – "regular" issues (for which an RFO will suffice) and true "emergency" issues get hopelessly mixed together, such that a pro per, clerks and even bench officers have difficulty figuring out what substantive part of the RFO's requests were properly noticed for the Ex Parte date for consideration (to be ruled upon on short notice), versus what substantive part of the RFO's requests must wait for a subsequent hearing (if any).** This is particular problematic when an individual is seeking both types of relief, where the RFO is served "twice" on the other party – first, in essence as the notice for the application or request for Ex Parte relief (and there is no date filled in the box on FL-300 for this purpose), and again once a date is filled in for any further regular hearing. I have put together a few sample scenarios for your group to consider on the next page. Please take the time to do a "paper flow" analysis as to what a litigant actually receives in hand under these types of scenarios. Amending CRC 5.151 to allow the use of an alternative mandatory use form, an Ex Parte Application form under CRC 5.151(c), that could be in conjunction with the FL-300 and/or as stand alone (if a true single emergency where no other hearing will be held), would clear up what has now become a serious due process issue in connection with ex parte proceedings. It would provide clear notice of the date upon which the court was being presented papers, and what was being asked of the court to order at that time, as opposed to what was being requested at a subsequent	The committee considered developing a separate form for ex parte and regular motions. The difficulty is: 1) That it presumes that litigants would be able to tell the difference between emergency and other motions and be able to distinguish effectively. 2) That litigants would be able to create declarations that would be limited to the specific procedural relief that they were requesting. 3) That litigants would have to file two separate pleadings and incur additional filing fees, keep track of different service requirements, etc.

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	hearing date. Creating such an alternative use mandatory form for matters under CRC 5.151 would enhance what has now become a completely confusing process. A. Common scenarios where a "temporary" order is needed, **pending a full hearing**: • No orders in place (e.g. custody/visitation, support), but temporary orders needed until hearing • Need to modify existing visitation order, and there needs to be a change pending the full hearing (e.g. individual authorized to pick-up died, and need interim put order in place) • Need to modify custody order (b/c custody flipped, other parent incarcerated, etc.), and there is a need to get a temporary order in place pending the full hearing (e.g. so child can be enrolled in school) • Need to modify child support order (b/c custody flipped, other parent incarcerated), and there is a need to temporarily stop/stay certain orders (e.g. garnishments), pending a full hearing • Bank levies (or tax intercepts) have occurred, and a litigant needs temporary orders put in place (not to disburse $) pending the full hearing B. Common scenarios where an "emergency" order needed is needed, **with no further hearing**: • Existing custody/visitation order in place allowing 2 weeks vacation travel; other parent decides not to cooperate at the last minute in signing permission to	The committee believes that most of these orders are most commonly handled with an order shortening time that allows both parties to make a presentation rather than heard on an ex parte basis with no notice. These would likely be considered in more depth at a full hearing. The committee believes that most of these orders are most commonly handled with an order shortening time that allows both parties to make a presentation rather than heard on an ex parte basis with no notice. If there is no need for an additional hearing, the court can issue

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	travel and/or authorization to obtain passport; once order made, no further hearing needed • Disso judgment in place that orders one parent to pay something, e.g. tuition; litigant needs an emergency order to obtain funds from a particular account (so as not to lose child's place in school); once order made, no further hearing needed. • Existing visitation orders in place, with limitations (giving one parent authority to grant permission to X, which shall not be unreasonably withheld. An important event (unknown when orders were put in place) is going to occur (e.g. awards ceremony, graduation, etc.) and there is no agreement, and parent unreasonably withholds permission. Once order is made re: attendance at that one event, no further hearing needed. • Litigant need's driver's license released immediately (or will lose job that week), and can show no arrears owing and/or mother waived arrears. Once order is made, no further hearing required. C. Common scenarios where **both "temporary" and "emergency" orders are needed** (some that may require a full hearing, others nothing further needed after emergency request ruled upon): • Take any combination of the A and B scenarios (litigants often need one-time, emergency relief on one issue, and temporary orders pending an issue that must be set for a full hearing)	an order at that point. The committee agrees that it is not uncommon for parties to need some kind of temporary orders that also need to be considered at a full hearing on the matter.

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	SUGGESTED SOLUTION: For Emergency Ex Parte requests made pursuant to Rule CRC 5.151, develop and allow the use of an **alternative mandatory form** – an Ex Parte Application form, that can be used either in conjunction with an RFO, and/or as a stand alone. The proposed Temporary Emergency Orders form could use some changes such as: Changing the Title to "EMERGENCY ORDERS" and creating a check box to the right that can designate ...I Temporary Changing 1. 2. to be check boxes, and adding a 3. With a check box for IMMEDIATE ORDER (or some such description for the true single emergency situation where there will be no hearing – because as I have been trying time and again to educate folks that not all emergency requests, and therefore, emergency orders, have a subsequent hearing!!! Otherwise, we bench officers are left with having to cross out the "hard-coded" 1. and 2.	The committee considered developing a separate form for ex parte and regular motions. The difficulty is: 1) That it presumes that litigants would be able to tell the difference between emergency and other motions and be able to distinguish effectively. 2) That litigants would be able to create declarations that would be limited to the specific procedural relief that they were requesting. 3) That litigants would have to file two separate pleadings and incur additional filing fees, keep track of different service requirements, etc. The Judicial Council adopted *Findings and Order After Hearing* (Form FL-340) to record all orders after a hearing. Thus, the committee does not recommend revising form FL-305 as suggested by the commentator.
Hon. Charlotte Walter Woolard Judge Superior Court of San Francisco County	I am glad to see that there is going to be a separate Temporary Order form (FL-305), as well as an optional Declaration Notice form (FL-303). However, the proposed change to Rule 5.151, to reference this new optional form does not adequately address a number of problems our court has been seeing in the past six months since Rule 5.151 was amended effective 7/1/13 to	See above response to Commissioner Rebecca Wightman.

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	require the use of FL-300 only for all types of ex parte requests for emergency orders, especially ones that do not require any subsequent hearing. I ask that consideration be given to amend 5.151 (c) such that it allows for use of an Alternative Mandatory Form that can be used for ex parte emergency order requests, and that an Alternative Mandatory Form be created for such use under Rule 5.151. The biggest problem with requiring the use of only the FL-300 for all ex parte emergency requests is that it is a due process issue as well as confusion when the FL-300 is served on a litigant for purposes of an ex parte presentation – with no date filled in (because the date box on the FL-300 is for setting of actual hearing dates) – while the box at the bottom of FL-300 instructs a person that they must file a response serve a copy within 9 court days before the hearing date. The fact that the "Declaration Notice" under the ex parte process is required, and a person has left a telephone message (that may be garbled or otherwise inaccurate) does not fix the due process problem or confusion created by the lack of an alternative form that could be used. Adoption of an Alternative Mandatory Ex Parte Application form for use would provide litigants the opportunity to use a form that clearly identifies a court date – the date in which the ex parte papers will be presented to the court – so that a litigant has an opportunity to respond. I have attached a sample Ex Parte Application form that would alleviate the problems that have arisen since CRC 5.151 was amended last year. I believe our court has previously submitted a sample Ex Parte	

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Comments from proposal W14-12 (circulated in 2014)

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	Application form for your consideration. If you would like to see the sample, please contact my Operations clerk, Emina Abrams at eabrams@sftc.org.	

Rules 5.170		
Commentator	**Comment**	**Committee Response**
Virginia Johnson Staff Attorney Superior Court of San Diego County	*Conform this rule to my suggested changes to rule 5.92(b)(4) by adding a new subdivision that states "Requests made under rule 5.92 only for an order shortening time (do not require notice to other parties)." Change subdivision (8) by deleting the following text: Requests made under rule 5.92 for a party to appear in court ~~to give any legal reason why the orders requested should not be granted.~~ This language does not appear in any other CRC.	Because the committee recommends revising rule 5.92 to provide that request for an order shortening time require notice to the parties, the committee does not recommend the language proposed by the commentator. The committee recommends no longer recommends the changes proposed to rule 5.170 during the winter 2014 comment period.
Stacy Larson Family Law Facilitator Superior Court of Shasta County	**Subdivision (8)** will help clarify that a person requesting only an order that the other party appear at the noticed hearing can be made truly ex parte—without the notice to the other party delineated under CRC 5.165—is very helpful in clarifying this procedure. However, as discussed above, CRC 5.92 should provide guidance regarding the process for requesting this relief ex parte and a requirement that a separate declaration giving the factual basis supporting the request for personal appearance be submitted so that bench officers can consider this request without reading the voluminous declarations on all issues relating to the RFO.	The committee recommends no longer recommends the changes proposed to rule 5.170 during the winter 2014 comment period. The committee recommends amending rule 5.92 as suggested.

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ATTACHMENT B

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Family Law: Changes to Request for Order Rules and Forms (Amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94; 5.151, and 5.170; adopt form FL-303; and revise forms FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, Fl-341, FL-341(A), FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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Form FL-300		
Commentator	**Comment**	**Committee Response**
John Chemeleski Superior Court Commissioner Superior Court of Los Angeles County	One of the most important purposes of this form is to advise the other party and the court of what the requesting party is requesting. This form fails to do so in two important due process areas by not providing a space to include the amount of attorney fees and costs that are requested and,...	The committee recommends revising the form to provide more space to include the amount of attorney's fees and costs that are requested. However, because other forms were adopted for mandatory use when requesting attorneys' fees and costs, the committee does not believe that other space should be provided. Instead, the form should reference the mandatory forms that a party needs to complete and attach to form FL-300. The Judicial Council adopted the current attorney's fees and costs item on form FL-300 in response to a legislative mandate. As specified in the Judicial Council report dated October 18, 2011: "Effective January 1, 2011, Assembly Bill 939 (Committee on Judiciary; Stats. 2010, ch. 352) amended Family Code sections 2030, 2032, 3121, and 3557, which concern awarding attorney's fees and costs based on income and need in family law proceedings. The bill required that the Judicial Council, by January 1, 2012, adopt a rule of court to implement sections 2030 and 3121 and develop a form for the information that must be submitted to the court to obtain an award of attorney's fees and costs under these sections."

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Family Law: Changes to Request for Order Rules and Forms (Amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94; 5.151, and 5.170; adopt form FL-303; and revise forms FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, Fl-341, FL-341(A), FL-341(B), FL-341(C), FL-341(D), and FL-341(E))
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Form FL-300		
Commentator	**Comment**	**Committee Response**
		See the relevant Judicial Council report at: http://www.courts.ca.gov/documents/ItemA18.pdf
	…even more significantly, [the form] does not provide a space to include even a summary of the parenting plan or visitation orders being requested. This problem, which exists in the current form FL-300, is not resolved by the list of options included therein (p.2, par.1d) as often this section is not completed or merely refers the reader to a declaration causing the reader to have to thumb through numerous pages just to find out what is being requested. It is not likely that the filing clerk will have time to spot this defect. This is not consistent with the Elkins recommendation for a comprehensive form.	The committee recommends expanding the amount of space available on the form to allow a party to write the parenting and visitation plans that he or she seeks.
	To the extent that space is a consideration the child support section could start on the next page and the seven lines of space proposed for restraining order information could be reduced to a one line asking to list all known restraining orders.	The committee does not recommend reducing the space provided for restraining order information to one line as proposed by the commentator. The current format is consistent with other Judicial Council forms requesting this information.
Harriett Buhai Center for Family Law Meredith Alexander Los Angeles	We do not agree with the proposal to remove the box with the order to appear. Although this need not be capitalized, the checkbox should not be removed from the revised form and the language should be kept as it currently reads. Deleting the checkbox and requiring the use of the FL-305 would make it more burdensome for self-represented litigants to request, and courts to order, the other side to appear. Furthermore, without a checkbox, self-represented litigants will	The committee believes that the recommendation to delete the order to show cause language on page 1 of the form better reflects that, upon proper service of the FL-300, the court does not have to also issue an order requiring the party to attend the hearing before the court can make orders on the relief requested. The committee recommends developing information sheets and online content for litigants about using a

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Form FL-300		
Commentator	**Comment**	**Committee Response**
	not know that if they want the other party to be ordered to appear to provide testimony, for example, they need to specifically ask for it. Thus, making the process more difficult for self-represented litigants to navigate.	notice in lieu of subpoena or a civil subpoena to compel a party to testify and/or produce documents at the hearing. The content will include examples of circumstances in which a party may want to use a notice in lieu of subpoena or a civil subpoena. The committee recommends that the date, time, and location of the child custody mediation or child custody be located only in the court order section of the form.
	Page 1, items 3 and 7, combining items 3 and 7 would help to clarify when the parties need to attend mediation/counseling and save space. It is confusing for self-represented litigants to have their court date listed in the middle of the form and the mediation/counseling date at the bottom. Having the dates closer together would help litigants better understand the two dates. Additionally, this would not require any additional work for the judge because, pursuant to Rule 5.92(c), as modified, the court clerk could stamp the mediation/counseling order as part of his or her ministerial tasks.	The committee recommends revising the form as suggested by the commentator.
	Page 1, Box: NOTICE TO THE PERSON WHO WAS SERVED WITH THIS REQUEST FOR ORDER, the title should include the word "with" between "served" and "this	The committee prefers to recommend a new information sheet to help a responding party understand and complete *Responsive Declaration to Request for Order* (form FL-320). The information sheet will explain that, generally, a fee is not required to file the form. It will also explain the "first appearance fee."

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Comments from proposal W14-12 (circulated in 2014)
Family Law: Changes to Request for Order Rules and Forms (Amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94; 5.151, and 5.170; adopt form FL-303; and revise forms FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, Fl-341, FL-341(A), FL-341(B), FL-341(C), FL-341(D), and FL-341(E))
All comments are verbatim unless indicated by an asterisk (*).

Form FL-300		
Commentator	**Comment**	**Committee Response**
	request." We recommend keeping the phrase, "You do not have to pay a fee to file Form FL-320." We understand the confusion this may cause some individuals; however, we are concerned that not including this information will result in individuals not exercising their right to respond to an RFO for financial reasons. While it is true that a litigant who has not filed a Response to the underlying action may need to pay a fee to file the Response, a litigant does not have to file a Response, and pay the associated fee, in order to file a Responsive Declaration. A litigant should not be dissuaded from seeking help to file a Responsive Declaration because of concern about cost. Page 2, item 1.d(6), for consistency with other items and to allow litigants to write in the desired attachment or Judicial Council form, item 1.d(6) should read "(6) Other (specify):" instead of "(6) Other (Attachment 1d)." Page 2, item 2a, we recommend making option (1) the Child Custody and Visitation Application Attachment (FL-311), and combining current options "(1) Attachment 2a" and "(3) Other (specify)" into one option (2). Current options (1) and (3) serve the same purpose and are not both needed. It is very common for individuals to use the Judicial Council form FL-311 instead of their own attachment, so it should be the first option. Therefore, item 1a would read as follows:	The committee recommends removing the language from form FL-300 and providing more information to the responding party on a new *Information Sheet: Responsive Declaration to Request for Order* (form FL-320). The committee recommends revising the form to provide a separate item 1.e. for *"Other (specify):"* to provide more space for a party to write other orders he or she seeks relating to child custody. The committee recommends substantive changes to this part of the form in the report for SPR15-16.

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ATTACHMENT B

Comments from proposal W14-12 (circulated in 2014)

Family Law: Changes to Request for Order Rules and Forms (Amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94; 5.151, and 5.170; adopt form FL-303; and revise forms FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, Fl-341, FL-341(A), FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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

Form FL-300		
Commentator	**Comment**	**Committee Response**
	a. As requested in: [ ] (1) Child Custody and Visitation Application Attachment (form FL-311) [ ] (2) Other (specify):	
Kristen E. Hoadley Senior Court Staff Attorney Superior Court of San Francisco	The requirement that FL-300 be used to submit an application for ex parte (emergency) orders is very confusing. We have found that attorneys and self represented litigants (SRLs) are confused about how to use the FL-300 when it comes to , among other things, indicating the date, time and place of the ex parte hearing/ submission. There is no place to indicate the date, time and place of the ex parte hearing/ submission on the FL- 300. The place to indicate date, time and place on the FL-300 is intended to used for the law and motion hearing date not the ex parte date. While the forms may work for many courts, they are very confusing for courts that give the parties a "date" for the submission / hearing of the ex parte request. SRLs are instructed to serve of copy of the application for emergency orders (FL-300) on the opposing party. The problem is that when the opposing party gets the FL-300 it does not state a date time and place of the ex parte hearing. The only "notice" they receive is a phone call stating the date time and place of the ex parte submission / hearing ….nothing on paper to refer back to. The forms may work for cases with two attorneys but it is extremely confusing for SRLs.	See response (below).

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Form FL-300		
Commentator	**Comment**	**Committee Response**
	I suggest / request that the Judicial Counsel develop a stand alone optional form to request ex parte/emergency orders that will enable the court to write in the date time and place of the ex parte hearing. This optional form can also be used in cases where there is no need to set the matter on the Family Law law and motion calendar because the emergency orders are for a single event ….for example "mother may remove the child from the Bay Area counties for the weekend of 2/1/14 to attend a family reunion in San Diego". A FL-300 would not be needed in the above example as no further hearing is necessary.	The committee considered developing a separate form for ex parte and regular motions. The difficulty is: 1) That it presumes that litigants would be able to tell the difference between emergency and other motions and be able to distinguish effectively. 2) That litigants would be able to create declarations that would be limited to the specific procedural relief that they were requesting. 3) That litigants would have to file two separate pleadings and incur additional filing fees, keep track of different service requirements, etc.
Virginia Johnson Staff Attorney Superior Court of San Diego County	Page 1, item 9: Revise this item to specify that form FL-305 must be personally served with all documents filed with the request for order. This would conform the language to rule 5.167(b). Page 1, deletion of the Order to Show Cause language: I do not think that it is a correct statement of the law that the court acquires personal jurisdiction over a party who has not yet made a general appearance in the case when that party has been personally served with the Request for Order.	The committee recommends revising the form as suggested by the commentator. The language in the invitation to comment is based on Code of Civil Procedure section 416, which provides that from the time of service of summons, the court is deemed to have acquired jurisdiction of the parties and to have control of all subsequent proceedings.

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Form FL-300		
Commentator	**Comment**	**Committee Response**
	I think that revising the check boxes at items 1, 2, 6, and 7 to state "Applicant requests temporary emergency orders" are good changes. Page 3, item 5a: Revise this item so attorneys know that supporting declarations must be filed and served with the RFO. Item 5 a would state: Are requested on *Request for Attorney's Fees and Costs Attachment* (form FL-319) or a declaration that addresses the factors covered in that form and is filed with this *Request for Order.* Page 3, item 5b. Change this item to state: A *Supporting Declaration for Attorney's Fees and Costs Attachment* (form FL-158) or a declaration that addresses the factors covered in that form ~~will be~~ is filed with this *Request for Order.* Page 4, item 9 (Request for Order Shortening Time): This entire section appears to be a duplication of information in an ex parte application for an OST. Including it could cause a person to believe an ex parte application for an OST is not necessary – just ask for it in the RFO. Page 4, item 11. Add a new item 11 to conform with the suggestion in rule 5.92(b)(1) and 5.92(e)(1) to provide the statutory and/or legal basis for the relief sought. .	No response required. The committee recommends the changes suggested by the commentator, with minor alterations. The committee recommends the changes suggested by the commentator, with minor alterations. The committee recommends maintain this item on the form. The committee does not recommend the changes suggested by the commentator as it would similar to requiring a memorandum of points and authorities with each filing.
Stacy Larson	The changes to this form are very helpful and help make this	No response required.

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Form FL-300		
Commentator	**Comment**	**Committee Response**
Family Law Facilitator Superior Court of Shasta County	multi-use form better serve its designated uses as our Notice of Motion and Order to Show Cause.	
	Caption Box: A separate designation should be added for "arrears." Litigants frequently check the boxes for "child support" or "spousal or partner support," inadvertently opening the issues of current support, when they only want to address the issue of their arrears or arrears payment.	The committee recommends additional fillable space in the "Other" section of the caption box instead of adding a separate designation for "arrears."
	Page 1, Bottom "Notice to the Person who Was Served this Request for Order": It would be helpful to clarify that the party may seek permission from the court to appear telephonically at the hearing.	The committee does not recommend expanding the information in this section to include the various ways in which a responding party may attend the hearing.
	Bottom: CRC 5.90 et seq. provides great guidance regarding Requests for Orders. This reference should be included with the references to the other code sections at the bottom of the page	The committee recommends that form FL-300 reference rule 5.92 with the other code sections at the bottom of the first page.
	Page 2, Item (1): Historically, the headings for (a), (b), and (c) do not line up as the heading for (a), requiring the child's name and age, is significantly shorter than the ones for legal and physical custody designations. This can cause confusion when different custody labels are sought for different children. Can they be aligned so the "fill in" sections line up on the form?	The committee recommends the suggested formatting revisions to item 1 of the form.
	Page 2, Item (2)(a)(3): The "other" section needs more room to specify relatively simple parenting-time/visitation orders without filling out the entire FL-311.	The committee recommends revising the form to provide more fillable space for this section.

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Form FL-300		
Commentator	**Comment**	**Committee Response**
	Page 4, Item (8): We need much more room for the "Other Relief" section as we, more often than not, have to use the MC-025 to write out our "other relief" requests. To keep the form less than four pages long, space can be taken from Item (7), which (at least in our courthouse) rarely lacks space or Item (10), which typically requires attachment of the MC-031 to provide adequate factual basis. Somewhere in this form, there should be a separate section where the litigant can/must provide a factual basis to support his/her request for a court order that the other party personally appear. The bench officer should not have to review the entire declaration to find the factual basis supporting an ex parte request for a court order that the other party personally appear.	The committee recommends providing as much room to complete this section as is possible, given the other changes recommended in SPR15-16. The committee does not recommend a specific item for a party to seek a court order for the personal appearance of the other party.
Los Angeles County Bar Association Family Law Section Seth Kramer, Chair	One of the most important purposes of this form is to advise the other party and the court of what the requesting party is requesting. This form fails to do so in two important due process areas by not providing a space to include the amount of attorney fees and costs that are requested and, even more significantly, does not provide a space to include even a summary of the parenting plan or visitation orders being requested. This problem, which exists in the current form FL-300, is not resolved by the list of options included therein (p.2, par.1d) as often this section is not completed or merely refers the reader to a declaration causing the reader to have to thumb through numerous pages just to find out what is being requested. It is not likely that	The committee recommends revising the form to provide more space to include the amount of attorney's fees and costs that are requested. However, because other forms were adopted for mandatory use when requesting attorneys' fees and costs, the committee does not believe that other space should be provided. Instead, the form should reference the mandatory forms that a party needs to complete and attach to form FL-300. The Judicial Council adopted the current attorney's fees and costs item on form FL-300 in response to a legislative mandate. As specified in the Judicial Council report dated October 18, 2011:

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Form FL-300		
Commentator	**Comment**	**Committee Response**
	the filing clerk will have time to spot this defect. This is not consistent with the Elkins recommendation for a comprehensive form. To the extent that space is a consideration the child support section could Start on the next page and the seven lines of space proposed for restraining order information could be reduced to a one line asking to list all known restraining orders.	"Effective January 1, 2011, Assembly Bill 939 (Committee on Judiciary; Stats. 2010, ch. 352) amended Family Code sections 2030, 2032, 3121, and 3557, which concern awarding attorney's fees and costs based on income and need in family law proceedings. The bill required that the Judicial Council, by January 1, 2012, adopt a rule of court to implement sections 2030 and 3121 and develop a form for the information that must be submitted to the court to obtain an award of attorney's fees and costs under these sections." See the relevant Judicial Council report at: http://www.courts.ca.gov/documents/ItemA18.pdf
State Bar of California Family Law Section Saul Bercovitch Legislative Counsel	FLEXCOM is in agreement that the forms should be revised to make them "more effective and user-friendly" as indicated in the Invitation to Comment. We found, however, that a few of the proposed changes were not accurate or confusing. We address five specific amendments: **(1) New FL-300:** The proposed new FL-300 (as well as the current form) provides for property restraints that exactly mirror those found on the back of the Summons and go into effect upon filing (Petitioner) or service (Respondent). Because this language is duplicative of the Automatic Temporary Restraining Orders (ATROS) in the Summons, we believe that making the very same restraints an option on the Request for Order form might lead a party to believe the ATROS are not in	No response required. The committee recommends removing the Property Restraint item from the form.

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Family Law: Changes to Request for Order Rules and Forms (Amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94; 5.151, and 5.170; adopt form FL-303; and revise forms FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, Fl-341, FL-341(A), FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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Form FL-300		
Commentator	**Comment**	**Committee Response**
	effect. By checking the FL-300 boxes, the moving party is likely seeking orders that are already in effect. If the boxes are not checked, then the responding party may mistakenly believe that the ATROS are somehow not in effect. For these reasons, we recommend that the ATRO boxes – and all accompanying language – be removed and that Box No. 6 "Property Restraint" be revised to a more simplified request that would read: "Requests the following restraints/restrictions with regard to property….." **New FL-300 and 320**: In several places on both forms, there are statements that indicate that a current Income and Expense Declaration is ***attached***. Although we like the notion of making the financial declarations more clearly identified as documents to be *submitted*, our concern is that financial documents are not "attached." Instead, they are *filed* separately. Attaching the form causes trouble with, and extra work for, the Clerk's office. We recommend that in all instances where the "is attached" language is found on both forms, it should be revised to read: ….a current Income and Expense Declaration has been filed or will be filed in accordance with California Rules of Court, rule 5.260(a)(3)…."	The committee recommends removing the Property Restraint item from the form. The committee recommends revising the form in the appropriate places to indicate that the party must file a current form FL-150 with form FL-300. Same as above response.
Superior Court of Los Angeles County	Agree with proposed changes only if modified. Page 1 - Agree with proposed changes	No response required.

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ATTACHMENT B

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

Form FL-300		
Commentator	**Comment**	**Committee Response**
	Page 2 - Items 1 and 2: The language "Applicant requests temporary emergency orders" should mirror the language in FL 300-INFO. Please change to "Applicant requests temporary emergency (ex parte) orders."	The committee recommends the change proposed by the commentator.
	Page 3 –Item (3)(e): Change language: From "A current Income and Expense Declaration (form FL-150) or, if eligible, a current Financial Statement (Simplified) (form FL -155) is attached." To "You must attach a current Income and Expense Declaration (form FL-150) or, if eligible, a current Financial Statement (Simplified) (form FL -155)."	The committee recommends revising the form so that the language reads more like a declaration. The committee recommends additional changes to this and other items to clarify that the moving party must complete and file an *Income and Expense Declaration* with the *Request for Order*.
	Items 4(c) and 5(b): Change language:From "A current Income and Expense Declaration (form FL-150) is attached."To: "You must attach a current Income and Expense Declaration (form FL-150)"	The committee recommends making the suggested formatting correction to this item.
	Item (5)(c): Move the end period "." one place to the left as there is an extra space.	The committee recommends the change proposed by the commentator.
	Items 6 (Property Restraint) and 7 (Property Control): The language "Applicant requests temporary emergency orders" should mirror the language in FL 300-INFO. Please	The committee recommends the change proposed by the commentator to Property Control. Due to space constraints, the committee is not able to add "(ex parte)" to each check box as suggested.

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Form FL-300		
Commentator	**Comment**	**Committee Response**
	change to "Applicant requests temporary emergency (ex parte) orders." Page 4 –Item 7 (Property Control (continued)): The language "Applicant requests temporary emergency orders" should mirror the language in FL 300-INFO. Please change to "Applicant requests temporary emergency (ex parte) orders."	Due to space constraints, the committee is not able to add "(ex parte)" to each check box as suggested.
Superior Court of Santa Barbara County Deborah Mullin Family Law Facilitator	FL-300, p. 2, paragraph 1: Move (a), (b) and (c) to the left so that there's more room to type the party's name in items (b) and (c). The space in item (c) is especially small in the form's program.	The committee recommends revising the form to provide more fillable space to type the information in the form.
Superior Court of San Joaquin County	Form FL-300 Page 1 Item 4 – Info sheet is a good tool for court patrons to follow when needing guidance on how to complete the form. Page 1 – Deleting signature line is good Page 1 Item 6b – Good and very clear when responsive declaration needs to be served if different than 9 days Page 1 Notice area – Removing the statement about no filing fee for filing responsive declaration is ideal, this will clarify a lot of the confusion sourrounding the first appearance fees. Page 2, item 1 (child custody) d. (2) – Request for Child	No response required. No response required. No response required. No response required.

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Form FL-300		
Commentator	**Comment**	**Committee Response**
	Abduction Prevention Orders (form FL-312) should also mention that form FL- 341(B), Child Abduction Prevention Order Attachment needs to be attached because it goes with request. Page 4 item 10 – Stating the limit of 10 pages is helpful especially in circumstances when court patrons are adamant about adding extensive attachments. One question though, will the supplemental declaration also have a page limit?	Rule 5.111 covers declarations (supporting and responding to a request for order) that are filed with form FL-300. The rule also covers reply declarations. Rule 5.112.1 covers declaration page limitations, exemptions. If a supplemental declaration is determined to be supporting declaration by a judicial officer, then the court will have to grant permission to extend the length of the declaration under rule 5.111(a)(2).

Form FL-300-INFO		
Commentator	**Comment**	**Committee Response**
Harriett Buhai Center for Family Law Meredith Alexander	Page 1, item 3, Forms Checklist, we recommend bolding key words to help litigants identify what additional forms are needed by issue. For example, in item 3.b, bold the phrase "child custody visitation (parenting time)." We recommend including visitation in this phrase for consistency. For item 3.c, bold "child support." For item 3.d, bold "spousal or partner support." For item 3.e, bold "attorney's fees and costs." For item 3.f, bold "temporary emergency (ex parte) orders." For item 3.g, bold "witnesses." For item 3.h, bold "separate trial (bifurcation)." Page 1, item 3.b, for the additional custody and visitation	To save reproduction costs, courts have generally requested limited use of bolded text in Judicial Council forms. The committee recommends including the term "visitation" in item 3b. To help litigants identify the additional forms required for each topic, the committee recommends underlining the content of items a through i, at item 3 instead of bolding the text. The committee recommends revising the form to state

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Form FL-300-INFO		
Commentator	**Comment**	**Committee Response**
	attachments listed under item 3.b from FL-312 down, we recommended including "(as needed)." This will help litigants understand that not all forms are required, just those specific to their situation.	that the party may need to complete some of the forms listed in the item.
	Page 1, item 3.i, we recommend removing this item and incorporating it into the service section later in the form. If this item is kept as proposed, it will be confusing to self-represented litigants who might think they need to complete these forms and file them with the RFO. Additionally, this item is missing a closed parenthesis after "child custody, visitation, or child support."	The committee recommends extensive revisions to this form, which cover the suggestions made in this comment.
	Page 2, FL-300 image, it is unclear to us what purpose the image of FL-300 serves. It is likely that the litigant will be looking at the FL-300 simultaneously while referring to this INFO sheet. It would save space to remove the image.	The committee drafted form FL-300-INFO to follow the same format as DV-505-INFO, *How Do I Ask for a Temporary Restraining Order,* which includes an image of the restraining order form. The image is intended to orient a party to the form being described in the information sheet.
	Page 2, item 4, add a section explaining that if the requesting party wants an order for the other side to appear, they must specifically ask for it under item 8, Other Relief.	The committee prefers to provide a party with information about using a notice in lieu of subpoena or a civil subpoena if he or she wants to compel the other party to attend the hearing.
	Page 3, item 9, we recommend renumbering this item, Temporary Emergency (Ex Parte) Orders, so that it is listed as item 6 instead of item 9 and appears on page 2 instead of page 3. From there, renumber the following items accordingly.	The committee decided to maintain page 2 for basic information about completing and filing form FL-300.

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Form FL-300-INFO		
Commentator	**Comment**	**Committee Response**
	Page 3, item 9, second bullet, we recommend including the following statement after "request for temporary emergency orders": "or a written declaration describing why it was dangerous for you to notify the other party."	The committee recommends that this section include that a party may state in a declaration why notice was not given to the other party and then reference form FL-303 as a form that may be used as the declaration regarding notice.
	Page 4, item 14.d, first bullet, we recommend including "Petition" before "Response." The Respondent could be the one filing the RFO and should know that they can serve by mail. Item 14.d is confusing and may be difficult for self-represented litigants to follow. We suggest rewording this item as follows, "The party being served has NOT made a general appearance in this case. This means the other party has NOT: • Filed a Petition, Response, or Appearance, Stipulations and Waivers; • Filed a Request for Order to strike or transfer the case; • Filed a written notice of his or her appearance; or • Filed any other document that requires a filing fee or fee waiver (unless the court decided that the document does not count as Respondent's general appearance)."	The committee no longer recommends the language in the version of form FL-300-INFO that circulated for public comment in winter 2014.
	Page 4, item 15*)*, we recommend dividing this paragraph into items a and b, one for personal service and one for service by mail. There also appears to be a typo in the first sentence, the form for personal service is listed at FL-335, but it should be FL-330.	The committee recommends other revisions to make this information easier to read.

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ATTACHMENT B

Comments from proposal W14-12 (circulated in 2014)

Family Law: Changes to Request for Order Rules and Forms (Amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94; 5.151, and 5.170; adopt form FL-303; and revise forms FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, Fl-341, FL-341(A), FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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

Form FL-300-INFO		
Commentator	**Comment**	**Committee Response**
Virginia Johnson Staff Attorney Superior Court of San Diego County	Page 3, item 9. Shouldn't this section reference mandatory form FL-305?	The committee recommends revising this section to refer to form FL-305
Stacy Larson Family Law Facilitator Superior Court of Shasta County	The changes to this form make it much more useful for self-represented litigants. **Page 1, Item (2), third bullet:** There is significant danger in listing only one of the required forms to request a domestic-violence restraining order as the self-represented litigants often take this literally and file only this one form without necessary attachments. To clarify, it may help to write something like, "Use form DV-100 with relevant attachments and accompanying forms." **Page 1, Item (3)(c):** The use of asterisks is a bit distracting. It would seem sufficient to omit the asterisks after "FL-150" and "FL-155" and simply state they must attach a current FL-150 or FL-155 and then keep the asterisked clarification direction below (e. g., "To know which form is right for you . . . FL-150 or FL-155?" Either at the beginning of this form on page 1 or at Item (4) on page 2, it would be helpful to remind the litigants that the FL-300 along with all attachments and accompanying forms must be served on all parties. This would help head off the common scenario that litigants reveal their physical address and personal telephone number, mistakenly believing that their papers will go to a judge and not be accessible to nor seen by the other	No response required. The committee recommends revising the form to include this suggestion. The committee recommends revising the form to simplify this section. The committee recommends that the form be revised to specify in the instructions that the party must write the name of all parties who will be served with the Request for Order.

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Form FL-300-INFO		
Commentator	**Comment**	**Committee Response**
	party, when it is not safe for them to do so and/or including information in their declarations that they would not reveal if they were more experienced in the process. It may seem obvious that all documents filed with the court will be accessible to the other party through the court file and must be served on the other party, but litigants new to the process frequently do not know this.	
	Page 2, Item (4), Caption: It would be helpful to remind the litigants that they must accurately designate the parties' names and designations (petitioner or respondent or other parent/party), consistent with the court's file. Failure to do so can result in their papers being rejected.	The committee recommends revising item 4 to state that the party must use the party names as they appear in the petition that was originally filed with the court.
	Page 2, Item (4), Item 5: It would be helpful to explain that if a particular form is completed/served and not listed, it should be written in at item (e) "other" with the number and name of the form.	The committee's recommended changes to form FL-300 cover this comment.
	Page 2, Item (4), Item 7: This is helpful information regarding the differences in each county. It would be helpful to start this provision with "Leave this blank." This will clarify that the litigant should not complete this section.	The committee recommends revising the form as requested by the commentator.
	Page 3, Item (9), First Paragraph: the comma before the "or" in the last sentence should be omitted as the conjunction "or" does not join two or more complete sentences nor three or more items in a series.	The committee recommends revising the form as requested by the commentator.
	Page 3, Item (9), Last Bullet: the parallel structure of this	The committee recommends revising the form as

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Form FL-300-INFO		
Commentator	**Comment**	**Committee Response**
	sentence if flawed due to the last item "and to find out . . . party." It can be corrected in a variety of ways such as, "Follow your court's local procedures for . . . filing fees, and completing local forms you may need to file and serve on the other party."	requested by the commentator.
	Page 3, Item (10), First Paragraph: It is important to provide a layperson definition of "service" for the litigants, but it's equally important that the definition not oversimplify or unintentionally mislead them. The first sentence of this section fails to inform them that all parties must be served the moving papers, including any joined parties and/or Department of Child Support Services. Additionally, the colon is unnecessary and should not be used if there is not a complete sentence preceding it.	The committee recommends revising this item so to indicate that service must be made on all parties.
	A possible revision of the first sentence would be, "Service is the act of giving your legal papers to the other parties named in the case so that they know what orders you are asking for .."	The committee recommends changing the section about service..
	Page 3, Item (10), Second Paragraph: It would be helpful to add "or parties" in the first sentence to help emphasize that many family-law cases have more parties than just the mother or wife and father or husband.	The committee recommends revising the form as suggested by the commentator.
	Page 3, Item (11), Last Sentence: Since we reference both the FL-150 and FL-155 in the first part of this sentence, we should reference both in the last part of the sentence (e. g., ". . . you must include a blank copy of the same form for the other party to complete.").	The committee believes that a party should serve form FL-150, even if the party serves a form FL-155, since the other party may not be eligible to complete form FL-155.

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ATTACHMENT B

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Family Law: Changes to Request for Order Rules and Forms (Amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94; 5.151, and 5.170; adopt form FL-303; and revise forms FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, Fl-341, FL-341(A), FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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Form FL-300-INFO		
Commentator	**Comment**	**Committee Response**
	Page 4, Item (14) (e): When Family Code section 215 passed and the FL-334 Declaration Regarding Address Verification form circulated for comment, many of us questioned how it affected, if at all, service of RFOs to modify judgments or permanent orders of spousal support and issues other than child support, custody, and visitation. The response we received was that, "As this form relates only to the requirements for requests to modify judgments or permanent orders for child custody, visitation, or child support, the committee prefers to limit the form accordingly and does not agree to recommend that the form include a legal interpretation of Family Code section 215." This remains a gray area as case law and legislative history provide some authority that post-judgment motions to modify spousal support, etc., may be served by mail. Bench officers within our own small courthouse interpret this code differently, and litigants can be detrimentally affected depending on which interpretation is followed. The language on this form would become law pursuant to CRC 5.7, which states, "All forms adopted or approved by the Judicial Council for use in any proceeding under the Family Code, including any form in the FL, ADOPT, DV, and EJ 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." It would also provide a black and white interpretation that post-judgment or post-permanent-order motions not pertaining to custody, visitation, or child support MUST be personally served. If this is the intent, then these matters should be made clear by revising Family Code §215 and on the FL-334 Declaration Regarding Address Verification. It is difficult to fathom that this sweeping change could be	Family Code section 215(b) clearly authorizes service by first-class mail or airmail, postage prepaid, of a motion to modify postjudment or permanent orders for child custody, visitation, or child support if it includes an address verification. It does not specifically authorize service by mail with address verification for postjudgment spousal support modifications. Service requirements of other types of postjudgment modification motions remain open to interpretation of the law. The committee recommends including a statement in the form that the party should consult an attorney to determine the correct manner of service for all other requests to modify postjudgment or permanent orders.

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Form FL-300-INFO		
Commentator	**Comment**	**Committee Response**
	made in the FL-300-INFO sheet. Item (e) is also problematic because the layperson is unlikely to understand the difference between "permanent" or "temporary" orders and also unlikely to understand that they may mark the item "T" because the RFO requests change in a judgment or permanent orders but still may have the documents served by mail if the change relates to custody, visitation, or child support as long as an Address Verification form is filed and served. **Page 4, Item (15):** An introductory sentence would be helpful as would clarifying the wording to distinguish between the two proofs of service. An example would be as follows: "Once the other party or parties are served, a proof of service form must be completed and filed. If the server gives the forms . . . If the person mails the forms, . . ." **Page 4, Item (16):** At the end of the paragraph, it would be helpful to remind the litigants that proofs of service should be filed with the court at least five days before the hearing pursuant to CRC 5.94(b).	The committee recommends revising the form as suggested by the commentator, with alterations. The committee recommending this change to the form.
State Bar of California Family Law Section Saul Bercovitch Legislative Counsel	**FL-300-INFO.** This new information sheet gives instructions on how to complete and process the form – including types of service. At page 3, no. 14, it gives instruction on types of service and whether one must serve by mail or personally and provides a quick questionnaire to aid the reader in determining whether he or she must mail or personally serve. If you answer "True" to any of the statements, you must personally serve. But question "c" is inaccurate. It reads: "The person has not been served with a Summons and Petition in the case." If one	The committee no longer recommends the content of item 14 which circulated for comment in winter 2014. That content was not included in the invitation to comment that circulated in the spring 2015 cycle.

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Comments from proposal W14-12 (circulated in 2014)

Family Law: Changes to Request for Order Rules and Forms (Amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94; 5.151, and 5.170; adopt form FL-303; and revise forms FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, Fl-341, FL-341(A), FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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Form FL-300-INFO		
Commentator	**Comment**	**Committee Response**
	answers "true" then presumably personal service is mandated – but that is partially true. If a post-judgment modification is filed by the **Respondent** – where the Petitioner in the action would not have been served with a Petition/Summons – then the questionnaire seems to say that you must personally serve; which is not true. Post-judgment modifications can be mail-served with address verifications. We recommend the question be modified.	
Superior Court of Los Angeles County	**Agree** with proposed changes **only if modified**. We like the updated FL-300-Info sheet and can tell that much good work and thought was put into creating a user-friendly document. We recommend a number of clarifications and corrections. **Page 1 -** **Item 3f.** Consider referencing newly created form FL-303, which can be used as a declaration regarding notice of the ex parte hearing. We suggest that the item would read: "Your declaration describing how and when you gave notice about the request for temporary emergency orders. You may use form FL-303 for this purpose." **Item 3i.** Add an end parenthesis after the words "child support" in the second line. **Page 2 -** **Item 5.** At the end of the first sentence in the second paragraph, the reference should be changed to "page 2	No response required. The committee recommends revising the form as suggested by the commentator, with minor changes. The committee deleted item 3i from the version of form FL-300-INFO that circulated for comment in spring 2015. The committee recommends the changes to the form suggested by the commentator.

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Comments from proposal W14-12 (circulated in 2014)

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Form FL-300-INFO		
Commentator	**Comment**	**Committee Response**
	at item1" because the reference is to custody orders. **Item 8.** For consistency's sake, "can't" in the first line should be changed to "cannot." **Page 3 –** We compliment that drafters of this form for the Temporary Emergency (Ex Parte) Orders box. It is written clearly and the manner in which it is set off in the box works well to get the attention of the reader. We also like the use of pictures to depict service on this page. We think litigants will find the graphics helpful. Otherwise we have no comments on this page. **Page 4 – Item 14.** We found this section to be a bit confusing, though we appreciate the attempt to make it user friendly with True and False questions. **SUGGESTION/OPTION 1 -** If the JC decides to leave it in this format, we suggest the following changes: **Instruction sentence.** At the end of the second sentence, change "same" to "following" so that the phrase reads "if you answer "false" (F) to ALL of the following statements:" **14a.** Change to "I am requesting temporary emergency orders"	The committee recommends the changes to the form suggested by the commentator. No response required. The committee deleted item 14 from the version of form FL-300-INFO that circulated for comment in spring 2015. The committee no longer recommends the format in which previous item 14 was drafted for the winter 2014 cycle. Same as the above response. In item 15 of the version of form FL-300-INFO that circulated in spring 2015, the committee recommends that the form remain consistent with rule 5.92 by stating that the *court granted* temporary emergency orders.

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Form FL-300-INFO		
Commentator	**Comment**	**Committee Response**
	14c. Change "person" to "other party"	The committee recommends using the term "respondent."
	14d. Change the sentence to read "The party being served has not done any of the following." We believe that self-represented litigants will not understand what is meant by "has not made a general appearance in this case"	The committee no longer recommends that the form include the language that circulated in winter 2014 in item 14d.
	Also under 14d, change the word "Filing" to "Filed" in all instances We also found the last item to be confusing and recommend eliminating that item.	Same as above response.
	SUGGESTION/OPTION 2 – If the JC will consider re-writing this section, we would recommend that it read as follows, beginning after the sentence that ends with "even if it is not required": "If you are requesting temporary emergency (ex parte) orders, your *Request for Order* must be personally served.	The committee re-drafted this item for the spring 2015 comment cycle and recommends alternative wording for the content about service.
	If you are not requesting temporary emergency (ex parte) orders, you may be able to serve your *Request for Order* by mail if: 1) The other party has filed a Response or other written	The committee re-drafted this item for the spring 2015 comment cycle and recommends alternative wording for the content about service. Same as above response.

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Form FL-300-INFO		
Commentator	**Comment**	**Committee Response**
	notice of their appearance in the action **or** 2) The *Request for Order* requests a modification of a judgment or other final order for child custody, visitation and/or child support. This type of *Request for Order* may be served by mail if the proof of service includes an address verification. Form FL-334 may be used for this purpose." **Item 16.** For consistency's sake, in the first sentence, the words "request for orders" should be capitalized and italicized as follows: "*Request for Orders."* **Item 18 *(now item 21)*.** Clarification is requested regarding the empty line following the website address. Is the intention that the JC will complete that address once the website is created? Is the JC creating a new web page regarding preparations for RFO hearings?	The committee recommends the change suggested by the commentator. The committee's intention is to complete this section before a report is submitted to the Judicial Council. A web site address will be inserted once it has been assigned by staff.

Form FL-303		
Commentator	**Comment**	**Committee Response**
Harriett Buhai Center for Family Law Meredith Alexander	For consistency and clarification, the title of the form should include the words "Ex Parte," so the name reads: "DECLARATION REGARDING EX PARTE NOTICE AND DELIVERY OF REQUEST FOR TEMPORARY EMERGENCY ORDERS." Page 1, item 2, there are extra spaces before and after the parenthetical phrase that appears after the word "NOTICE."	The committee recommends Declaration Regarding Notice and Service of Temporary Emergency (Ex Parte) Orders." The committee recommends revising the form as suggested by the commentator.

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ATTACHMENT B

Comments from proposal W14-12 (circulated in 2014)

Family Law: Changes to Request for Order Rules and Forms (Amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94; 5.151, and 5.170; adopt form FL-303; and revise forms FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, Fl-341, FL-341(A), FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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Form FL-303		
Commentator	**Comment**	**Committee Response**
Superior Court of Los Angeles County	**Agree** with proposed changes **only if modified**. **Title of the form –** We propose changing the name of the form to "Declaration Regarding Notice for Temporary Emergency (Ex Parte) Orders." We propose that for consistency's sake, the words "Ex Parte" be included in the title to match the FL-300-Info, item 9. We propose eliminating the phrase "and Delivery" for the reasons detailed below. **Page 2, Item 3.** We suggest eliminating Item 3 in its entirety. We know of no rule that requires a courtesy copy of the RFO to be delivered to the other party prior to the ex parte RFO hearing. Including this section could be misleading to self-represented litigants who may assume that they must deliver a copy of the documents to the other party. This could be dangerous in situations where a litigant seeks ex parte orders without notice because there is a risk that they or the children will be harmed if notice is given, or that the children will be removed from the state. If a litigant or attorney chooses to deliver a courtesy copy to the other party prior to the ex parte RFO hearing, they can indicate this at item 7 or on a separate document.	The committee recommends revising the form as suggested by the commentator, with alterations. Item 3 is included on the form to be consistent with rule 5.167 (*Service of application*),which provides: **a) Service of documents requesting emergency orders** A party seeking emergency orders and a party providing written opposition must serve the papers on the other party or on the other party's attorney at the first reasonable opportunity before the hearing. Absent exceptional circumstances, no hearing may be conducted unless such service has been made. The court may waive this requirement in extraordinary circumstances if good cause is shown that imminent harm is likely if documents are provided to the other party before the hearing. This rule does not apply in cases filed under the Domestic Violence Prevention Act.

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Form FL-303		
Commentator	**Comment**	**Committee Response**
		(b) Service of temporary emergency orders If the judicial officer signs the applicant's proposed emergency orders, the applicant must obtain and have the conformed copy of the orders personally served on all parties.
Stacy Larson Family Law Facilitator Superior Court of Shasta County	Most courts, like ours, have created their own form to document notice of requests for emergency temporary orders. It is a great idea to have a uniform, statewide form that can be used for this purpose. Caption/Title: As discussed in more depth below, I suggest that we omit "AND DELIVERY OF" from the caption/title as it confuses the purpose of the form and creates inefficiency in the parties' ability to submit these papers to the court then have copies served on the other party or parties. **Item (2)(a):** this should be made a complete sentence, ending with a colon, to help the litigants understand that they must not only check item (a) if they gave notice but also fill out items (2)(a)(1) through (2)(a)(3). The sentence could read, "I gave notice of the request for temporary emergency orders as described in items (1) through (3) below:" This would also be more consistent with the structure of Item (b) on this form. **Item (2):** litigants frequently have another individual provide notice to the other party, and this option should be added. An example could be inserting as Item (2)(a)(4) a checkbox item like "Notice was given by someone other than me, namely _____. Attached is a true and accurate declaration	No response required. The committee recommend using the term "service" instead of "delivery." The committee recommends revising the form as suggested by the commentator, with alterations. The committee recommends revising item 1 to include a series of check boxes to indicate whether the form is being completed by a party's attorney, a party in the case, or a person who is not a party in the case.

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Form FL-303		
Commentator	**Comment**	**Committee Response**
	(form MC-031) signed by the person who gave notice describing the time, date, and manner of notice." **CRC 5.151(e)** requires that the party give notice of the specific relief requested. There is nowhere on this form to do this. Item (a)(1) states generally that "I told the following person the date, time, and place of the emergency hearing and the specific court orders I seek:" However, litigants typically believe that it is sufficient to tell the other person they are seeking "emergency temporary orders" without specifying that they are seeking sole legal/physical custody, no visitation, and drug-testing orders. This distinction can often greatly impact the likelihood the other party will appear at the ex parte hearing. It would seem helpful to the bench officer if the litigant specify on the form what they told the other parties they were requesting as an emergency temporary order. **CRC 5.151(e)(1)(D)** requires that the moving party attempt to ascertain whether the opposing party plans to appear at the hearing. There is nowhere on this form to report this information, but it could be easily modified at or near Item (4) by adding a checkbox for I do/do not believe the other party will appear at the ex parte hearing. **CRC 5.151(e)(2)** requires that the moving party report the other party's response to the notice. There is nowhere on this form to do so yet; however, this could be easily added at the bottom of Item (2)(a) as subsection (4).	The committee recommends the change suggested by the commentator. Not all courts have hearings on a request for temporary emergency orders, as noted in the rule. Therefore, the committee recommends including an item on the form to indicate if the party completing the form believes or does not believe that the party given notice will oppose the request for temporary emergency orders. This language would cover the requirements of rule 5.151(e)(2)(A). The committee recommends including an item on the form to indicate the other party's response to the notice.

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Form FL-303		
Commentator	**Comment**	**Committee Response**
	Page 2, Item (3): There is no requirement under CRC 5.151 that the declaration regarding notice specify when and how the papers were served prior to the ex parte hearing. CRC 5.167 requires service "on the other party or on the other party's attorney at the first reasonable opportunity before the hearing." It is problematic for a party to complete Item (3) in our county as they would most often provide verbal notice to the other party or his/her attorney, prepare and submit their moving papers to the court, then provide copies to the other party or his/her attorney. They would not be allowed to submit their papers to the court without this declaration regarding notice, but they would not be providing copies to the other party until after the papers were submitted to the court. Since the code does not require that the party specify in the notice how and when they had copies of the papers served prior to the ex parte hearing, it would be more helpful to simply include a non-checkbox item that informs the moving party of this requirement. For example, Item (3) could read, "I understand that I must have a copy of my moving papers served upon the other party or his/her attorney at the first reasonable opportunity before the hearing and that if I fail to do so, the hearing may not occur." **CRC 5.151** requires disclosure of the other party's name, address, and telephone number (or their attorney's); disclosure of how the requested order would change the status quo; a copy of the most current custody/visitation orders (if available); an updated FL-105 Declaration under UCCJEA. If the form FL-303 is designed to ensure compliance with CRC 5.151 et seq., it	The rule applicable to item 3 is rule 5.165 (*Requirements for notice*), which provides, in part: **(a) Method of notice** Notice of appearance at a hearing to request emergency orders may be given by telephone, in writing, or by voicemail message. **(b) Notice to parties** A party seeking emergency orders under this chapter must give notice to all parties or their attorneys so that it is received no later than 10:00 a.m. on the court day before the matter is to be considered by the court. After providing notice, each party must be served with the documents requesting emergency orders as described in rule 5.167 or as required by local rule. This rule does not apply to a party seeking emergency orders under the Domestic Violence Prevention Act. The committee does not recommend revising the form as suggested by the commentator. This information would be included in the *Request for Order* (form FL-300), not in form FL-303.

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Form FL-303		
Commentator	**Comment**	**Committee Response**
	should include these sections. The parties are often not aware that once they submit their papers and the judge reviews them, they must pick up their moving papers and have them formally served upon the other party or parties. It would be helpful to add a note to this effect.	Because the procedure may vary from court to court, the committee does not recommend revising the form as suggested.
Superior Court of Santa Clara County Christine Copeland Commissioner	Forms FL-303- I think it may be worth repeating what already appears at bottom of page 3 of FL-300 re: if you want a DV order, don't use these forms. Otherwise, I am afraid that a DV order seeker downloading forms online or another way will not see or will bypass FL-300 and its warning, but instead go directly to FL-303 and FL-306 and think this is how you apply for a DVPA order.	Given the requests for additional space for other requests or order on all the forms in the proposal, and due to the space constraints of this form, the committee does not recommend revising the form as suggested by the commentator. The notice does appear on forms FL-300, FL-300-INFO, and FL-320. The California Court Web Site also includes information to litigants about the forms needed for cases involving domestic violence.

Form FL-305		
Commentator	**Comment**	**Committee Response**
Harriett Buhai Center for Family Law Meredith Alexander Staff Attorney	Page 1, item 1, there is an extra space after (form FL-300). Page 1, item 2.a(4) does not line up with items (1), (2) and (3). Page 1-2, items 2.a and 2.b should be consolidated and made to fit on page 1 by taking out some of the extra space at 2.a(2), 2.a(3)(B) and (C). It is confusing to list the continuation as a separate issue "b" that requires checking an additional box	The committee recommends extensive reformatting of this form and technical changes that include correcting typographical and spacing errors. Same as above answer. The committee recommends extensive reformatting of this form and technical changes that include correcting typographical and spacing errors.

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Comments from proposal W14-12 (circulated in 2014)

Family Law: Changes to Request for Order Rules and Forms (Amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94; 5.151, and 5.170; adopt form FL-303; and revise forms FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, Fl-341, FL-341(A), FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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Form FL-305		
Commentator	**Comment**	**Committee Response**
	when it is really still part of "a." Page 2, item 2.b(5) should be included above with the other orders, and should be renumbered as 2.b(4) with the following items renumbered accordingly.	 Same as above response.
Stacy Larson Family Law Facilitator Superior Court of Shasta County	It is a great idea to make this Temporary Emergency Orders form a stand-alone document. **Page 1, Item (2) *(now item 1)*:** One of the biggest causes of confusion on the current FL-305 is when the temporary orders expire. This item provides some clarification but is still likely to be misunderstood by the responding party. It may be helpful to add more specific reference to the date/time the temporary orders expire such as "THE COURT MAKES THE FOLLOWING temporary orders . . . automatically expire on the day and time of your hearing listed at Item (2) on page 1 of the FL-300 Request for Order form, unless reissued by the Court." **Page 1, Item (2) *(now item 1)*:** Schools and law enforcement are often unsure whether a temporary order is still in effect. Since our FL-305, in its proposed new form, merely references that the temporary order will expire on the court date shown on the RFO form, it can be even more confusing as they will not know what that date/time of expiration is when viewing only the stand-alone FL-305. Even if they request a copy of the FL-300, they cannot be sure if the FL-300 with date/time of hearing is the accurate date/time of expiration for the FL-305 temporary order as parties so often file competing RFOs one	No response required. The committee recommends revising the form to include that the orders expire on the date of the hearing, unless extended by court order. Same as above response.

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Comments from proposal W14-12 (circulated in 2014)

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

Form FL-305		
Commentator	**Comment**	**Committee Response**
	after another. The confusion is further compounded if the temporary order is issued then reissued one or more times. It would help to write in the date/time of expiration on the FL-305 with a statement that the temporary order expires on that day unless reissued pursuant to an FL-306 signed by a judge. It would be helpful to similarly revise the FL-306 to include reference to the specific RFO being reissued—date and time of initial filing and who the filing party was—so the reissuance would clearly relate to a specific RFO and temporary order.	
	Page 1, Item (3) ***(now item 2(a)(4))*****:** Different courts interpret this clause differently. By its plain language, it seems to state that the restrained party cannot take the child from the state or specified counties for any purpose. Some courts interpret this as meaning restraining only the relocation of the child to another state or county for purposes of changing residence. It would be helpful for litigants if the language specified whether this means "for any purpose" or merely "for purpose of changing residence."	The language in the order is not meant to pertain only to move-away cases. The committee believes that the issue is one of judicial education rather than revising the form, which on its face, is not limited to move-away cases. The committee recommends referring this matter to the Center for Judiciary Education and Research.
	Page 2, Item (b)(4)(C) ***(now item 2(a)(6)(c))*****:** There is a typographical error omitting the last part of this sentence (e. g., "the United States of America.").	The committee recommends revising the form as suggested by the commentator.
	Temporary emergency orders are often made in cases that already have existing custody/visitation orders. It would be helpful to have a checkbox where bench officers can clarify that all other existing orders, not in conflict with the temporary emergency orders herein, remain in full force and effect. This would ensure that if a party already has a drug-testing order or	The committee recommends revising the form as suggested by the commentator.

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Comments from proposal W14-12 (circulated in 2014)

Family Law: Changes to Request for Order Rules and Forms (Amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94; 5.151, and 5.170; adopt form FL-303; and revise forms FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, Fl-341, FL-341(A), FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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Form FL-305		
Commentator	**Comment**	**Committee Response**
	an order that specified people not be present at the exchanges, etc., these clauses remain in effect until the noticed hearing.	
Superior Court of Los Angeles County	**Agree** with proposed changes **only if modified**. **Title of the form –** We propose changing the name of the form to "Temporary Emergency (Ex Parte) Orders." We propose that for consistency's sake, the words "Ex Parte" be included in the title to match the FL-300-Info, item 9. **Page 2, top of the page.** There are two typos to correct. First, the letter (b) is unnecessary. This section is a continuation of section a Child Custody and Visitation (Parenting Time). Consequently, the lettering for the remaining items needs to be changed as well. Property Restraint becomes (b), Property Control becomes (c), and Other orders becomes (d). Second, please add a colon and line, or at least a colon, to the phrase "The country of habitual residence of the child or children is" such that there is a place indicated to write a response. We propose that the sentence would appear as follows: The country of habitual residence of the child or children is: _____.	The committee recommends revising the form as suggested by the commentator. The committee recommends revising the form as suggested by the commentator. The committee recommends revising the form to reinsert the language on current form FL-305, which was inadvertently deleted from the form that circulated for comment.
Superior Court of Santa Clara County Christine Copeland Commissioner	Forms FL-305- I think it may be worth repeating what already appears at bottom of page 3 of FL-300 re: if you want a DV order, don't use these forms. Otherwise, I am afraid that a DV order seeker downloading forms online or another way will not see or will bypass FL-300 and its warning, but instead go directly to FL-303 and FL-306 and think this is how you apply for a DVPA order.	Given the requests for additional space for other requests or order on all the forms in the proposal, and due to the space constraints of this form, the committee is not able to recommend revising the form to include a notice box to educate parties as suggested by the commentator. The notice does appear on forms FL-300, FL-300-INFO, and FL-320. The California Court Web Site also includes information to litigants about the forms needed for cases

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Comments from proposal W14-12 (circulated in 2014)

Family Law: Changes to Request for Order Rules and Forms (Amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94; 5.151, and 5.170; adopt form FL-303; and revise forms FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, Fl-341, FL-341(A), FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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Form FL-305		
Commentator	**Comment**	**Committee Response**
		involving domestic violence.
Hon. Rebecca Wightman Commissioner Superior Court of San Francisco County	Add a check box in the Title of the Order form for Child Support. Otherwise, for every temporary emergency order, it has to be written in. Temporary Emergency Orders form could use some changes such as: • Changing the Title to "EMERGENCY ORDERS" and creating a check box to the right that can designate...I Temporary • Changing 1. 2. to be check boxes, and adding a 3. With a check box for IMMEDIATE ORDER (or some such description for the true single emergency situation where there will be no hearing – because as I have been trying time and again to educate folks that not all emergency requests, and therefore,emergency orders, have a subsequent hearing!!! Otherwise, we bench officers are left with having tocross out the "hard-coded" 1. and 2.	The committee prefers that the form include specific checkboxes for items orders that are statutorily authorized to be issued as temporary emergency (ex parte) orders. The committee does not recommend this change. Form FL-305 is intended to record temporary emergency orders issued pending a hearing. *Findings and Order After Hearing* (form FL-340) is used to record orders after hearing.

Form FL-306		
Commentator	**Comment**	**Committee Response**
Harriett Buhai Center for Family Law Meredith Alexander Staff Attorney	In the caption, the extra P in the word "application" should be removed. Item 3, to ensure the form is easy to use for litigants seeking to	The committee recommends revising the form as suggested by the commentator. The committee recommends clarifying that the form is

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Form FL-306		
Commentator	**Comment**	**Committee Response**
	reissue an RFO without temporary orders, this item should be reorganized so that "a" is "c." Items 3.b and 3.c will be applicable to all situations. Current item 3.a is only applicable in some situations. There is also a space missing after current item a. Item 4, for the above reason, we recommend removing the phrase "of the orders" from this item, so it would read, "I request a reissuance because:" Item 4.b, the word "recommending" should be moved and the phrase reworded as follows, "The parties were referred to a child custody mediator or child custody recommending counselor."	only to be used to request reissuance of temporary restraining orders granted by the court pending the hearing on the *Request for Order*. The committee recommends revising the form to conform to the requirements of Family Code section 245, amended effective January 1, 2016. The committee recommends revising the form as suggested by the commentator.
Virginia Johnson Staff Attorney Superior Court of San Diego County	*Item 4a. should be revised to require the party to explain why the papers could not be served before the hearing. I suggest, "The papers could not be served as required before the hearing date <u>because *(explain)*:</u>" Item 4b should be changed to state: The parties ~~were referred to a~~ <u>must attend a</u> child custody mediation or recommending child custody <u>counseling on *(specify date, time and location)*</u>:" Item 8 *(now item 10):* I suggest rewording to make service clearer. "A filed copy of this order must be attached as the cover page of the Request for Order <u>and served along with all supporting documents and the Temporary Emergency Orders (if applicable).</u>"	Due to the space constraints of this form, the committee may not able to recommend revising the form as suggested by the commentator. The committee recommends that the form be revised to state: "The hearing was continued for the parties to meet with a child custody mediator or child custody recommending counselor." The committee recommends revising the form as proposed by the commentator , with minor changes.

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Form FL-306		
Commentator	**Comment**	**Committee Response**
Stacy Larson Family Law Facilitator Superior Court of Shasta County	**Caption:** There is a typographical error in the caption in the word "Application" as it has one too many "P."	The committee recommends revising the form as suggested by the commentator.
Superior Court of Los Angeles County	**Agree** with proposed changes **only if modified**. We recommend that the section titled "Order" be modified to match the format on the FL-300 and state "COURT ORDER (For Court Use Only)." This will clarify that only Court staff should complete that section. **Item 6** We recommend clarifying that item 6 only applies to those instances in which a Judicial Officer has made an order shortening time. The way the form is currently written indicates that a date for service and Responsive Declaration should be written in at all times. We recommend that item 6 be modified to conform to item 6 on the first page of the FL-300. So, there would first be a check box, then the words "Time for Service is shortened. Service must be on or before (date): " **Item 8.** We recommend removing the box in front of the sentence at item 8. This instruction applies to everyone filing the FL-306. We recommend that this instruction be placed above the Court Order section as well. Perhaps as number 5, immediately following number 4, and then the subsequent numbering can be changed.	The committee recommends revising the form as suggested by the commentator. The committee recommends revising the form as suggested by the commentator. The committee recommends revising the form as suggested by the commentator. Due to the space constraints of this form, the committee is not able to recommend revising the form to include the notice requested by the commentator.

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Family Law: Changes to Request for Order Rules and Forms (Amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94; 5.151, and 5.170; adopt form FL-303; and revise forms FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, Fl-341, FL-341(A), FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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Form FL-306		
Commentator	**Comment**	**Committee Response**
	Additionally, in the box at the upper right hand corner, please add the words "FOR COURT USE ONLY."	The committee recommends revising the form as suggested by the commentator.
Superior Court of Santa Clara County Christine Copeland Commissioner	Forms FL-306- I think it may be worth repeating what already appears at bottom of page 3 of FL-300 re: if you want a DV order, don't use these forms. Otherwise, I am afraid that a DV order seeker downloading forms online or another way will not see or will bypass FL-300 and its warning, but instead go directly to FL-303 and FL-306 and think this is how you apply for a DVPA order.	Due to the space constraints of this form, the committee is not able to recommend revising the form to include the notice requested by the commentator.
Hon. Rebecca Wightman Commissioner Superior Court of California, County of San Francisco	Reissuance form –the removal of the word "and" makes it now susceptible [in my view] for folks who filed an RFO and did not check the emergency box, to simply try to use that form as an end run around when a continuance request should be made…	The committee recommends revising the rule and form to clarify when a party must complete form FL-306. The form is used to ask the court to reissue the temporary emergency orders pending the hearing on the Request for Order, not to reissue a Request for Order without temporary emergency orders. The form will also be revised to include changes made to Family Code section 245, amended effective January 1, 2016.

Form FL-311		
Commentator	**Comment**	**Committee Response**
Harriett Buhai Center for Family Law Meredith Alexander	Page 1, item 2.c, the word "recommending" should be moved and the phrase reworded as follows, "The parties will go to mediation or child custody recommending counseling at (specify location below):" Page 1, item 2.e, we agree that this item should be revised to	The committee recommends revising the form as suggested by the commentator. The committee recommended revising item 2e to

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Form FL-311		
Commentator	**Comment**	**Committee Response**
	include boxes to check to indicate whether the visitation (parenting time) commences at the start of school or after school. This is a very common order and including it as an easy option in the forms is very useful. However, we would recommend including the word "or" between the time options and the boxes regarding school. This way the item would read From _____ at _____ [ ] a.m. [ ] p.m OR [ ] start of [ ] after school.	instruct the parties to "Specify start and ending date and time. If applicable, check "start of school" OR "after school." Because it is important to include both a time and whether it is the start of school or the end of school, if applicable, committee prefers not to include the word "OR" between the two items. Parties could interpret "OR" as meaning that they need to complete either the time or the check boxes relating to school (but not both).
	It is important that litigants include both a time and whether it is the start or end of school. If no time is listed, the order will be confusing and possibly unenforceable on days when the children do not have school. Including the word "or" will make the order clearer and easier to follow whether or not there is school.	See above response.
	Page 2, item 2.e(4) should follow the same format as the prior form with the addition of "(form MC-025 may be used for this purpose)." The box should remain in the bottom right to avoid confusion. Additionally, the phrase "has other visitation (parenting time) days and times" should be deleted. It is unnecessary and confusing.	The committee recommends revising item 2d(4) to avoid confusion.
Stacy Larson Family Law Facilitator Superior Court of Shasta County	**Item (2)(e)(1-4):** The checkbox for "Other parent/party's" should be modified to "Other parent's/party's"	The committee recommends revising the form as suggested by the commentator.
	Item (2)(e): It's a great idea to include checkboxes for "before school" and "after school" as these are common orders made by	The committee recommends revising the form as suggested by the commentator.

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Form FL-311		
Commentator	**Comment**	**Committee Response**
	the court. However, the proposed checkbox for "start of" is difficult to understand as the word "school" seems to apply only to the "after school" checkbox. Perhaps we could make the first box "before school" (or "start of school") and the second checkbox "after school" to make this more clear. The current configuration will be difficult for litigants to understand.	
	Page 2, Item (2)(e)(4): It is not clear what this item is requesting in the first checkbox. If the intent is to mirror our current Item (4) on Page 1 of the FL-311, then we really need more space to specify the unique parenting time/visitation schedule. Even the current FL-311, Item (4), "Other" is a bit short on space, and the new version will not work at all as it only provides enough room for a single word next to "specify."	The committee recommends revising the form at item 2e(4) so that it is easier to understand that the party can use the space provided on the form to specify other visitation times and restrictions or use an attachment, if additional space is needed.
	Page 2, Item (3): The first part of this section essentially mirrors the version in our current FL- 311, which causes litigants a great deal of confusion. It would be helpful if we could add "if any" in the section for the costs (e. g., "I request that the costs of supervision, if any, be paid as follows: . . .").	The committee recommends revising item 3 on the form be revised to state "I request that any costs of supervision be paid as follows."
	Also, litigants do not know that their designated supervisor, whether professional or non-professional, must meet the requirements of Family Code 3200.5. It would be helpful if this was specified on this form under Item (3). For example, if we moved the bold-print notation at the bottom ("If item 3 is checked . . .") up so that it appears directly under the heading for Item (3), we could add "The supervisor you propose must meet the requirements of Family Code §3200.5. These	The committee agrees to include the changes suggested by the commentator, with minor alterations, among the revisions being recommended to the Judicial Council.

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Form FL-311		
Commentator	**Comment**	**Committee Response**
	requirements are listed on form FL-324 Declaration of Supervised Visitation Provider." If litigants are informed of these requirements, it will assist them in proposing appropriate supervisors and/or in deciding whether to request supervised visitation at all before filling in the request under Item (3).	
	Page 2, Item (4)(f): Since the exchange place may be somewhere other than a home, such as a public place or a police department, it may be better to specify ". . . go between the car and the exchange location." § Page 2, Item	The committee recommends revising the form to consider that the exchange location may be in a place other than a party's home.
	Page 2, Item (4): A very common issue regarding transportation and exchanges is which party will arrange and pay for transportation. Can this be added as a new Item (4)(g), moving "Other" to a new Item (4)(h)?	The committee recommends adding a check box for transportation costs to be consistent with the other items on the form. The issue of arranging transportation can be included in item 4h (Other).
	Page 2, Item (5): Different bench officers frequently interpret this section differently. By its plain language, it requests a court order preventing one or both parties from taking the children from the county or state even on his/her own parenting time. Some bench officers interpret this as prohibiting only removal of the child for purposes of changing residency. It would be helpful if the language was modified to promote more uniform interpretation.	Item 5 (Travel with the children out of state) is not meant to pertain only to move-away cases. The committee believes that the issue is one of judicial education rather than revising the form, which on its face, is not limited to move-away cases.
	Page 2, Item (10): I know the form is getting somewhat long, but we really need more space for "other" to fill in additional requests for orders pertaining to custody/parenting time. Otherwise, we must attach an MC-025 or another form everytime a litigant wishes to request customized orders.	In attempting to be responsive commentators' suggestions to improve this form, the committee may not be able to revise the form to provide additional fillable space at item 10.

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Form FL-311		
Commentator	**Comment**	**Committee Response**
	A very common order requested is the request for drug testing. It would be helpful to add a checkbox item that requests drug testing by urinalysis with 24 hours notice with the results released to the requesting party, the cost of dirty tests to be reimbursed to the requesting party.	To keep the form to 2 pages, the committee prefers not adding another item, when the check box for "Other" could be used by a party to include the language suggested by the commentator.
Los Angeles Center for Law and Justice Suma Mathai, Esq.	Yes, the form should include check boxes, as proposed to include options for visitation to commence at the start of school or after school; however, additional language should also be included to allow the parties to indicate times for commencement and termination of visitation in the event that school is not in session. Visitation exchanges frequently occur on non-school days due to holidays and breaks, so inclusion of this additional language will be beneficial.	No response required. Due to the space limitations on this form, the committee prefers that parties use the "Other" check box to include the suggested provisions or add an additional page to the form.
Superior Court of Los Angeles County	**Agree** with proposed changes **only if modified**. **Item 2e and 2e(1).** We think that the reference to "start of" and "after school" could be confusing. We recommend changing the language to say "start of school" and "after school" to clarify. **Item 2e(4).** We find the use of these two sentences to be redundant. We recommend having one box at item 2e(4) and modifying the sentence to state "Other visitation (parenting time) days and times as well as additional restrictions are listed __ below or __ in attachment 2e(4) (*form MC-025 may be used for this purpose*): "	The committee recommends revising the form as suggested. The committee recommends revising the form to clarify item 2e(4) and avoid redundancy.

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Form FL-311		
Commentator	**Comment**	**Committee Response**
Superior Court of Santa Barbara County Deborah Mullin Family Law Facilitator	FL-311, p. 1, paragraph 1: Same comment as above. Move the "child's name," "DOB," "Legal custody" and "Physical custody" columns to the left so that there's more room for typing. FL-311, p. 1, paragraph 2(e): Indicate (Specify start and ending date and time. If applicable, check "start of" or "after" school.) By making this change, it clarifies that "start of" and "after" both refer to school. FL-311, p. 2, paragraph 2e.(4): Change the spacing on the responses. "Other visitation… (specify)" needs more space for a response. Put 2e(4) checkbox and sentence at the bottom of the given response area, as it is currently drafted. FL-311, p. 2, paragraph 4: Add as an alternative: "Transportation will be provided by the parent receiving the children." FL-311, p. 2, paragraph 9: Change the form number to FL-341(E) Joint Legal Custody.	The committee recommends revising the form as requested. The committee recommends revising the form as requested, with other changes. The committee recommends revising the form to provide as much additional space as possible. Due to space limitations on the form, the committee prefers to not add the suggested language on the form. Instead, this information can be included in the "Other" section. The committee recommends revising the form as requested.
Superior Court of San Joaquin County	We feel [that the proposed global revisions to form FL-311 to delete all references to "parents" and replace them with "parties"] will positively impact all court patrons who commonly have difficulties noting their correct role on pleadings or filings. For our clerks it will save clerk processing time as we currently need to modify forms to remove Father or	No response required.

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ATTACHMENT B

Comments from proposal W14-12 (circulated in 2014)

Family Law: Changes to Request for Order Rules and Forms (Amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94; 5.151, and 5.170; adopt form FL-303; and revise forms FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, Fl-341, FL-341(A), FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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

Form FL-311		
Commentator	**Comment**	**Committee Response**
	Mother and impose correct party titles. Form FL-311 should be revised at item 2.e. to include check boxes to indicate whether the visitation (parenting time) commences at the start of school or after school. This would save clerk time as clerks currently need to modify current forms so that items reflect correct starting and ending time on visitation schedules. It will also be helpful for law enforcement and schools/daycare when having to determine who to release the child to. Sometimes when we modify current forms the order appears doctored and validity may be questioned.	No response required.

Form FL-312		
Commentator	**Comment**	**Committee Response**
Harriett Buhai Center for Family Law Meredith Alexander	Page 2, item 5, we recommend substituting form FL-311 for form FL-341(A). This form, FL-312 is part of a Request for Order, not an order, whereas FL-341(A) is an actual court order. Thus, it is more appropriate that in the Request for Order, the FL-311 or some other statement or attachment be used for the supervised visitation order requests. Attaching an FL-341(A) to an RFO will be confusing and misleading.	The committee recommends revising item 5 as suggested by the commentator.
	*Page 2, item 10: I suggest wording changes just to clarify the meaning of this item. I ask for a court order: __ requiring the party to turn in all the children's passports and	Item 10 is titled "Turn in and Do Not Apply for Passports and Other Vital Documents." The committee recommends revising the form to include

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Form FL-312		
Commentator	**Comment**	**Committee Response**
	other travel documents in his or her possession or control.	a request to turn in other *vital* documents and provide an example of vital documents. The list of vital documents would include "documents used for travel." The committee agrees to revise the check box to include the documents in the party's possession or "control."
	__preventing the party from applying for passports or other documents (such as visas or birth certificates) that can be used for international travel.	The committee prefers the wording "...documents that can be used to travel with the children," instead of limiting the request to situations involving international travel.
	I also suggest that FL-341(B) *Child Abduction Prevention Order Attachment* be amended to have separate orders for (1) turning in children's passports and other travel documents in his or her possession or control as follows (*specify):* (Ex: opposing counsel; minor's counsel; etc] and (2) Must not apply for a new passport or any other travel document for the children.	The committee recommends revising form FL-341(B) so that it is consistent with the recommended changes to form FL-312.
Stacy Larson Family Law Facilitator Superior Court of Shasta County	**Page 2, Item (5):** Litigants do not know that their designated supervisor, whether professional or non-professional, must meet the requirements of Family Code 3200.5. It would be helpful if this was specified on this form under Item (5). We could add something like "The supervisor must meet the requirements of Family Code §3200.5. These requirements are listed on form FL-324 Declaration of Supervised Visitation Provider." If litigants are informed of these requirements, it will assist them in proposing appropriate supervisors and/or in deciding whether to request supervised visitation at all before filling in the request under Item (3).	The committee does not recommends this statement as the requirements only apply in cases that involve domestic violence.

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Form FL-312		
Commentator	**Comment**	**Committee Response**
	Also, the litigants typically are already completing and filing an FL-311 (rather than the FL-341(A), so it would be helpful if this was a checkbox option on Item (5).	The committee recommends revising item 5 to include a check box for form FL-311 and delete the check box for form FL-341(A), which is a court order.
Superior Court of Los Angeles County	**Agree** with proposed changes We like the changes made to the language at item 3 because it is much clearer and more direct. Great change to the form. Otherwise we have no comments on this form.	No response required.
Superior Court of San Joaquin County Erica A. Ochoa Court Records Manager	Form FL-312, Request for Child Abduction Prevention Orders – Add a notice box at the bottom of page 2 of 2 to indicate that Form FL-341(B), Child Abduction Prevention Order Attachment goes hand in hand with FL-312 (312 is Request and 341(B) is the Order). Similar to the notice box on form FL-337 or notice at the bottom of form FL-320, page 2 of 2. We feel [that the proposed global revisions to form FL-312 to delete all references to "parents" and replace them with "parties"] will positively impact all court patrons who commonly have difficulties noting their correct role on pleadings or filings. For our clerks it will save clerk processing time as we currently need to modify forms to remove Father or Mother and impose correct party titles.	Form 341(B) is an attachment to form FL-341, which is then attached to a *Findings and Order After Hearing* (form FL-340), a *Stipulation and Order for Custody and/or Visitation of Children* (form FL-355), or a *Judgment* (form FL-180). Therefore, the committee prefers not to recommend revising the form as suggested by the commentator. No response required.

Form FL-320

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Commentator	Comment	Committee Response
Stacy Larson Family Law Facilitator Superior Court of Shasta County	**Item (3):** At item (c), the party is potentially consenting to a guideline order. Again, at item (d)(1), the party is potentially consenting to a guideline order. This seems repetitive. Do we need Item (d)(1)?	The committee recommends extensive revisions to simply this form that should address the comment.
	Item (4)(c): This section states that the party does not consent to the requested order but does not ask him/her to clarify the order to which he/she does consent until Item (4)(d). The former three items pertaining to child custody, child visitation/parenting time, and child support follow a different format, combining these two options into one. It would be helpful to follow the same format for all items, making Item (4)(c) unnecessary.	Same as above response.
	Item (5): It would be helpful if the responding party was informed that the FL-158 Supporting Declaration for Attorney's Fees and Costs Attachment can be used to provide necessary information.	The committee recommends revising the form as suggested by the commentator.
	Additionally, Items (1) through (3) on this form pertaining to child custody, child visitation/parenting time, and child support follow a different format, combining the option to not consent to the requested order and not consenting but explaining the order to which he/she would consent into one option. It would be helpful to follow the same format for all items, making Item (5)(c) unnecessary.	The committee recommends extensive revisions to simply this form that should address the comment.
	Item (6): Items (1) through (3) on this form pertaining to child custody, child visitation/parenting time, and child support	Item 6 pertains to property restraint. The committee recommends revising the form to delete "Property

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Form FL-320		
Commentator	**Comment**	**Committee Response**
	follow a different format, combining the option to not consent to the requested order and not consenting but explaining the order to which he/she would consent into one option. It would be helpful to follow the same format for all items, making Item (6)(b) unnecessary.	Restraint" from the form.
	Item (7): Items (1) through (3) on this form pertaining to child custody, child visitation/parenting time, and child support follow a different format, combining the option to not consent to the requested order and not consenting but explaining the order to which he/she would consent into one option. It would be helpful to follow the same format for all items, making Item (6)(b) unnecessary.	Item 7 pertains to property control. The committee recommends revising the form at item 7 as suggested by the commentator.
	Item (8) ***(now item 9)*****:** The other party often requests several orders under "Other Relief," making it difficult to respond using Item (8) on this form. It may be helpful to specify "order or orders" for Items (8)(a) through (c). Also, Items (1) through (3) on this form pertaining to child custody, child visitation/parenting time, and child support follow a different format, combining the option to not consent to the requested order and not consenting but explaining the order to which he/she would consent into one option. It would be helpful to follow the same format for all items, making Item (8)(b) unnecessary.	The committee recommends changing the item to state "Other Orders Requested."
	Affirmative Relief: Parties frequently wish to make a Request for Affirmative Relief in their responses, and it's difficult to use this form for this purpose. Can we have an Item (10)	California Rules of Court, rule 5.92 provides that "[t]he responding papers may request relief related to the orders requested in the moving papers. Unrelated relief

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Form FL-320		
Commentator	**Comment**	**Committee Response**
	Request for Affirmative Relief added?	must be sought by filing a separate request for order as specified in (a)."
Superior Court of Los Angeles County	**Agree** with proposed changes **only if modified**. We like the additions made to the FL-320 regarding the instruction that an FL-150 or FL-155 be attached. We recommend that any relevant code sections and rules of court be indicated at the bottom right hand corner of the form above the www.courts.ca.gov website address. Additionally, in the box at the upper right hand corner, please add the words "FOR COURT USE ONLY."	No response required. The committee recommends revising the form to include the relevant Family Code sections. As a policy change, the Judicial Council no longer includes rules of court on forms. The committee recommends this correction.

Form FL-336		
Commentator	**Comment**	**Committee Response**
Harriett Buhai Center for Family Law Meredith Alexander	Page 1, item 1.e seems redundant with item 1.d and should be removed.	The committee recommends revising the form at page 1 by deleting item 1.d. However, the committee also recommends adding an "Other (specify):" checkbox for the court to indicate if the proceeding was heard in any other matter besides as a default, by declaration, by trial, or on the party's request for order.
Los Angeles Center for Law and Justice Suma Mathai, Esq.	On **FL-336**, *Order to Pay Waived Court Fees and Costs*, Page 2, Item 5, we suggest that the heading language be changed. As written, it is unclear whether the court is ordering that notice be provided to a party, by whom, by when, and by what method, or if the item was intended for something else.	The committee recommends revising the form at item 5 to provide greater clarity about the notice required to be given to a party ordered to pay the initial fee waiver recipients court fees. The committee recommends that page 2 of the form specify circumstances in which a party or the court must ensure service of the order by mail.

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Form FL-336		
Commentator	**Comment**	**Committee Response**
Superior Court of Los Angeles County	Agree with proposed changes only if modified. We have one minor formatting change to this form. At item 2a (first and second line), and items 5a and 5b, for consistency's sake, please capitalize the words "Parent/Party." In other forms, wherever Petitioner and Respondent are capitalized, all three words in Other Parent/Party are also capitalized. We ask that this form be consistent with that formatting decision. Additionally, in the box at the upper right hand corner, please add the words "FOR COURT USE ONLY."	The committee recommends revising the form as suggested by the commentator. Same as above response.

Form FL-337		
Commentator	**Comment**	**Committee Response**
Superior Court of Los Angeles County	Agree with proposed changes	No response required.

Form FL-341(C)		
Commentator	**Comment**	**Committee Response**
Harriett Buhai Center for Family Law Meredith Alexander	Page 1, item 1, for Mother's birthday and Father's birthday include the date, so that it reads: "Mother's birthday (*date*): Father's birthday (*date*):" Page 2, item 1, continued, the first line in the grid, underneath the heading "Holidays" should indicate "Other (specify):"	The committee recommends revising the form as suggested by the commentator. The committee recommends revising the table at item 1,page 2, so that the title reads "Other Holidays." This will allow additional space for a party to list the specific holiday.

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Form FL-341(C)		
Commentator	**Comment**	**Committee Response**
	Page 2, item 2.b(1), the open parenthesis is missing between the words "has" and "number."	The committee recommends revising the form as suggested by the commentator.
Stacy Larson Family Law Facilitator Superior Court of Shasta County	It's a great idea to update this form. It serves a dual purpose for litigants as it can be used as a settlement tool, helping them to remember to address each of these holidays and reducing conflict later, as well as for requests for orders and orders after hearing.	No response required.
	Christmas and Christmas Eve: I'm assuming we omit these holidays in the interest of political correctness, but it's not practical to leave them off. Specifying the "first half" and "second half" of "Winter Break" does not address the days most frequently litigated by parents—who will have the child/children on Christmas Eve and Christmas. Because these popular holidays are not listed, litigants frequently forget to address them in their pleadings and/or stipulations. Can we please add them in as separate items?	The committee prefers to recommend revising the form to provide a blank holiday table so that parties can list the holidays that are observed in their families.
	Easter: Ditto from former comment—Easter Sunday is a big holiday for many families. Parents frequently litigate who is going to have the child on Easter Sunday. It would be helpful to add his in as a separate item.	Same as above response.
	Summer Break: Typically, parents share summer break, at least to some extent. It would be helpful if we had more room here to give a few specifics.	The committee's recommended revisions to provide a blank table for a party to include other holidays will address the commentator's request for additional space.
	December/January School Break: It is unclear how this is	The committee recommends revising the entry, which

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Form FL-341(C)		
Commentator	**Comment**	**Committee Response**
	different from "Winter Break, first half" and Winter Break, second half." I suggest we omit this entry to make room for more important entries.	circulated for comment as "Winter Break" so that it reads "President's Week Recess, first half" and "President's Week Recess, second half," Although this recess is also referred to as "Ski Week" or "Winter Break" in some schools , the committee prefers "President's Week Recess because of its proximity to President's Day weekend and to avoid confusion with the entry for "December/January School Break"
	Child's birthday: If we need to make room for other holidays, such as Christmas, we could reduce them back to just one child, allowing parents who have multiple children or who want to address halfsiblings' and step-siblings' birthdays under "other."	The committee believes that the additional table recommended in the form will cover the situations described by the commentator.
	Breaks for year-round schools: Year-round school schedules are typically a bit complicated, and it would be helpful to have some room here to specify how the breaks would be apportioned. It would be somewhat rare for one parent to have ALL the breaks from year-round schools.	Same as above response.
	Column for "Times": The beginning and ending time information often does not fit in the column provided. Many of the holidays require writing in the starting date/time and ending date/time (e. g., "Friday after school to Monday before school" or "Mother to have Christmas morning until noon and Father to have Christmas day noon to _____"). School breaks are often even more complicated (e. g., "Mother to have the first two weeks of summer vacation. Father to have remainder of summer vacation, returning the child two weeks before the first	The committee recommends revising the holiday table in item by widening it as much as possible while retaining the other columns, which may be useful to some parties.

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Form FL-341(C)		
Commentator	**Comment**	**Committee Response**
	day of school for the next academic year.") It would be helpful to make this column wider, so we could write in the appropriate information. To make room, we could omit the "every year" column. Parents who have a particular holiday every year could simply write their designation ("petitioner" or "respondent") in both the "even numbered" and "odd numbered" columns. Litigants are frequently confused regarding how to fill out this form and lack room to provide the necessary information. It's a wonderful idea to make this form a two-page form and add significant room on page 2 to "write in" additional holidays. This is SO needed.	No response required.
Superior Court of Los Angeles County	**Agree** with proposed changes **only if modified**. On page 1, we recommend that under "Father's birthday" a row be added for "Other Parent/Party's birthday)." On page 2, we noticed a few formatting errors. First, under **2. Vacations**, the words "Parent/Party" should be capitalized for consistency's sake. Under 2b(2)(B) and 2b(2)(C), we recommend making Petitioner, Respondent and Other Parent/Party all lower case to be consistent with other forms. Whenever these words are used in a sentence, they are usually lower case. See item 7 on the proposed FL-300 for an example. Additionally, please remove the colon at item 2b(2)(C) after "suggestions of" to be consistent with item 2b(2)(B), which	The committee recommends revising the form as requested by the commentator. The committee recommends revising the form as requested by the commentator. The committee recommends the formatting that is approved by the Judicial Council forms style guide. The committee recommends revising the form as requested by the commentator.

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Form FL-341(C)		
Commentator	**Comment**	**Committee Response**
	does not include a colon.	
Superior Court of Santa Barbara County Deborah Mullin Family Law Facilitator	**FL-341(C):** I don't understand the difference between "Winter Break, first half/Winter Break, second half" and "December/January School Break."	The committee recommends revising these entries as "President's Week Recess, first half" and "President's Week Recess, second half," Although this recess is also referred to as "Ski Week" or "Winter Break" in some schools , the committee prefers "President's Week Recess because of its proximity to President's Day weekend.
Superior Court of San Joaqin County	We feel [that the proposed global revisions to form FL-341(C) to delete all references to "parents" and replace them with "parties"] will positively impact all court patrons who commonly have difficulties noting their correct role on pleadings or filings. For our clerks it will save clerk processing time as we currently need to modify forms to remove Father or Mother and impose correct party titles.	No response required.

Form FL-341(D)		
Commentator	**Comment**	**Committee Response**
John Chemeleski Superior Court Commissioner Superior Court of Los Angeles County	Objections to proposed form FL-341(D):ADDITIONAL PROVISIONS—PHYSICAL CUSTODY ATTACHMENT. This form should be eliminated. Except for items 1 and 2, most of these "provisions" impose on the constitutionally protected custodial rights of fit parents to raise their children under US Supreme Court case law (including Troxell v. Granville) and should only be ordered by the court where there has been a finding based on the evidence that a parent is not fit or capable of making appropriate decisions on such issues or where the court has assumed jurisdiction in a dependency case or where	The committee does not recommend eliminating this form. Effective January 1, 2004, the Judicial Council approved form FL-341(D) for optional use to address common issues in custody and visitation orders such as safety, child care, and phone contact. It is meant to allow (1) litigants to set out a parenting schedule and (2) judicial officers to specify the scope of, and incorporate common provisions regarding, physical custody.

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Form FL-341(D)		
Commentator	**Comment**	**Committee Response**
	the parties have knowingly and intelligently waived such rights by agreement in mediation. The family court is required to resolve disputes over child custodial arrangements based upon what arrangements appear to be in the children's best interests and is not to Impose restrictions on parents in a family law	
Harriett Buhai Center for Family Law Meredith Alexander	Page 1, the introductory paragraph seems confusing because each of the items below identifies whether it applies to the parties or the noncustodial party. It might make more sense to have options at each item to check to identify whether the order applies to Petitioner, Respondent or both. Page 1, item 1, we recommend including boxes to check for Petitioner and Respondent. It is not always appropriate that both parties provide current contact information, such as in cases that involve domestic violence. Litigants should be given an easy option to ensure the other party provides current contact information without having to disclose their contact information if it would be dangerous to do so. Additionally, we recommend including "cell" as an option under 1.b, and an option 1.c for email address. Page 1, item 5, we recommend keeping the word non-custodial to help clarify the orders. We also recommend including options under items 5.b and 5.c for including a specific timeframe.	The committee recommends revising the form as suggested by the commentator. The committee recommends revising the form as suggested by the commentator. The committee recommends keeping the word noncustodial in this item and providing additional space to include a specific timeframe for items 5b and 5c.
Stacy Larson Family Law Facilitator Superior Court of Shasta County	**Item (5):** It would be helpful to add a checkbox option for parents to request or agree that parents must be given the opportunity to "make up" missed visitation or parenting time that is cancelled by the other parent.	The committee prefers that such information be provided in the check box for "Other" instead of creating a new provision on the already-crowded form.

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Form FL-341(D)		
Commentator	**Comment**	**Committee Response**
	A very common order requested is the request for drug testing. It would be helpful to add a checkbox item that requests drug testing by urinalysis with 24 hours notice with the results released to the requesting party, the cost of dirty tests to be reimbursed to the requesting party. **Item (10):** The use of marijuana is increasingly more common. It may be helpful to add "or medical marijuana smoke." It would be helpful to add a clause similar to Item (7) prohibiting the parents from discussing court proceedings and litigation pertaining to the child or parties with the child.	Same response as above. The committee agrees to recommends this revision to the form. The committee agrees to recommend this revision to the form with minor changes.
Superior Court of Los Angeles County	**Agree** with proposed changes **only if modified**. In the first sentence starting with "The additional provisions to physical custody apply to," please capitalize "Parent/Party" to be consistent with formatting on other forms.	The committee recommends revising the form as suggested by the commentator.
Superior Court of Santa Barbara County Deborah Mullin Family Law Facilitator	**FL-341(D), top of the page:** Why is the sentence added: "The additional provisions to physical custody apply to…Petitioner…Respondent…Other?" Almost all the numbered items refer to "each party" or "the parties." If one item is supposed to refer to just one party, perhaps that numbered item should have the appropriate party check boxes. The language is confusing as drafted. I think it's an unnecessary addition.	The sentence "The additional provisions to physical custody apply to (specify parties): _Petitioner _ Respondent _ Other Parent/Party" was added to avoid duplicating the entry in each of the subsequent items. In addition, the recommendation is for a global revision to replace all references to "parents" with "parties." The committee believes that these change improve the form by allowing for cases in which the petitioner may not be a parent, such as in actions involving a local child support agency (who may be listed as the petitioner in

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Form FL-341(D)		
Commentator	**Comment**	**Committee Response**
		the case), or cases in which the court grants custody or visitation rights to a child's grandparent or another relative.
Superior Court of San Joaquin County	We feel [that the proposed global revisions to form FL-341(D) to delete all references to "parents" and replace them with "parties"] will positively impact all court patrons who commonly have difficulties noting their correct role on pleadings or filings. For our clerks it will save clerk processing time as we currently need to modify forms to remove Father or Mother and impose correct party titles.	No response required.

Form FL-341(E)		
Commentator	**Comment**	**Committee Response**
John Chemeleski Superior Court Commissioner Superior Court of Los Angeles County	This proposal contains a major change from the existing form that is not discussed in the proposal. The current form reads as follows in par. 2: In exercising joint legal custody, the parents will share in the responsibility and confer in good faith on matters concerning the health, education, and welfare of the children. The parents must confer in making decisions on the following matters:	The proposed change described by the commentator is not a major change to the form. The revisions are meant to conform the language to the form's original purpose. The Judicial Council approved form FL-341E, *Joint Legal Custody Attachment*, effective January 1, 2004, to allow the court to specify the circumstances under which the *consent* of both parents is required to be obtained in order for them to exercise legal control of the child and

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Comments from proposal W14-12 (circulated in 2014)

Family Law: Changes to Request for Order Rules and Forms (Amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94; 5.151, and 5.170; adopt form FL-303; and revise forms FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, Fl-341, FL-341(A), FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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

Form FL-341(E)		
Commentator	**Comment**	**Committee Response**
	The proposed form reads as follows: In exercising joint legal custody, the parties will share in the responsibility and discuss in good faith matters concerning the health, education, and welfare of the children. The parents must discuss and CONSENT in making decisions on the following matters: This change (requiring consent) would now appear to prevent a parent from enrolling a child in school, taking to a child to a doctor, dentist, or other health care professional (except in emergency) or to a counselor or sign up for soccer simply because the other parent failed to consent or refused to reply to a request that the parent "consent" to such activity. Should a parent in such a situation risk contempt of court by doing so or should that parent wait 6 to 12 weeks to get a hearing date? Will the courts have additional expenses in appointing counsel for a contempt defendants or should the courts summarily dismiss such charges? Such a draconian order should only be made in rare circumstances and with other specific provisions for resolving such disputes and should not be in a general use form leading users of such form to think this is an order the court would normally make.	the consequences of the failure to obtain mutual consent as required by Family Code section 3083.[1]" Same as above response. Generally, under Family Code section 3003, in exercising joint legal custody, the parties may act alone, as long as the action does not conflict with any orders concerning the physical custody of the children. The committee recommends revising the form to better clarify that the provisions listed on the form are only

[1] [1] Judicial Council of Cal., Family and Juvenile Law Advisory Com.Rep., *Family Law: Child Custody and Visitation Orders (revise forms FL-311 and FL-341; approve forms FL-341C, FL-341D, FL-341E, and FL-355)* (Sept. 10, 2003), p. 3.

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Comments from proposal W14-12 (circulated in 2014)

Family Law: Changes to Request for Order Rules and Forms (Amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94; 5.151, and 5.170; adopt form FL-303; and revise forms FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, Fl-341, FL-341(A), FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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

Form FL-341(E)		
Commentator	**Comment**	**Committee Response**
		meant to be used in special circumstances as describe in Family Code section 3083.
Harriett Buhai Center for Family Law Meredith Alexander	Item 4.b should not be listed under the heading "Special decision making designation." It should be moved and renumber as item 6 and listed as "6. [ ] Access to Records. Each party will have access to the children's school, medical, and dental records, and the right to consult with professionals who are providing services to the children." This item is very important and, as it is currently listed, is easily missed or misinterpreted by litigants, schools, and other professionals. The items that follow items should be renumbered accordingly.	Due to space constraints on the form, the committee recommends revising the title of item 4 to include "access to child's records."
Stacy Larson Family Law Facilitator Superior Court of Shasta County	**Item (2):** A common area for discussion between the parents is the religious affiliation, if any, the child will be exposed to. This should be added to the list of checkbox items. There should be a provision after Item (2) explaining what the parties should do if they are not able to agree on these issues (such as file papers with the Court to litigate disputed issues).	The committee recommends retaining the checkbox relating to religious affiliation as this a common area for discussion between parents. Given the space limitations of this of this form, the committee is unable to revise the form as suggested.
Los Angeles County Bar Association Family Law Section Seth Kramer, Chair	This proposal contains a major change from the existing form that is not discussed in the proposal. The current form reads as follows in par. 2: *In exercising joint legal custody, the parents will share in the responsibility and confer in good faith on matters*	Comments are duplicative of those submitted by John John Chemeleski. See above response.

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Comments from proposal W14-12 (circulated in 2014)
Family Law: Changes to Request for Order Rules and Forms (Amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94; 5.151, and 5.170; adopt form FL-303; and revise forms FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, Fl-341, FL-341(A), FL-341(B), FL-341(C), FL-341(D), and FL-341(E))
All comments are verbatim unless indicated by an asterisk (*).

Form FL-341(E)		
Commentator	**Comment**	**Committee Response**
	concerning the health, education, and welfare of the children. The parents must confer in making decisions on the following matters: The proposed form reads as follows: *In exercising joint legal custody, the parties will share in the responsibility and discuss in good faith matters concerning the health, education, and welfare of the children. The parents must discuss and consent in making decisions on the following matters:* This change would now appear to prevent a parent from enrolling a child in school, taking to a child to a doctor, dentist, or other health care professional (except in emergency) or to a counselor or sign up for soccer simply because the other parent failed or refused to reply to a request that the parent "consent" to such activity. Should a parent in such a situation risk contempt of court by doing so or should that parent wait 6 to 12 weeks to get a hearing date? Will the courts have additional expenses in appointing counsel for a contempt defendants or should the courts summarily dismiss such charges? Such a draconian order should only be made in rare circumstances and with other specific provisions for resolving such disputes and should not be in a general use form leading users of such form to think this is an order the	See above response. See above response.

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Comments from proposal W14-12 (circulated in 2014)

Family Law: Changes to Request for Order Rules and Forms (Amend Cal. Rules of Court, rules 5.12, 5.62, 5.63, 5.92, 5.94; 5.151, and 5.170; adopt form FL-303; and revise forms FL-300, FL-300-INFO, FL-305, FL-306, FL-311, FL-312, FL-320, FL-336, FL-337, Fl-341, FL-341(A), FL-341(B), FL-341(C), FL-341(D), and FL-341(E))

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

Form FL-341(E)		
Commentator	**Comment**	**Committee Response**
	court would normally make.	
Superior Court of Los Angeles County	**Agree** with proposed changes **only if modified**. **Item 1.** Please capitalize "Parent/Party" to be consistent with formatting on other forms. **Item 2.** In the second sentence, please change the word "parents" to "parties" for consistency's sake.	The committee recommends revising the form as suggested by the commentator. Same as above response.
Superior Court of San Joaqin County	We feel [that the proposed global revisions to form FL-341(E) to delete all references to "parents" and replace them with "parties"] will positively impact all court patrons who commonly have difficulties noting their correct role on pleadings or filings. For our clerks it will save clerk processing time as we currently need to modify forms to remove Father or Mother and impose correct party titles.	No response required.

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JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 27, 2015

Title
Family and Juvenile Law: Juvenile Court Final Child Custody Orders

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 5.475, 5.620, 5.700, and 5.790; revise forms JV-200 and JV-205; approve form JV-206

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, 2016

Date of Report
August 18, 2015

Contact
Corby Sturges, 415-865-4507
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Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending four rules of court to clarify the procedures and requirements that apply when the juvenile court terminates its jurisdiction over a child and returns custody of the child to one or more parents. The committee also recommends revising two mandatory Judicial Council forms and approving one optional form to allow the juvenile court to include sufficient information about the circumstances underlying its custody order for the family court in which a request for the order's modification or termination is made to determine whether a significant change of circumstances has occurred and, if so, whether the requested modification is in the best interest of the child. The amendments and revisions also update references to current statutes and rules, incorporate gender-neutral language consistent with Assembly Bill 1403 (Stats. 2013, ch. 510) when appropriate, conform to recent case law, and maintain consistency with recent and recommended revisions to the Judicial Council forms for family court custody orders.

Recommendation

The committee recommends that the Judicial Council, effective January 1, 2016, amend four rules of court, revise two Judicial Council forms, and approve one Judicial Council form for optional use, as follows:

1. Amend rule 5.475 to more clearly and accurately describe the statutory duties of a superior court clerk who receives a final custody order transmitted from the juvenile court and to make technical changes;
2. Amend rule 5.620(a) to specify the juvenile court's exclusive jurisdiction, under section 304, to establish a guardianship after a dependency petition is filed until the petition is dismissed or jurisdiction is terminated, and to make technical changes;
3. Amend rule 5.620(c) to distinguish the process for issuing juvenile court custody orders subject to continuing jurisdiction from the process for issuing custody orders and terminating jurisdiction;
4. Amend rule 5.700 to clarify that it applies only when the juvenile court issues final custody orders and terminates jurisdiction, to describe the effect of juvenile final custody orders, and to describe the statutory duties of a superior court clerk who receives a final custody order transmitted from the juvenile court;
5. Amend rule 5.790(c) to distinguish between the process when the juvenile court issues custody or visitation orders and retains delinquency jurisdiction and the process when the court issues those orders and terminates its delinquency jurisdiction;
6. Revise form *Custody Order—Juvenile—Final Judgment* (JV-200) to give the court opportunities to make more detailed custody orders, to solicit on the form the reasons for limitations on custody or visitation, to use language in common with the family law custody forms and attachments, and to cross-reference those attachments where appropriate;
7. Revise form JV-200 to use gender-neutral language where possible, to add space for identification of and orders directed to additional parents, and to provide for attachment of parentage orders when applicable;
8. Revise form JV-200 to permit the juvenile court to specify a minimum amount of visitation if it otherwise permits the parents to arrange shared parenting time;
9. Revise *Visitation Order—Juvenile* (form JV-205) to add "(Parenting Time)" to the title, to use gender-neutral language where possible, to clarify the form's structure, to allow additional detail about supervised visitation and travel with children, and to cross-reference family law attachments where appropriate; and
10. Approve *Reasons for No or Supervised Visitation—Juvenile* (form JV-206) to allow the juvenile court to specify its reasons for denying or limiting visitation or parenting time with a child.

The text of the amended rules and the new and revised forms are attached at pages 10–22.

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Previous Council Action

Rule 5.475 was adopted in 2006 and last amended effective January 1, 2013. Rule 5.620 was adopted as rule 1429.1 in 2000 and last amended effective January 1, 2014. Rule 5.700 was adopted as rule 1457 in 1990 and last amended effective January 1, 2007. And rule 5.790 was adopted as rule 1493 in 1991 and last amended effective January 1, 2015, to implement statutory family-finding requirements.

Custody Order—Juvenile—Final Judgment (form JV-200) was adopted for mandatory use in 1990 and has been revised multiple times, most recently effective July 1, 2014, to implement statutory amendments affecting the priority of enforcement of restraining orders.

Visitation Order—Juvenile (form JV-205) was adopted for mandatory use in 2000 and has been revised multiple times, most recently effective July 1, 2014, to implement statutory amendments affecting the priority of enforcement of restraining orders.

Rationale for Recommendation

When the juvenile court terminates jurisdiction over a dependent child or ward of the court and places the child with one or more of his or her parents, the court may issue final custody and visitation orders, sometimes known as "exit orders," under section 362.4 or 726.5 of the Welfare and Institutions Code.[1] These custody orders must be filed in any pending superior court proceeding related to the custody of the child, including dissolution, parentage, Domestic Violence Protection Act, and other family law proceedings as well as probate guardianship proceedings. If no custody proceeding is pending, the juvenile court may order its clerk to transmit the custody orders to the superior court of the county where the parent given physical custody resides. If the juvenile court orders transmission, the clerk of the receiving court must immediately open a file, assign a case number, and file the order.

These juvenile court orders continue in effect until and unless modified by another superior court order. Thus, they govern the custody and visitation of the child indefinitely. The orders need to provide specific direction to the parents and other parties to facilitate compliance and reduce the potential for conflict, especially regarding the parenting time orders and the mechanics of transferring the child from one parent to another.

Juvenile final custody orders also need to provide sufficient detail, and use language familiar to the family law bench and bar, to permit the family court to enforce them if a dispute does arise or to modify or terminate the orders if circumstances change significantly and modification would be in the best interest of the child. The information included in the juvenile court order must address the circumstances that led to the juvenile court's child custody and parenting time orders to enable a family court to determine whether circumstances have changed to a degree that

[1] All subsequent statutory references are to the Welfare and Institutions Code unless otherwise specified. All rule references are to the California Rules of Court.

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justifies considering whether the requested modification is in the best interests of the child. The child custody orders need to serve these functions without disclosing juvenile case information that should remain confidential, because juvenile court child custody orders, including attachments, are not themselves confidential. (§ 362.4.)

The proposal addresses these issues by revising *Custody Order—Juvenile—Final Judgment* (form JV-200) and *Visitation Order—Juvenile* (form JV-205) to provide the juvenile court with the opportunity to describe more thoroughly the circumstances underlying its custody and visitation orders. The revisions seek to solicit more information on the face of the form orders and to clarify that certain family law custody and visitation attachments may be used. Further revisions would give the juvenile court the option of referring to specific parts of the juvenile court record in its orders. Under section 827(a)(1)(L)–(M), the record is available without a juvenile court order for inspection by family court judicial officers and staff, as well as guardianship investigators, who are actively participating in a custody proceeding. The committee also proposes approving an optional statewide Judicial Council form, *Reasons for No or Supervised Visitation—Juvenile* (form JV-206), to give the juvenile court specific options for explaining the reasons and circumstances underlying an order denying or limiting visitation or parenting time for a parent with a child.

Finally, the proposal would amend rules 5.475, 5.620, 5.700, and 5.790 to clarify the responsibilities of the juvenile and family courts and clerks when issuing, transmitting, or receiving juvenile court custody orders and to more clearly distinguish the process for issuing custody orders at termination of juvenile court jurisdiction from the process for issuing custody orders and retaining jurisdiction.

In a separate proposal, the committee also proposes revising family court child custody and visitation attachment forms—FL-341(B), FL-341(C), FL-341(D), and FL-341(E)—to indicate that the juvenile court may attach those forms to form JV-200 or JV-205 to add additional detail to its final custody orders.[2]

Comments, Alternatives Considered, and Policy Implications

External comments

The invitation to comment on this proposal was circulated from April 17, 2015, through June 17, 2015, to the standard mailing list for family and juvenile law proposals, as well as to the regular rules and forms mailing list, which included judges, court administrators, attorneys, mediators, family law facilitators and self-help attorneys, and other family and juvenile law professionals and attorney organizations. Twelve comments were received.[3] Six commentators agreed with the

[2] For more information, please see Fam. & Juv. Law Advisory Comm., Rpt. to Judicial Council, *Domestic Violence—Request to Modify or Terminate Domestic Violence Restraining Orders; Family Law—Changes to Request for Order Rules and Forms* (Oct. 28, 2015, meeting).

[3] A chart providing the full text of the comments and the committee responses is attached at pages 23–39.

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proposal as circulated. The remaining six commentators agreed with the proposal and suggested modifications.

Three commentators noted that, in the absence of a pending family law proceeding, rules 5.475 and 5.700 and form JV-200 direct the transmission of the juvenile court custody order to the superior court in the county of residence of the parent holding sole physical custody of the children. The commentators noted that the rules and form do not, however, provide guidance about where to send the form if parents share physical custody. The committee recommends further amending rules 5.475 and 5.700 to affirm the juvenile court's discretion to designate the court to which the order is to be transmitted, subject to the following order of preference: first, the county of residence of the parent awarded sole physical custody; if none, then to the county of the child's primary residence; and if neither circumstance applies, then to a county or location in which a parent resides. Item 15 on form JV-200 asks the court to designate the receiving jurisdiction and provides an opportunity to indicate into which of the categories the designated jurisdiction falls.

Several commentators suggested that the rules or forms be amended to eliminate the requirement that the receiving court send a filed copy of the custody order to the parents and the originating juvenile court by first-class mail; some suggested permitting e-service. Others suggested permitting personal service on the parents as a substitute for mail service. One commentator noted that it made little sense to require first-class mail if the receiving court and the originating court were divisions of the same superior court, or even in the same building. The committee does not recommend eliminating the requirement that the receiving court use first-class mail to send copies of the order. Section 362.4 requires the receiving court to send a copy of the filed order by first-class mail to the parents and the originating court. Although many of the commentators' suggestions have merit, they will need to wait for legislative amendment. The Court Technology Advisory Committee (CTAC) is in the first phase of its Rules Modernization Project. The current phase focuses on technical amendments to rules and forms designed to facilitate electronic filing and service. The second phase, set to begin next year, will focus on substantive statutory and rule amendments, which may include amending section 362.4.

One commentator suggested requiring that the juvenile court use *Confidential Information* (form JV-287) to transmit any confidential address to the designated superior court. The commentator suggested that this practice would permit the receiving court to fulfill its statutory duty—to send a copy of the filed order to all the parents—without disclosing the confidential address. The committee does not recommend the suggested change. The family court needs to have the mailing address of each party bound by the juvenile court custody orders. Section 316.1 requires each parent to designate a permanent mailing address in the juvenile court proceeding. This address is properly included on the juvenile custody order form. In a child custody proceeding, section 3429 of the Family Code requires each party to disclose the child's residential address in its first pleading or affidavit, but prohibits such disclosure in cases involving allegations of domestic violence or child abuse. The committee is aware of no other statute or rule requiring that a party provide a physical or residential address. Under circumstances in which the

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disclosure of a home address would pose a safety risk, the party at risk should designate an alternative mailing address, such as a post office box or an attorney's address. Item 17 on form JV-200 is revised to specify that the address to be included is the mailing address.

Several commentators suggested that form JV-206 be made confidential because of the nature of the information on the form. The committee does not recommend the suggested change. Form JV-206 should be attached to the custody and visitation orders issued on forms JV-200 and JV-205 and become a part of those orders. Section 362.4 requires the Judicial Council to "adopt forms for any custody … order issued [when the juvenile court terminates its jurisdiction]. These form orders shall not be confidential." Because form JV-206 will be attached to form JV-200 or JV-205, it is a "form order" as described by section 362.4. Legislative policy seems to require that the form be publicly available to the same extent as the principal order to which it is attached.

Confidentiality protections in juvenile court are intended to protect the child subject to the proceedings.[4] Although the filing of the form in a family law custody file will disclose information about the dependency case, legal and policy considerations dictate that the form be public. First, as discussed above, section 362.4 prohibits the form's confidentiality. Second, if the form were made confidential, it would need to be separated from the principal orders and placed in a confidential portion of the custody file. The information on the form is critical to the family court's disposition of a request to modify the orders. Filing the form separately from the main orders could keep that information from the court. The court might then issue a modification that unintentionally placed the child at risk of physical rather than reputational harm. Third, form JV-206 conveys information about certain parental failures related to the order denying or limiting that parent's visitation rights, along with steps the parent might take to remedy those failures. It neither solicits nor requires a narrative of the events that led to the visitation order.

Two commentators suggested that form JV-206 be adopted as a standalone form rather than as an attachment to the custody or visitation order forms. The suggestion appears intended to facilitate the maintenance of the form in a confidential portion of the family law file. The committee does not recommend the suggested change. Form JV-206 should be an attachment to forms JV-200 or JV-205. Because the information on form JV-206 supports findings and orders made on those covering forms, the committee does not anticipate that the juvenile court would have occasion to use form JV-206 except as an attachment.

Several commentators suggested that form JV-206 be adopted for mandatory use when the juvenile court issues a no-visitation or supervised-visitation order. The committee recommends that JV-206 be approved for optional use. Forms JV-200 and JV-205 have been adopted for mandatory use. Each of these forms requires the juvenile court, when it orders no visitation (JV-

[4] See, e.g., section 346, which requires the child's, but not the parent's, consent before admitting the public to a dependency hearing.

200, items 4 and 5) or supervised visitation (JV-205, item 3), to specify its reasons for these orders. The principal forms permit the court to use either form JV-206 or another attachment. Many courts have already developed local procedures and forms to specify these reasons. Approving form JV-206 for optional use will permit those courts to continue to use the new or their existing forms and, at the same time, will give courts without a local form a template on which to specify their reasons for limiting or denying visitation.

One court commented that the Department of Child Support Services (DCSS) had requested that the court "not file exit orders on DCSS cases because it creates a problem when/if they file a dismissal." The court asked, "If the only open case is a DCSS case, should exit orders be filed on that case?" The committee recommends that the juvenile court custody order not be filed in a pending governmental child support case under section 17400 et seq. of the Family Code unless that is the only pending proceeding under the Family Code and the receiving court has already issued a custody or visitation order in that proceeding. If a DCSS case and another proceeding related to the custody of the child are pending in the receiving court, the juvenile court order should be filed in the other proceeding. If no proceeding related to the custody of the child apart from the DCSS case is pending in the receiving court and the court has not issued a custody order in the child support case, the receiving court must open a new family law custody proceeding and file the juvenile court order in that proceeding.

One commentator suggested that item 16 on form JV-200 be expanded to include all parties to the juvenile court proceeding. The committee does not recommend the suggested change. Rather, it recommends revising item 16 to clarify that its requirements apply not to the juvenile court, but to the superior court that receives a copy of the juvenile court order. The number of persons identified in item 16 may have led to its interpretation as a list of persons to be served with the juvenile court order. But that is not the case. The juvenile court order must be served on the parties to the juvenile court proceeding and their counsel in the same manner as all other juvenile court orders. Item 15 reflects the juvenile court's separate, additional duty to order the transmission of its final custody order to any court in which a specified proceeding is pending or, if no such proceeding is pending, to the court in a county in which a custodial parent resides. Revised items 16 and 17 address the further duties of the clerk of a court that receives a transmitted copy of the juvenile court order. Item 16 directs the clerk of the receiving court to file the order as specified. Revised item 17 directs the receiving court to mail a copy of the newly filed order to the juvenile court to confirm the filing and to the child's parents to inform them of the proper forum and applicable case number to use to seek a modification of the custody order. Therefore, only the parents' mailing addresses are needed here.

One commentator suggested deleting the requirement in rule 5.700(d) that the juvenile court custody order be filed in superior court if no proceeding is pending. The commentator was concerned that filing the order might invite unnecessary litigation. The committee does not recommend the suggested change. Instead, the committee proposes clarifying that rule 5.700 requires the originating juvenile court to direct that the order be transmitted to a specific court if no custody proceeding is pending. This requirement is consistent with rule 7.1008, which

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requires the transmission of a former guardian visitation order when no custody proceeding is pending. It is also consistent with prevailing California juvenile court practice and the unpublished ruling of at least one appellate court.[5] Maintaining a copy of the order on file in a superior court is unlikely to promote litigation and will, if litigation does arise, expedite the filing and processing of the case.

One commentator suggested that the juvenile court attach any parentage orders to form JV-200. The committee agrees and recommends that the form direct the attachment of parentage orders if item 9 is completed.

One commentator noted that item 2 on form JV-205, regarding terms of visitation (parenting time), does not indicate clearly that either item 2a or item 2b must be checked, leading parties completing the form to fail to check either item, even when completing subitems (1)–(4) in item 2b. The committee agrees that the existing format is confusing and has modified its recommendation to indicate more clearly that either 2a or 2b, but not both, must be checked. The committee also recommends modifying the "smart" version of the form to permit the subitems under 2b to be checked only if 2b is itself checked.

Finally, several commentators suggested that the committee explore methods other than first-class mail for a receiving court to use to send a copy of the newly filed order to the parents and the originating court. The committee agrees that e-service should be explored. The Court Technology Advisory Committee (CTAC) circulated a separate proposal, SPR15-32, to make technical amendments to the rules of court to facilitate e-business, e-filing, and e-service. Because section 362.4 requires the clerk of the receiving court to use first-class mail to send the order to the juvenile court and the parents, an amendment or revision eliminating that requirement would be substantive and must await the next phase of the Rules Modernization Project.

Alternatives

In addition to the alternatives discussed above, the committee considered not amending the rules or revising the forms. The committee rejected this alternative. The amendments and revisions are needed to update the rules and forms to conform to recent legislation; to simplify the procedures involved in transmitting a juvenile court custody order to the proper family court; and, in response to overwhelming demand from family court judicial officers and court staff, attorneys, and self-represented litigants, to allow the juvenile court to specify in more detail the requirements of its orders and the circumstances underlying them. This additional detail will guide the parties in complying with the orders, reduce occasions for conflict arising from uncertainty regarding the orders' requirements, and, if a party does seek modification of the orders in family court, provide the court with sufficient information to make an informed decision on the request.

[5] See *In re L.L.* (Cal. Ct. App. June 26, 2015) C075958, at p. 20.

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Policy implications

The Joint Rules Subcommittee (JRS) of the Trial Court Presiding Judges and Court Executives Advisory Committees agreed with the proposal. The JRS pointed out that revising and adding forms would have fiscal and operational impacts on the trial courts, but indicated that these impacts would be minor and likely to be outweighed by efficiencies generated by the recommended amendments and revisions.

Implementation Requirements, Costs, and Operational Impacts

The committee anticipates that this proposal will result in some costs to the courts to revise forms, to train court staff about the changes to the rules and forms included in this proposal, and possibly to revise local court rules and forms so they are consistent with the changes adopted by the Judicial Council. However, the committee expects that the changes will save resources for the courts by clarifying and simplifying filing procedures and case-flow management as well as facilitating the exchange of necessary information between juvenile and family courts.

Attachments and Links

1. Cal. Rules of Court, rules 5.475, 5.620, 5.700, and 5.790, at pages 10–15
2. Judicial Council forms JV-200, JV-205, and JV-206, at pages 16–22
3. Chart of comments, at pages 23–39

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Rules 5.475, 5.620, 5.700, and 5.790 of the California Rules of Court are amended, effective January 1, 2016, to read:

Rule 5.475. Custody and visitation orders following termination of a juvenile court proceeding or probate court guardianship proceeding

(a) Custody and visitation order from other courts or divisions

~~A juvenile court or probate court may transmit a custody or visitation order to a family court for inclusion in a pending family law proceeding or to open a new family law case file, after termination of a juvenile court proceeding or a probate guardianship proceeding under rules 5.700 and 7.1008.~~

On termination of juvenile court jurisdiction under rule 5.700 or termination of a probate guardianship under rule 7.1008, the juvenile court or probate court will direct the transmission of its custody or visitation orders to any superior court in which a related family law custody proceeding or probate guardianship proceeding is pending for filing in that proceeding.

If no such proceeding is pending, the court terminating jurisdiction will direct the transmission of its order to the superior court of, in order of preference, the county in which the parent with sole physical custody resides; if none, the county where the child's primary residence is located; or, if neither exists, a county or location where any custodial parent resides.

(1) *Procedure for filing custody or visitation orders from juvenile or probate court*

(A) ~~The~~ Except as directed in subparagraph (B), on receiving the custody or visitation order of a juvenile court or ~~the visitation order of a former guardian~~ probate court, the clerk of the receiving court must file the order ~~must be filed~~ in any pending nullity, dissolution, legal separation, ~~paternity~~ Uniform Parentage Act, Domestic Violence Prevention Act, or other family law custody proceeding, or in any probate guardianship proceeding ~~which~~ that affects custody or visitation of the child.

(B) ~~If no dependency, family law, or probate guardianship proceeding affecting custody or visitation of the child is pending, the order may be used as the sole basis to open a file and assign a family law case number.~~ If the only pending proceeding related to the child in the receiving court is filed under Family Code section 17400 et seq., the clerk must proceed as follows.

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(i) If the receiving court has issued a custody or visitation order in the pending proceeding, the clerk must file the received order in that proceeding.

(ii) If the receiving court has not issued a custody or visitation order in the pending proceeding, the clerk must not file the received order in that proceeding, but must instead proceed under subparagraph (C).

(C) If no dependency, family law, or guardianship proceeding affecting custody or visitation of the child is pending, the order must be used to open a new custody proceeding in the receiving court. The clerk must immediately open a family law file without charging a filing fee, assign a case number, and file the ~~custody or visitation order, without a filing fee, in the file of any family law proceeding affecting the custody and visitation of the child~~ order in the new case file.

(2) *Endorsed filed copy—clerk's certificate of mailing*

Within 15 court days ~~after~~ of receiving the order, the clerk must send~~, by first-class mail,~~ an endorsed filed copy of the order showing the ~~receiving court~~ case number assigned by the receiving court by first-class mail to~~:~~ each of the child's parents and to the court that issued the order, with a completed clerk's certificate of mailing, for inclusion in the issuing court's file.

~~(A) The persons whose names and addresses are listed on the order; and~~

~~(B) The court that issued the order, with a completed clerk's certificate of mailing, for inclusion in the sending court's file.~~

(b) Modification of former guardian visitation orders—custodial parent

When a parent ~~of the child~~ has custody of the child following termination of a probate guardianship, ~~proceedings~~ a former guardian's request for modification of the probate court visitation order, including an order denying visitation, must be ~~determined~~ brought in a proceeding under the Family Code.

(c) * * *

Rule 5.620. Orders after filing under section 300

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(a) Exclusive jurisdiction (§ 304)

Once a petition has been filed ~~in juvenile court~~ alleging that a child is described by ~~a subsection of~~ section 300, and until the petition is dismissed or dependency is terminated, the juvenile court has ~~sole and~~ exclusive jurisdiction ~~over matters~~ to hear proceedings relating to the custody of the child and visitation with the child and establishing a guardianship for the child.

(b) * * *

(c) Custody and visitation (§ 361.2)

If the court sustains a petition, ~~and~~ finds that the child is described by section 300, and removes physical custody from a parent or guardian, it may ~~enter findings and orders~~ order the child placed in the custody of a previously noncustodial parent as described in rule 5.695(a)(7)(A) ~~and~~ or (B).

(1) ~~These findings and~~ This order~~s~~ may be entered at the dispositional hearing ~~under rule 5.700~~, ~~or~~ at any subsequent review hearing under rule ~~5.710(g) or 5.715(d)(2) or rule 5.720(b)(1)(B)~~ 5.708(k), or on ~~the~~ granting ~~of~~ a ~~motion~~ request under section 388 for custody and visitation orders.

(2) If the court orders legal and physical custody to the previously noncustodial parent and terminates dependency jurisdiction under rule 5.695(a)(7)(A), the court must proceed under rule 5.700.

(3) If the court orders custody to the noncustodial parent subject to the continuing supervision of the court, the court may order services provided to either parent or to both parents under section 361.2(b)(3). If the court orders the provision of services, it must review its custody determination at each subsequent hearing held under section 366 and rule 5.708.

(d)–(e) * * *

Rule 5.700. Termination of jurisdiction—custody and visitation orders ~~Order determining custody~~ (§§ 302, 304, 361.2, 362.4, 726.5)

~~(a) Order determining custody—termination of jurisdiction~~

~~If the juvenile court orders custody to a parent and terminates jurisdiction, the court may make orders for visitation with the other parent.~~ When the juvenile court terminates its jurisdiction over a dependent or ward of the court and places the child in the home of a

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parent, it may issue an order determining the rights to custody of and visitation with the child. The court may also issue ~~orders to either parent enjoining any action specified in Family Code section 2045~~ protective orders as provided in section 213.5 or as described in Family Code section 6218.

~~*(1) Modification of existing custody orders - new case filings*~~

~~The order of the juvenile court must be filed in an existing nullity, dissolution, legal guardianship, or paternity proceeding. If no custody proceeding is filed or pending, the order may be used as the sole basis to open a file.~~

(a) Effect of order

Any order issued under this rule continues in effect until modified or terminated by a later order of a superior court with jurisdiction to make determinations about the custody of the child. The order may be modified or terminated only if the superior court finds both that:

(1) There has been a significant change of circumstances since the juvenile court issued the order; and

(2) Modification or termination of the order is in the best interest of the child.

~~(2)~~**(b)Preparation and transmission of order**

The order must be prepared on *Custody Order—Juvenile—Final Judgment* (form JV-200). The court ~~may~~ must direct either the parent, parent's attorney, county counsel, or ~~the~~ clerk to:

~~(A)~~(1) Prepare the order for the court's signature; and

~~(B)~~(2) Transmit the order within 10 calendar days after the order is signed to ~~the~~ any superior court ~~of the county~~ where a ~~custody~~ proceeding described in (c)(1) is pending ~~has already been commenced~~ or, if no~~ne~~ such proceeding exists, to the superior court of, in order of preference:

(A) The county in which the parent who has been given sole physical custody resides;

(B) The county in which the children's primary residence is located if no parent has been given sole physical custody; or

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(C) A county or other location where any parent resides.

~~(3)~~**(c) Procedures for filing order—receiving court**

~~After receipt of the~~ On receiving a juvenile court custody order transmitted under (b)(2), the ~~superior court~~ clerk of the receiving ~~county~~ court must immediately file the juvenile court order ~~in the existing proceeding or immediately open a file, without a filing fee, and assign a case number~~ as follows.

(1) Except as provided in paragraph (2), the juvenile court order must be filed in any pending nullity, dissolution, legal separation, guardianship, Uniform Parentage Act, Domestic Violence Prevention Act, or other family law custody proceeding and, when filed, becomes a part of that proceeding.

(2) If the only pending proceeding related to the child in the receiving court is filed under Family Code section 17400 et seq., the clerk must proceed as follows.

(A) If the receiving court has issued a custody or visitation order in the pending proceeding, the clerk must file the received order in that proceeding.

(B) If the receiving court has not issued a custody or visitation order in the pending proceeding, the clerk must not file the received order in that proceeding, but must instead proceed under paragraph (3).

(3) If no dependency, family law, or guardianship proceeding affecting custody or visitation of the child is pending, the order must be used to open a new custody proceeding in the receiving court. The clerk must immediately open a family law file without charging a filing fee, assign a case number, and file the order in the new case file.

~~(4)~~**(d) Endorsed filed copy—clerk's certificate of mailing**

Within 15 court days ~~after~~ of receiving the order, the clerk of the receiving court must send ~~by first-class mail~~ an endorsed filed copy of the order showing the case number ~~of~~ assigned by the receiving court by first-class mail to ~~(1) the persons whose names and addresses are listed on the order,~~ the child's parents and ~~(2)~~ the originating juvenile court, with a completed clerk's certificate of mailing, for inclusion in the child's file.

~~**(b) Order determining custody—continuation of jurisdiction**~~

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~~If the court orders custody to a parent subject to the continuing jurisdiction of the court, with services to one or both parents, the court may direct the order be prepared and filed in the same manner as described in (a).~~

Rule 5.790. Orders of the court

(a)–(b) * * *

(c) Custody and visitation (§ 726.5)

(1) At any time ~~while the~~ when a child is a ward of the juvenile court, the court may issue an order determining the custody of or visitation with the child. An order issued under this subdivision continues in effect until modified or terminated by a later order of the juvenile court.

(2) ~~or~~ At the time wardship is terminated, the court may issue an order determining custody of~~,~~ or visitation with~~,~~ the child, as described in rule 5.700.

(d)–(j) * * *

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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):*	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
CUSTODY ORDER—JUVENILE—FINAL JUDGMENT	CASE NUMBER: JUVENILE: FAMILY *(existing, if one; otherwise, new):*

Date of hearing: Dept.:

Judicial officer *(name):*

THE COURT FINDS AND ORDERS

1. a. **Jurisdiction.** This court has jurisdiction to make child custody orders in this case under the Uniform Child Custody Jurisdiction and Enforcement Act (Fam. Code, §§ 3400–3465).

   b. **Notice and opportunity to be heard.** The parties were given notice and an opportunity to be heard as provided by the laws of the State of California.

   c. **Country of habitual residence**. The country of habitual residence of the child or children in this case is

   ☐ the United States ☐ other *(specify):*

   d. **Penalties for violating this order**. If you violate this order, you may be subject to civil or criminal penalties or both.

2. **Parents bound by this order.**

   a. **Name:** ☐ Mother ☐ Father

   b. **Name:** ☐ Mother ☐ Father

   c. **Name:** ☐ Mother ☐ Father

   are the parents of the children listed in item 3.

   Parents ☐ are ☐ are not married to each other.

   Parents ☐ do ☐ do not reside together.

3. **Custody.** Custody of the minor children is ordered as follows:

Child's name	Date of birth	Legal custody to *(name):*	Physical custody to *(name):*	Primary residence with *(name):*

☐ Additional children listed on Attachment 3.

4. ☐ This order reflects a change in the physical custody of the child or children to the custody of a formerly noncustodial parent.

Form Adopted for Mandatory Use
Judicial Council of California
JV-200 [Rev. January 1, 2016]

Family Code, § 3020 et seq.; Penal Code, § 136.2; Welfare & Institutions Code, §§ 302(d), 304, 361.2, 362.4, 726.5; Cal. Rules of Court, rule 5.700
www.courts.ca.gov

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CASE NAME:	CASE NUMBER: JUVENILE: FAMILY:

5. ☐ **Visitation (parenting time) of** *(name of parent):*
This parent may spend time with the children as follows:
☐ All children listed in item 3 ☐ The following children *(name each):*

a. ☐ As arranged by the parents, but no less than *(minimum):* hour(s), times per *(time period):* .
b. ☐ As stated on the attached form JV-205.
c. ☐ No visitation is ordered for the reasons stated ☐ on the attached form JV-206 ☐ on Attachment 4c.

6. ☐ **Visitation (parenting time) of** *(name of parent):*
This parent may spend time with the children as follows:
☐ All children listed in item 3 ☐ The following children *(name each):*

a. ☐ As arranged by the parents, but no less than *(minimum):* hour(s), times per *(time period):* .
b. ☐ As stated on the attached form JV-205.
c. ☐ No visitation is ordered for the reasons stated ☐ on the attached form JV-206 ☐ on Attachment 5c.

7. ☐ **Child abduction prevention.** There is a risk that one parent will take the children out of California without the other parent's permission. *Child Abduction Prevention Order Attachment* (form FL-341(B)) is attached and must be obeyed.

8. ☐ **Change of residence.** Under Family Code section 3024, unless there is prior written agreement to the change, any parent planning to change the residence of the child(ren) for longer than 30 days must provide notice to the other parent(s) at least 45 days before the proposed change to the extent feasible to allow time for mediation of a new plan.

9. ☐ **Parentage *(attach court order).*** *(Name):* was declared or adjudged the ☐ biological ☐ presumed parent of *(names of children):*

by court order *(specify county and case number):*
☐ juvenile court ☐ family court ☐ other *(specify):*
on *(date):*
☐ Additional parentage determination(s) and order(s) listed on Attachment 9.

10. ☐ **Additional physical custody provisions**. The parents will follow the physical custody provisions listed in the schedule
☐ on Attachment 10.
☐ on *Visitation (Parenting Time) Order—Juvenile* (form JV-205).
☐ on *Additional Provisions—Physical Custody Attachment* (form FL-341(D)).

11. ☐ **Holiday schedule**. The children will spend holiday time as listed in the schedule
☐ on Attachment 11.
☐ on *Children's Holiday Schedule Attachment* (form FL-341(C)).

12. ☐ **Joint legal custody**. The parents will share joint legal custody as listed in the plan
☐ on Attachment 12.
☐ on *Joint Legal Custody Attachment* (form FL-341(E)).

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CASE NAME:	CASE NUMBER: JUVENILE: FAMILY:

13. ☐ **Other findings and orders** *(including circumstances underlying any limits on custody or visitation at the time of the order):*

☐ Continued on the attached form JV-206.
☐ Continued on Attachment 13.

NOTICE

The juvenile court has terminated jurisdiction over the children listed in 3.
All requests for modification or termination of these orders must be brought in the family court case in which these orders are filed.

14. a. ☐ A criminal protective order on form CR-160 relating to the parties in this case is currently valid and in effect
in case number *(specify):*
in *(specify court, if known):* .
The order is scheduled to expire on *(expiration date):* .

b. ☐ A Domestic Violence Prevention Act protective order on form DV-110, DV-116, DV-130, or DV-730 relating to the parties in this case is currently valid and in effect in case number *(specify):*
in *(specify court, if known):* .
The order is scheduled to expire on *(expiration date):* .

c. ☐ A restraining order (form JV-250, JV-255, or JV-257) is attached.

Instruction for Law Enforcement

Conflicting Orders—Priorities for Enforcement.

If more than one restraining order has been issued protecting the protected person from the restrained person, the orders must be enforced in the following order (see Pen. Code, § 136.2, and Fam. Code, §§ 6383(h)(2), 6405(b).):

1. *EPO:* If one of the orders is an *Emergency Protective Order* (form EPO-001) and it 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 in enforcement 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.

Date:

JUDICIAL OFFICER OF THE JUVENILE COURT

(See reverse for transmittal and filing instructions.)

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CASE NAME:	CASE NUMBER: JUVENILE: FAMILY:

15. The *(check one):* ☐ clerk of the juvenile court ☐ parent given physical custody ☐ parent's attorney ☐ county counsel is directed to transmit this order within 10 calendar days to the clerk of the superior court in any county where a proceeding described in rule 5.700(a)(1) involving the child or children is pending or, if no such case exists, to the clerk of the court in *(specify jurisdiction):*
which is *(in order of preference):*
☐ the county where the parent who holds sole physical custody resides.
☐ the county where the child's or children's primary residence is located *(if no parent holds sole physical custody)*.
☐ a county or location where a parent resides.
☐ other *(name of jurisdiction):*

To the clerk of the receiving court:

16. Immediately on receiving this order, file the order as described in rule 5.475(a)(1) or 5.700(b) in a pending proceeding or a new file.
17. After filing the order, send an endorsed file-stamped copy of this order showing the case number assigned by your court by first-class mail to **the originating juvenile court** and:
a. ☐ The parent in 2a *(name and mailing address):*
b. ☐ The parent in 2b *(name and mailing address):*
c. ☐ The parent in 2c *(name and mailing address):*
d. ☐ Other *(name and mailing address):*

with a completed clerk's certificate of mailing *(see below).*

CLERK'S CERTIFICATE OF MAILING
(To be completed by clerk of receiving court)

I certify that I am not a party to this cause and that an endorsed filed copy of the foregoing order was mailed as follows: Each copy was enclosed in an envelope with postage fully prepaid. The envelopes were addressed to the originating court and to each person whose name and address are given in item 17. Each envelope was sealed and deposited with the United States Postal Service
at *(place):*
on *(date):*

Date: Clerk, by _____, Deputy

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CASE NAME:	CASE NUMBER: JUVENILE: FAMILY:

VISITATION (PARENTING TIME) ORDER—JUVENILE

Attachment to ☐ *Custody Order—Juvenile—Final Judgment* (form JV-200)
☐ *Notice of Hearing and Temporary Restraining Order—Juvenile* (form JV-250)
☐ *Restraining Order—Juvenile* (form JV-255) ☐ *Change to Restraining Order After Hearing* (form JV-257)

1. This order applies to the following children *(name each):*
   a. _____ b. _____ c. _____
   d. _____ e. _____ f. _____

2. ☐ **VISITATION (Parenting Time)** *(name of parent):* _____ will have the children with him or her
   (NOTE:** Either a or b must be checked. If neither is checked, this order may not be enforceable.**)
   a. ☐ as stated in the visitation agreement on Attachment 2a.
   or
   b. ☐ as follows:
      (1) ☐ **Weekends** starting on *(specify date):*

☐ First weekend of the month *(specify day(s) and times):*	from	_____	at _____	☐ a.m.	☐ p.m.
	to	_____	at _____	☐ a.m.	☐ p.m.
☐ *Second weekend of the month (specify day(s) and times):*	from	_____	at _____	☐ a.m.	☐ p.m.
	to	_____	at _____	☐ a.m.	☐ p.m.
☐ *Third weekend of the month (specify day(s) and times):*	from	_____	at _____	☐ a.m.	☐ p.m.
	to	_____	at _____	☐ a.m.	☐ p.m.
☐ *Fourth weekend of the month (specify day(s) and times):*	from	_____	at _____	☐ a.m.	☐ p.m.
	to	_____	at _____	☐ a.m.	☐ p.m.
☐ *Fifth weekend of the month (specify day(s) and times):*	from	_____	at _____	☐ a.m.	☐ p.m.
	to	_____	at _____	☐ a.m.	☐ p.m.

      (2) ☐ **Alternating weekends** starting on *(specify date):* from _____
      at _____ ☐ a.m. ☐ p.m. to _____ at _____ ☐ a.m. ☐ p.m.
      (3) ☐ **Midweek** from _____ at _____ ☐ a.m. ☐ p.m.
      to _____ at _____ ☐ a.m. ☐ p.m.
      (4) ☐ **Other** *(specify days and times as well as any additional conditions):*

      ☐ Continued on Attachment 2b(4).

3. ☐ **SUPERVISED VISITATION.** Until ☐ further order of the superior court ☐ other *(specify):*
   (name of parent): _____ may have only supervised visitation with the children according to the schedule in 2 for the reasons stated on ☐ the attached form JV-206 ☐ Attachment 3.
   Visit supervisor *(name):* Phone #: E-mail:

4. ☐ **TRANSPORTATION FOR VISITATION AND PLACE OF EXCHANGE**
   a. ☐ Transportation to the visits must be provided by ☐ Parent *(name):*
      ☐ Other *(specify):*
   b. ☐ Transportation from the visits must be provided by ☐ Parent *(name):*
      ☐ Other *(specify):*
   c. ☐ The children must be delivered to and picked up from *(specify location):*
   d. ☐ Other*(specify):*

Form Adopted for Mandatory Use
Judicial Council of California
JV-205 [Rev. January 1, 2016]

Family Code, § 3020 et seq.; Penal Code, § 136.2; Welfare and Institutions Code, §§ 302(d), 304, 362.4, 726.5; Cal. Rules of Court, rule 5.700
www.courts.ca.gov

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CASE NAME:	CASE NUMBER: JUVENILE: FAMILY:

5. ☐ **TRAVEL WITH CHILDREN**. Parent *(name):*

must have written permission from the other parent *(name):* or a court order to take the children out of

a. ☐ the state of California.

b. ☐ the following counties *(specify):*

c. ☐ other places *(specify):*

6. ☐ **Other findings and orders** *(specify circumstances, at the time of the order, underlying any limits on visitation):*

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☐ Continued on Attachment 6.

☐ Continued on the attached form JV-206.

Instruction for Law Enforcement

Conflicting Orders—Priorities for Enforcement.

If more than one restraining order has been issued protecting the protected person from the restrained person, the orders must be enforced in the following order (see Pen. Code, § 136.2, and Fam. Code, §§ 6383(h)(2) and 6405(b)):

1. *EPO:* If one of the orders is an *Emergency Protective Order* (form EPO-001) and it 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 in enforcement 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.

CASE NAME:	CASE NUMBER: JUVENILE: FAMILY:

REASONS FOR NO OR SUPERVISED VISITATION—JUVENILE

Attachment to ☐ *Custody Order—Juvenile—Final Judgment* (form JV-200)

☐ *Visitation (Parenting Time) Order—Juvenile* (form JV-205)

1. This order applies to the following children *(name each):*

2. This parent *(name):* was ordered to have ☐ no visitation ☐ only supervised visitation with the child or children named in 1 because

   a. this parent ☐ has not completed ☐ has not made substantial progress in the following court-ordered programs:

      ☐ Sexual abuse treatment or awareness program ☐ for offenders ☐ for victims

      ☐ Drug abuse treatment program with random testing

      ☐ Alcohol abuse treatment program with random testing

      ☐ Domestic violence treatment program ☐ for offenders ☐ for victims

      ☐ Anger management training

      ☐ Parenting classes

      ☐ Individual counseling

      ☐ Other *(specify):*

   b. The court denied services to this parent on *(date):* based on a finding, by clear and convincing evidence, that:

      ☐ he or she was responsible for severe sexual abuse of the child as described in section 361.5(b)(6) of the Welfare and Institutions Code.

      ☐ he or she was responsible for severe physical abuse of or severe physical harm to the child as described in section 361.5(b)(5)–(6) of the Welfare and Institutions Code.

      ☐ his or her whereabouts were unknown on that date and remain unknown.

      ☐ other *(specify):*

Completion of one of the programs above *might,* but need not, constitute a significant change of circumstances for purposes of modifying this final custody order. (Welf. & Inst. Code, § 302(d).)

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THIS IS A COURT ORDER.

Form Approved for Optional Use
Judicial Council of California
JV-206 [New January 1, 2016]

REASONS FOR NO OR SUPERVISED VISITATION—JUVENILE

Welfare and Institutions Code, §§ 302(d), 304, 361.5, 362.4, 726.5;
Cal. Rules of Court, rule 5.700
www.courts.ca.gov

SPR15-18

Family and Juvenile Law: Juvenile Court Final Custody Orders (amend Cal. Rules of Court, rules 5.475, 5.620, 5.700, 5.790; revise forms JV-200 and JV-205; approve form JV-206)

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

	Commentator	Position	Comment	Committee Response
1.	California Judges Association by Hon. Joan P. Weber, President	A	The proposal would clarify the procedures and requirements that apply when the juvenile court terminates its jurisdiction over a child and returns custody of the child to one or more parents on terms ordered by the court. The proposal is intended to provide a family court, to which a request for modification or termination of the order is made, with sufficient information to determine whether there has been a significant change of circumstances and, if so, whether the requested modification is in the best interest of the child. The proposed amendments and revisions would also update references to current statutes and rules, incorporate gender-neutral language consistent with AB1403 when appropriate, conform to recent case law, and maintain consistency with recent and proposed revisions to the Judicial Council forms for family court custody orders. The proposal incorporates a form already used by Los Angeles Dependency Court to let the Family Court know why a parent's visits are monitored or why no visits are ordered. With the information Family Law Court can rule more appropriately on a request to change the order, and consider whether there has been an appropriate change of circumstance. Other updates and improvements are made as well. We support the proposal.	Thank you for your comment. No additional response is required.
2.	Hon. L. Michael Clark, Judge Superior Court of Santa Clara County	A	These changes are very much needed. Thank you.	Thank you for your comment. No additional response is required.

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SPR15-18

Family and Juvenile Law: Juvenile Court Final Custody Orders (amend Cal. Rules of Court, rules 5.475, 5.620, 5.700, 5.790; revise forms JV-200 and JV-205; approve form JV-206)

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

	Commentator	Position	Comment	Committee Response
3.	Dependency Advocacy Center San Jose, California by Hilary Kushins, Attorney	A	The proposed JV-206 will be helpful for parents when exiting the dependency system to provide clarity as to what issues should be addressed in seeking modification in family court of the custody order.	Thank you for your comment. No additional response is required.
4.	Marie Hazlett Head Court Records System Clerk Los Angeles County Sheriff's Department	AM	I agree with all proposed changes, with the suggestion that the revision to JV-205 be modified to remove item 2b as it seems unnecessary. Item 2b is the most frequently overlooked box that is often not checked when the subsequent boxes are checked making it difficult to determine whether the subsequent boxes b(1)–(4) are actually granted. I suggest that it be removed all together. My suggestion is: 2. ☐ VISITATION (Parenting Time) (name of parent):_____will have children with him or her as follows: (a) ☐ as stated in the visitation agreement on Attachment 2a. (b) ☐ Weekends starting on (specify date): ☐First weekend of the month from _____ at _____. ☐First weekend of the month from _____ at _____. (c) ☐ Alternating Weekends starting on (specify date): _____ from _____. (d) ☐ Midweek from _____at _____. (e) ☐ Other (specify days and times):_____.	The committee understands the commentator's concern, but does not recommend the suggested change. As currently formatted, 2a and 2b are intended as alternatives. If 2a is checked, all visitation terms must be set forth on the attachment. If 2a is not checked, then 2b must be checked and all visitation terms must be set forth in 2b or as indicated therein. The committee has proposed modifications to indicate more clearly that either 2a or 2b must be completed.
5.	Joint Rules Subcommittee (JRS) of the	A	The JRS identified the following	The committee acknowledges the potential

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SPR15-18

Family and Juvenile Law: Juvenile Court Final Custody Orders (amend Cal. Rules of Court, rules 5.475, 5.620, 5.700, 5.790; revise forms JV-200 and JV-205; approve form JV-206)

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

	Commentator	Position	Comment	Committee Response
	Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee		fiscal/operational impact on the trial courts: • **Impacts existing automated systems (e.g., case management system, accounting system, technology infrastructure or security equipment, Jury Plus/ACS, etc.)** Courts *may* need to modify existing programming depending upon their case management systems. However, it is likely that changes would be minimal and limited to adding additional codes or actions which are typical to court business. • **Requires development of local rules and/or forms** Rule changes *may* require some courts to make minimal changes in their local rules, which courts have the opportunity to do twice annually if necessary. • **Results in additional training, which requires the commitment of staff time and court resources** Minimal training on additional forms and processing would be necessary for court staff. • **Increases court staff workload** A slight increase in workload for court staff handling juvenile and family law cases is likely depending upon the court's caseload. However, the benefit of implementation of this process that clarifies orders and improves efficiencies will likely mitigate the increase.	impacts identified by the JRS and agrees that the efficiencies resulting from the recommendation are likely to offset these impacts.

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SPR15-18

Family and Juvenile Law: Juvenile Court Final Custody Orders (amend Cal. Rules of Court, rules 5.475, 5.620, 5.700, 5.790; revise forms JV-200 and JV-205; approve form JV-206)

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

	Commentator	Position	Comment	Committee Response
			• **Proposed date for implementation is not feasible or is problematic** Additional implementation time is necessary and appropriate to ensure sufficient time to properly implement all phases of this proposal including changes in case management systems, communication of requirements, forms, training and to ensure all processes are implemented accurately. **The following is a response to the proposal's Request for Specific Comments:** • Will the approval of proposed form JV-206 provide an effective and efficient method for the juvenile court to convey the reasons for its custody and visitation orders to the family court? ***Yes, the courts believe this form is helpful and will provide consistency throughout the courts.*** • Should the council explore effective means of serving notice of the filing of the order other than first-class mail? ***Unknown at this time, although given many courts are moving to paperless systems exploring other options should be on the horizon. Courts do not want to increase workload and/or expenses with postage costs.*** • Would the proposal provide cost savings? If so please quantify.	The committee acknowledges that full implementation of the processes entailed by the recommended amendments and revisions may take more than 2 months, but believes that courts will be able to implement these processes within the extended timelines in rule 5.504(c).[1] No response required. The committee agrees that increasing workload or costs is undesirable. The committee believes that the recommended revision to items 16 and 17 on form JV-200 will reduce mailing costs by clarifying that section 362.4 requires first-class mail service of the filed copy of the order only to the originating court and the parents.

[1] All rule references are to the California Rules of Court. All statutory references are to the Welfare and Institutions Code unless otherwise specified.

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			It is difficult to quantify or conclude given courts would need to know how often cases are reviewed for conflicting orders, etc. However, it is likely in the long run some cost savings could be derived from implementing this change. It might take approximately 15–20 minutes to process the additional new forms for each case, yet if these forms were not available and a clerk had to gather the court file, have a judicial officer review the file, additional orders and make a determination regarding appropriate orders, it may take approximately ½ hour of the clerk's time and an hour of a judicial officer's time. Overall the potential savings would be approximately 2/3 of the time spent on reviewing documents and files that have already been processed.	No response required.
			• 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 systems, or modifying case management systems? ***These will vary among the courts. However, some courts will simply need to add additional codes to indicate the forms have been processed and sent to the appropriate parties. This would require IT staff or a software specialist, operations staff to train clerks on the processing of***	The committee has designed the recommendation to minimize implementation requirements to the extent consistent with achieving the recommendation's policy objectives.

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			forms and procedural changes, and management staff to update local rules if necessary. • Keeping in mind that rule 5.504(c) grants courts one year from their effective date to implement production of new and revised mandatory juvenile forms, would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? ***No, given that local rules, case management systems, and staff training are all likely necessary, two months is not realistic to ensure all necessary elements of the implementation are efficiently and effectively rolled out.*** • Would this proposal affect small courts differently from large courts? If so, please explain. ***Not necessarily, it depends on the court's availability of staffing, caseload and complications of case management system changes. For example, larger courts may have a larger caseload and more staff to train making the impact on workload greater yet they may have dedicated IT staff easily available to make system changes. While smaller courts may not have IT staff readily available to revise case management systems, they may have a simpler time of implementation in that the case management system may allow for easier manipulation, less training time with***	The committee acknowledges that full implementation of the processes entailed by the recommended amendments and revisions may take more than 2 months, but believes that courts will be able to implement these processes within the extended timelines in rule 5.504(c). No response required.

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			less staff, and a smaller workload.	
6.	Marianna Klebanov, Attorney/Writer San Mateo, California	AM	With respect to the proposed revision to Rule 5.700(d) of the California Rules of Court, I would remove the portion requiring opening a file in the Superior Court if no proceeding is pending. I would be concerned that this may invite excessive litigation in situations where it is unnecessary.	The committee does not recommend the suggested change. The committee believes that the risk of litigation arising from custody orders is best addressed by revising the order forms to provide more specific direction for situations in which uncertainty could lead to conflict among the parties. Some risk of litigation is unavoidable when a court order governs an evolving relationship. Requiring that the order be filed in a designated court selects a forum for resolution of disputes, forestalls forum shopping, and eliminates incentives for a party to race to file the order in a preferred court.
7.	Orange County Bar Association by Ashleigh Aitken, President	A	No specific comment submitted.	Thank you for your comment. No additional response is required.
8.	Santa Clara County Office of the County Counsel by Julie Fulmer McKellar Lead Deputy County Counsel	AM	The proposed amendments to JV-200 should include additional space in #9 for children with three legal parents. The modification to CRC 5.475(a)(1)(B) provides for the custody order to be used as the sole basis for "opening a file in the superior court of the county in which the parent given physical custody resides" but doesn't indicate the procedure if both parents are given physical	The committee does not recommend the suggested change. Only the rarest cases will present more than one parent whose status is or has been in dispute and has been adjudicated. In that event, the party directed to prepare the order may so indicate on an attachment. The committee has modified its recommendation to add a check box to indicate the continuation of item 9 on an attachment and to direct the attachment of the parentage orders if item 9 is completed. The committee agrees that additional clarification is needed to address situations in which both parents are given physical custody and (a) the child lives with one parent more than 50 percent of the time or (b) the child lives an equal amount of time with each parent. The committee proposes

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			custody (as the form allows) and they reside in different counties.	amending rules 5.475 and 5.700 to affirm the juvenile court's authority to direct the clerk or a specific party to transmit the order to a designated superior court for filing.
9.	State Bar of California Executive Committee of the Family Law Section (FLEXCOM) by Saul Bercovitch, Legislative Counsel	A	The Executive Committee of the Family Law Section of the State Bar (FLEXCOM) supports the proposal, revisions, and amended forms. FLEXCOM agrees that the proposed amendments to the California Rules of Court and the proposed revisions to the Judicial Council forms will provide the much needed continuity between juvenile court and family court when a dismissal or termination of dependency occurs. Once an exit order is made using the newly revised Judicial Council forms, the family court will have sufficient information upon which to determine whether there has been a significant change of circumstances under which the exit order could be modified in an action for custody, domestic violence, paternity, etc. The specificity of the orders and the integration of the use of attachments will enable better enforcement of the orders by law enforcement. FLEXCOM agrees that the addition that juvenile court would have any guardianship during the pendency of an action avoids duplicity of actions. FLEXCOM agrees that the automatic venue lies with the custodial parent eliminates forum	See responses to specific comments. No response required. The committee intends this language inserted in rule 5.620(a) to restate existing law. The committee agrees that additional clarification is needed to address situations in which both

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			shopping. However, where both parents are awarded joint custody with an equal timeshare, there is not a preferred venue. A remedy is not implicit in the proposal for dealing with this. If both parties simultaneously file in two abutting counties (e.g., Los Angeles and Orange County) which county has venue? Perhaps it is similar to the simultaneous filings of Petitions for Dissolution, where venue would lie with the party who serves the other party first in time.	parents are given physical custody and (a) the child lives with one parent more than 50 percent of the time or (b) the child lives an equal amount of time with each parent. The committee does not wish to promote a race to file or serve the order. The committee proposes amending rules 5.475 and 5.700 to affirm the juvenile court's authority to direct the clerk or a specific party to transmit the order to a designated superior court for filing.
10.	Superior Court of Los Angeles County by Janet Garcia, Court Operations Manager	AM	In new Family Law form FL-300 and associated forms, the word "parenting time" is referenced with "visitation." This is not used in the dependency context. They should be consistent. **Are there specific changes that would improve the rules and forms in this proposal?** 1. JV-200, item # 15—Remove the check box for "parent given physical custody." Leave the other three checkboxes. At the bottom of the paragraph, add in BOLD the following language: *If a parent in the case appears at the Family Law Clerk's*	The committee agrees and intends to incorporate the term "parenting time" into the juvenile court forms to refer to visitation as opportunities to the forms arise. The forms in this proposal have been revised to include "parenting time" to the extent practicable. The committee does not recommend making the suggested change. Section 362.4 authorizes the juvenile court to direct a parent to transmit the order to the receiving court. This check box gives the court an opportunity to exercise its statutory authority, but does not require the court to choose the parent. If, in the circumstances of a particular case, the court determines that directing the parent to transmit the order is inappropriate, the court should direct one of the other persons identified in item 15 to transmit the order. The committee does not recommend making the suggested change. To prevent the filing of multiple family law proceedings or a race by the

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			Office with the JV-200 Final Judgment, and the case has not been transmitted and family case number assigned, that parent may request that a family case number be issued at that time in order to facilitate the filing of an RFO for modification.	parties to file first, only the party expressly directed by the juvenile court should be permitted to transmit the juvenile court custody order to the designated superior court. Both the party and the court are designated in item 15 of the form, so that the clerk may easily determine whether the parent has come to the proper court.
			In addition, at the bottom of page 4 on the Clerk's Certificate of Mailing, there should be an option to note that the party was personally served at the time they appeared at the filing window and requested a family case number be issued.	The committee does not recommend the suggested change. Although this change makes sense, it appears that section 362.4 requires first-class mail service of the filed copy of the order to the originating court and the parents.
			The JV-287 form should be a mandatory filing in Family Court, along with the JV-200, whenever one of the parties has a confidential address so the Family Court Clerk can effectuate proper service.	The committee agrees that the family court should have access to the mailing address of each party bound by the juvenile court custody orders. The committee does not, however, recommend the suggested change. Section 316.1 requires each parent to designate a permanent mailing address to the juvenile court. This address is properly included on the juvenile custody order form. But no statute or rule requires that a party provide a home address. Under circumstances in which the disclosure of a home address would pose a safety risk, the party at risk should designate an alternative mailing address, such as a post office box or an attorney's address.
			Can more than one box be checked ordering multiple parties to transmit the order? If so, there may be multiple cases opened. It may	The committee intends that the court direct only one of the enumerated persons to transmit the order. The committee has inserted clarifying

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			be best to have the Clerk transmit the order.	language into item 15.
			2. JV-200, front page. More space is needed to include family law case number.	The committee agrees and has expanded the space available to enter the family law case number.
			3. Mandatory use of the Final Judgment—Exit Order. The Final Judgment—Exit Order as proposed should be mandatory upon termination of all dependency cases in which the child is residing in a home with only one parent present to ensure the orders are clearly conveyed to the Family Court.	The committee agrees. Under section 362.4, the Judicial Council adopted form JV-200 for mandatory use. It remains a mandatory form under the proposed revisions, as well as under the proposed amendments to rule 5.700(c). If the juvenile court issues a custody order when terminating its jurisdiction, it must use form JV-200.
			Will the approval of proposed form JV-206 provide an effective and efficient method for the juvenile court to convey the reasons for its custody and visitation orders to the family court? Yes.	No response required.
			However, we recommend that the JV-206 be a standalone form and not an attachment to the JV-200.	The committee does not recommend the suggested change. The committee does not anticipate that the juvenile court would have occasion to use form JV-206 except as an attachment to a custody or visitation order issued on form JV-200 or JV-205. Form JV-206 depends on and explains findings and orders on these covering forms.
			Due to the nature of the information (e.g., the reasons for supervised or no visitation) the form should be a confidential form and kept in a confidential envelope within the file.	The committee does not recommend the suggested change. Form JV-206 should be attached to the custody and visitation orders issued on forms JV-200 and JV-205 and become a part of those orders. Section 362.4 requires the Judicial Council

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	Commentator	Position	Comment	Committee Response
			Should the council explore effective means of serving notice of the filing of the order other than first class mail? *Yes, if the statute [allows] for other means.	to "adopt forms for any custody … order issued [when the juvenile court terminates its jurisdiction]. These form orders shall not be confidential." Because form JV-206 will be attached to form JV-200 or JV-205, it is a "form order" as described by section 362.4. Legislative policy seems to require that the form be publicly available to the same extent as the principal order to which it is attached. The committee agrees that e-service should be explored. The Court Technology Advisory Committee (CTAC) circulated a separate proposal, SPR15-32, to make technical amendments to the rules of court to facilitate e-business, e-filing, and e-service. Because section 362.4 requires the clerk of the receiving court to use first-class mail to send the order to the juvenile court and the parents, an amendment or revision eliminating that requirement would be substantive and must await the next phase of the Rules Modernization Project.
11.	Superior Court of Orange County Family Law and Juvenile Court Operations Managers by Blanca Escobedo, Principal Administrative Analyst	AM	**Are there specific changes that would improve the rules and forms in this proposal?** If there is a *no visitation* or *monitored visitation* order, the JV-206 should be a mandatory form.	The committee does not recommend the suggested change. Forms JV-200 and JV-205 are mandatory. Each of these forms requires the juvenile court to specify its reasons for ordering no visitation (JV-200, items 4 and 5) or supervised (JV-205, item 3) on either form JV-206 or another attachment. Many courts already have local procedures and

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				forms in place for specifying these reasons. Approving form JV-206 for optional use will permit these courts to continue to use their existing procedures and, at the same time, will give courts that do not have local forms a format with which to specify their reasons for limiting or denying visitation.
			Our local DCSS has requested our Court not file exit orders on DCSS cases because it creates a problem when/if they file a dismissal. If the only open case is a DCSS case, should exit orders be filed on that case? We recommend adding this clarification to CRC 5.700(b).	The committee has modified its recommendation to specify, in rules 5.475 and 5.700, that a juvenile court custody order should not be filed in a pending governmental child support case unless custody issues have already been addressed in that case. If no other family law custody proceeding is pending and no custody issues have been addressed in the child support proceeding, the receiving court should open a new family law custody proceeding and file the juvenile court order therein.
			Case number boxes on forms JV-200, JV-205, and JV-206 are very small and cannot fit two different case numbers. Please expand or create separate boxes for the juvenile and family law case numbers.	The committee agrees with the suggested change and has expanded the space for entering case numbers.
			Custody Order—Juvenile-Final Judgment (JV-200) o Page 1, header, there is not enough space to write the Family case number.	The committee agrees with the suggested change and has expanded the space for entering case numbers.
			o Page 1, item 3 does not have enough space to	The committee agrees with the suggested change

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			write the name of the person who has legal custody, physical custody, and primary residence.	and has expanded the space for entering information in item 3.
			o Page 1, item 2 we recommend adding a title to this section. The definition/purpose gets lost because it's at the end of #2, which causes confusion.	The committee agrees with the suggested change and has added a title to item 2.
			o Page 2, item 9 we recommend juvenile courts attach parentage orders to the exit orders so they are also filed in family court case file.	The committee agrees with the suggested change and has revised item 9 to direct the attachment of parentage orders.
			o Page 3, items 11, 12, and 13 - recommend rewording to "Attachment _____" for flexibility rather than adding specific attachment numbers.	The committee does not recommend the suggested change. The attachment numbers correspond to the item numbers on the primary form, per Judicial Council protocol. That protocol is intended to prevent confusion regarding which items on the primary form are referenced by each item on the attachment. In other words, items on attachments should not be numbered consecutively, but rather according to the item on the primary form to which each corresponds.
			o Page 4, item 16(a) we recommend adding more space or instructing user to add an attachment to list additional attorneys when multiple children exist, as there will also be multiple attorneys.	The committee recommends revising item 16 to reflect the limited statutory duty of the clerk of the receiving court to send a filed copy of the order only to the parents and the originating juvenile court. Revised items 16 and 17 apply only to the receiving court. All parties to the juvenile court case and their respective attorneys will receive a copy of the juvenile custody order.

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			o Page 4, recommend adding a section 16(i) to reflect the originating court. It gets lost without a line item and it may get missed.	The committee recognizes the risk of omitting the originating court in the existing format. In addition to reducing the number of persons whom the receiving court is required to send a filed copy, the committee has also proposed moving the originating court to the beginning of revised item 17 to reduce the chance of its omission.
			o Item #16(d): Should courts list children 12 years of age or over only or all children?	The committee recommends deleting item 16(d).
			o For courts that have juvenile and family law courts in close proximity, it should allow the use of internal mail service (not just certified mail).	The committee agrees that the superior court clerk should not be required to return the filed copy of the form to the originating juvenile court by first-class mail if the receiving court is a division of the originating court and an equally reliable and efficient method of transmitting documents among divisions is available. However, section 362.4 requires the clerk of the receiving court to use first-class mail to send the order to the juvenile court and the parents. See also the response to the Los Angeles Superior Court's comment on e-service at page 34, above.
			Will the approval of proposed form JV-206 provide an effective and efficient method for the juvenile court to convey the reasons for its custody and visitation orders to the family court?	
			The JV-206 will document reasons for custody and visitation orders made by the juvenile court.	No response required.
			However, we recommend this be a required	See response to initial Superior Court of Orange

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			form when there is a *no visitation* or *monitored visitation* order made.	County comment at pages 34–35, above.
			Additionally, there are concerns in having the JV-206 becoming a public records once it's filed in family court because it contains sensitive information pertaining to the child(ren). We recommend the JV-206 be deemed a confidential document. If this change is approved, we also recommend revising JV-205, item 3, to reflect the JV-206 deemed a confidential document.	Please see the response to the comment by the Los Angeles Superior Court regarding confidentiality at pages 33–34, above.
			Should the council explore effective means of serving notice of the filing of the order other than first class mail?	
			First class mail is adequate for serving notice, but possible e-service options would be preferred.	Please see the response to the comment by the Los Angeles Superior Court on e-service at page 34, above.
			Would the proposal provide a cost savings?	
			We do not anticipate a cost savings with the implementation of this change.	No response required.
			What are the implementation requirements for courts? – for example, training staff (identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in the CMS, or modifying the CMS?	

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			Revisions to juvenile and family law procedures will need to be made to reflect the use of the new/revised forms. Communication with judicial officers and stakeholders will be coordinated to share new forms and to remind them documents filed in family court are public records, if confidentiality recommendation is not adopted. CMS impact will be limited to the creation of a new docket code. **CRC 5.504(c) grants courts 1 year from their effective date to implement production of new/revised mandatory juvenile forms, could two months from JC approval of this proposal until its effective date provide sufficient time for implementation?** Two months is sufficient time to implement new forms.	Committee staff is available to provide technical assistance in the implementation of amended rules and new and revised Judicial Council forms. No response required.
12.	Superior Court of San Diego County by Mike Roddy, Executive Officer	AM	**Rule 5.475**: The rule should specify in (a)(1)(B) and (b) in which division of the court the proceeding is to be opened and/or brought. **Rule 5.700**: The rule should specify in (d) in which division of the court the proceeding is to be opened.	The committee does not recommend the suggested changes. As circulated for comment, the rule specifies that the receiving court should open a family law file if no related proceeding is pending. The court should open the file in the division that hears proceedings under the Family Code, typically the family law division or family court. The committee agrees and proposes amending rule 5.700(d) to specify that the receiving court open a family law file if no related proceeding is pending.

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JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 27, 2015

Title
Family and Juvenile Law: Transfers to Tribal Court Under the Indian Child Welfare Act

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 5.483 and 5.590; revise forms ICWA-060 and JV-800

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair
Tribal Court–State Court Forum
Hon. Richard C. Blake, Cochair
Hon. Dennis M. Perluss, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2016

Date of Report
July 29, 2015

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Executive Summary

The Family and Juvenile Law Advisory Committee (committee) and the Tribal Court–State Court Forum (forum) propose amendments to the California Rules of Court and revisions to Judicial Council forms concerning the transfer of court proceedings involving an Indian child from the jurisdiction of the state court to a tribal court. These changes are in response to provisions of Senate Bill 1460 (Stats. 2014, ch. 772) (SB 1460) and the Court of Appeal decision in *In re. M.M.* (2007) 154 Cal.App.4th 897. SB 1460 requires the state juvenile court to give the tribal court specific information and documentation when a case governed by the *Indian Child Welfare Act* is transferred. The *In re M.M.* decision implicates an objecting party's right to appeal a decision granting a transfer to a tribal court.

Recommendation

The Family and Juvenile Law Advisory Committee and the Tribal Court–State Court Forum recommend that the Judicial Council, effective January 1, 2016:

1. Amend rule 5.483 to make use of the *Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction* (form ICWA-060) mandatory rather than optional, add a requirement that the transfer order include matters required by section 827.15 of the Welfare and Institutions Code, and, to ensure that the parties are aware of the requirements, add a subsection requiring an advisement that any party wishing to appeal an order transferring a case to tribal court must file their appeal before the transfer is finalized and that if a party does not ask for and obtain a stay of the order for transfer, the appellate court will lose jurisdiction over the appeal;

2. Amend rule 5.590 to require an advisement that an appeal of an order granting a transfer of an Indian child custody proceeding involving an Indian child to tribal court must be taken before the transfer finalizes and that if a party does not ask for and obtain a stay of the order for transfer, the appellate court will lose jurisdiction over the appeal;

3. Revise Judicial Council *Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction* (form ICWA-060) by making it mandatory rather than optional, reorganizing the form in response to comments, adding places to put the information required by Welfare and Institutions Code section 827.15, and adding an advisement concerning appellate rights as follows:

   > A party that intends to seek appellate review of the transfer order is advised that they must take their appeal before the transfer to tribal court is finalized. Failure to request and obtain a stay (delayed effective date) of the transfer order will result in loss of appellate jurisdiction; and

4. Revise Judicial Council *Notice of Appeal—Juvenile* (form JV-800) to refer to section 305.5 of the Welfare and Institutions Code, and add the following advisement:

   > You are advised that if you wish to file an appeal of the order for transfer to a tribal court, you (1) may ask the juvenile court to stay (delay the effective date of) the transfer order and (2) must file the appeal before the transfer to tribal jurisdiction is finalized. Read rule 5.483 and the advisory committee comment.

The text of the amended rules and copies of the revised forms are attached at pages 7–12.

Previous Council Action

In 2006, the Legislature enacted Senate Bill 678 (Ducheny; Stats. 2006, ch. 838), which incorporated various provisions of the federal Indian Child Welfare Act (ICWA; 25 U.S.C.

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§ 1901–1963) into the California Family Code, Probate Code, and Welfare and Institutions Code. To implement SB 678, the Judicial Council adopted comprehensive ICWA rules and forms, including rule 5.483 concerning transfers to tribal court, effective January 1, 2008. This rule has been amended only once since 2008, and only for technical changes, specifically to delete statutory references.

Rule 5.590—concerning the advisement of rights to review juvenile cases governed by Welfare and Institutions Code sections 300, 601, and 602—was amended and renumbered, effective July 1, 2010. The rule was first adopted as rule 1435, effective January 1, 1990, and previously amended effective January 1, 1992–1995, and July 1, 1999. In 2007, it was amended and renumbered as rule 5.585, effective January 1, 2007.

Rationale for Recommendation

The existing rule governing transfers of cases to tribal court under the Indian Child Welfare Act, rule 5.483, contains limited information on the procedures to transfer a case to tribal court, what information must be provided to the tribal court, and the parties' appellate rights. The current proposal provides more information in these areas in response to two developments that have occurred since the enactment of rule 5.483: (1) the requirement under SB 1460 to provide a tribal court with specific information and documentation when a case governed by the Indian Child Welfare Act is transferred and (2) the appellate jurisdictional issues addressed in the *In re M.M.* decision.

In 2007, the Court of Appeal, First Appellate District, held that once a transfer from state court to tribal court is finalized, the decision to transfer is not appealable because the California Court of Appeal has no power over the tribal court to which the case has been transferred.[1] To alert parties to this possibility, the committee and forum propose adding advisements to several forms and under several rules indicating that any appeal must be filed before the transfer is finalized and that, if a stay is not sought and received, the Court of Appeal will lose jurisdiction to consider the appeal.

The Legislature recently enacted Senate Bill 1460 (Stats. 2014, ch. 772), which amended section 305.5 of the Welfare and Institutions Code and added sections 381 and 827.15 concerning the transfer of juvenile court proceedings involving an Indian child from the jurisdiction of the local state court to a tribal court. In particular, SB 1460 sets out certain requirements concerning the contents of orders and the information that must be provided when a child's case is transferred from a California juvenile court to a tribal court. This change brings California law into alignment with federal requirements under title IV-E of the Social Security Act designed to ensure continuity of title IV-E eligibility when a case transfers from state court to tribal court. To implement this legislation, the committee and forum propose amending rule 5.483 and revising form ICWA-060 to require the content mandated by the legislation.

[1] *In re M.M.* (2007) 154 Cal.App.4th 897.

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Comments, Alternatives Considered, and Policy Implications

External Comments

This proposal was circulated for comment as part of the spring 2015 invitation to comment cycle, from April 17 to June 17, 2015, 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, social workers, probation officers, court-appointed special advocates, and other juvenile and family law professionals. In addition, the proposal was circulated to tribal advocates, tribal leaders, and others with a particular interest in tribal issues. Eight individuals or organizations provided comment: one agreed with the proposal, one agreed if modified, five disagreed with the proposal, and one expressed no position but included comments. A chart with the full text of the comments received and the forum's and committee's responses is attached at pages 13–26.

All of the substantive comments received on the proposal related to appellate issues. None of the commentators raised issues relating to the changes implementing SB 1460.

As originally drafted and circulated for comment, in response to the *In re M.M.* decision, the proposal would have created a reduced timeline for filing an appeal combined with an automatic stay of the finalization of an order transferring a case to tribal court to give an objecting party a defined period of time in which to appeal and request a stay. The procedure suggested in the proposal received a number of negative comments and has been substantially revised in light of those comments. In particular, the proposal no longer includes suggestions to amend rule 8.406 and adopt rule 8.418 as was proposed when the item circulated for public comment.

Two of the commentators who disagreed with the proposal and one who agreed, if modified, suggested that the shortened time frame for appeal and the unique procedure created a trap for the unwary and rather than protecting objecting parties' rights to appeal would, in practice, undermine those rights. Two of the commentators who disagreed with the proposal, the Pechanga Band of Luisenio Indians and California Indian Legal Services, objected that the automatic stay would delay permanency for Indian children, would broaden appellate rights, and was inconsistent with ICWA, California statutes implementing ICWA, and other governing law. They urged the Judicial Council to defer action on this proposal pending the Bureau of Indian Affairs (BIA) adoption of new regulations governing ICWA. While this proposal was pending, on February 25, 2015, the BIA published the new *Guidelines for State Courts and Agencies in Indian Child Custody Proceedings*, which replaces and supersedes the guidelines issued in 1979.[2] On March 20, 2015, the BIA proposed new regulations governing ICWA.[3]

[2] The new guidelines are available at *www.bia.gov/cs/groups/public/documents/text/idc1-029447.pdf*.

[3] The proposed regulations are available at *www.bia.gov/cs/groups/public/documents/text/idc1-029629.pdf*.

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In response to these comments, the proposal was substantially revised to eliminate both the shortened time for appeal of an order granting a transfer of a case governed by ICWA to tribal court and the automatic stay of the finalization of such an order. Instead, the proposal now requires an advisement to the parties that any appeal of an order granting a transfer to tribal court must be taken before the transfer has been finalized and that if an objecting party fails to request and obtain a stay of the order for transfer, the appellate court will lose jurisdiction should the transfer be finalized.

Alternatives

As discussed above, the committee and forum had originally considered establishing an alternative time-frame for appeals of orders transferring cases governed by ICWA to tribal court. In light of the concerns raised by the various commentators, the committee and forum decided that the better alternative would be to provide the parties with an advisement that any appeal must be taken before finalization of the transfer.

The committee and forum are aware that the new BIA guidelines and proposed regulations contain provisions that appear to conflict with both California case law and the Welfare and Institutions Code. These provisions might require additional rule and form changes, including to sections governing transfers to tribal court (Cal. Rules of Court, rule 5.483; form ICWA-060), as well as to sections regarding content of notice, the nature and timing of inquiry and of active efforts, considerations in applying placement preferences, and a number of other areas. The committee and forum considered whether to defer action on this current proposal in light of the new guidelines and proposed regulations. However, given that several years may pass before any such changes in California statutes are finalized, the committee and forum decided that the following benefits outweighed waiting: (1) parties are entitled to information to understand how to object to a transfer and preserve their appellate rights; (2) state courts will have a clear procedure to follow when issues of transfer arise; and (3) tribal courts will receive all of the information and documentation that they are entitled to under SB 1460 as mandated by state and federal law.

Implementation Requirements, Costs, and Operational Impacts

The requirements, costs, and impacts of implementing this proposal should be minimal because, even without these changes, state courts are required to notify the parties of their appellate rights and transfer these cases to tribal courts absent good cause. Existing council rules and notice forms can be used; however, they do not give the parties the information needed to comply with statutory and case law. There are no associated costs, but rather there are potential savings, which will result when cases are promptly and properly transferred from state court to tribal court.

Attachments and Links

1. Cal. Rules of Court, rules 5.483 and 5.590, at pages 7–8
2. Judicial Council forms ICWA-060 and JV-800, at pages 9–12
3. Chart of comments, at pages 13–26

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4. Attachment A: *In re M.M.* (2007) 154 Cal.App.4th 897
   Senate Bill 1460 (Stats. 2014, ch. 772), *www.leginfo.ca.gov/pub/13-14/bill/sen/sb_1451-1500/sb_1460_bill_20140929_chaptered.html*

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Rules 5.483 and 5.590 of the California Rules of Court are amended, effective January 1, 2016, to read:

Rule 5.483. Transfer of case

(a)–(f) *** * ***

(g) Order on request to transfer

(1) The court must issue its final order on the *Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction* (form ICWA-060).

(2) When a matter is being transferred from the jurisdiction of a juvenile court, the order must include:

(A) All of the findings, orders, or modifications of orders that have been made in the case;

(B) The name and address of the tribe to which jurisdiction is being transferred;

(C) Directions for the agency to release the child case file to the tribe having jurisdiction under section 827.15 of the Welfare and Institutions Code;

(D) Directions that all papers contained in the child case file must be transferred to the tribal court; and

(E) Directions that a copy of the transfer order and the findings of fact must be maintained by the transferring court.

(h) Advisement when transfer order granted

When the court grants a petition transferring a case to a tribal court under Welfare and Institutions Code section 305.5, Family Code section 177(a), or Probate Code section 1459.5(b), and rule 5.483, the court must advise the parties orally and in writing that any appeal to the order for transfer to a tribal court must be made before the transfer to tribal jurisdiction is finalized and that failure to request and obtain a stay of the order for transfer will result in a loss of appellate jurisdiction.

~~(h)~~ (i) Proceeding after transfer

* * *

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Advisory Committee Comment

Once a transfer to tribal court is finalized as provided in rule 5.483(i), the appellate court lacks jurisdiction to order the case returned to state court (*In re M.M.* (2007) 154 Cal.App.4th 897).

As stated by the Court of Appeal in *In re M.M.*, the juvenile court has the discretion to stay the provisions of a judgment or order awarding, changing, or affecting custody of a minor child "pending review on appeal or for any other period or periods that it may deem appropriate" (Code Civ. Proc., § 917.7), and the party seeking review of the transfer order should first request a stay in the lower court. (See Nuckolls v. Bank of California, Nat. Assn. (1936) 7 Cal.2d 574, 577 [61 P.2d 927] ["Inasmuch as the [L]egislature has provided a method by which the trial court, in a proper case, may grant the stay, the appellate courts, assuming that they have the power, should not, except in some unusual emergency, exercise their power until the petitioner has first presented the matter to the trial court."].) If the juvenile court should deny the stay request, the aggrieved party may then petition this court for a writ of supersedeas pending appeal. (Cal. Rules of Court, rule 8.112).

Subsection (h) and this advisory committee comment are added to help ensure that an objecting party does not inadvertently lose the right to appeal a transfer order.

Rule 5.590. Advisement of right to review in Welfare and Institutions Code section 300, 601, or 602 cases

(a)–(b) * * *

(c) Advisement requirements for appeal of order to transfer to tribal court

When the court grants a petition transferring a case to a tribal court under Welfare and Institutions Code section 305.5, Family Code section 177(a), or Probate Code section 1459.5(b), and rule 5.483, the court must advise the parties orally and in writing, that an appeal of the order must be filed before the transfer to tribal jurisdiction is finalized, and that failure to request and obtain a stay of the order for transfer will result in a loss of appellate jurisdiction.

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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*):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	CASE NUMBER:
ORDER ON PETITION TO TRANSFER CASE INVOLVING AN INDIAN CHILD TO TRIBAL JURISDICTION	RELATED CASES *(if any):*

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
   - ☐ Deputy county counsel
   - ☐ Tribal representative *(name)*:
   - ☐ Parent *(name):*
   - ☐ Parent *(name):*
   - ☐ Guardian
   - ☐ Deputy district attorney
   - ☐ Parent's attorney
   - ☐ Parent's attorney
   - ☐ CASA
   - ☐ Other:

3. The court has read and considered the
   - ☐ ICWA-50, *Notice of Petition and Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction*
   - ☐ Other *relevant evidence (specify):*

4. ☐ The child's tribe has informed this court that it has a tribal court or other administrative body vested with authority over child custody proceedings.

5. **THE COURT FINDS AND ORDERS** under ☐ Family Code, § 177(a); ☐ Probate Code, § 1459.5(b); ☐ Welfare and Institutions Code, § 305.5; ☐ 25 U.S.C. § 1911(a) (Exclusive Jurisdiction)

   a. ☐ The request for transfer is granted and the following ordered:

   (1) The child's case is ordered transferred to the jurisdiction of the tribe listed below:
   Name of tribe:
   Address:
   City, state, zip code:
   Telephone number:

   (2) Physical custody of the child is transferred to a designated representative of the tribal court listed below:
   Name:
   Title:
   Address:
   City, state, zip code:
   Telephone number:

   (3) The case is being transferred from a juvenile court, and all of the findings and orders or modifications of orders that have been made in the case are attached.

   (4) The case is being transferred from a juvenile court, and the county agency is hereby directed to release its case file to the tribe under section 827.15 of the Welfare and Institutions Code.

   (5) The case is being transferred from a juvenile court, and all originals contained in the court file must be transferred to the tribal court, a copy of the transfer order and findings of fact must be maintained by the transferring court.

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CHILD'S NAME:	CASE NUMBER:

(6) A party that intends to seek appellate review of the transfer order is advised that the party must take an appeal before the transfer to tribal court is finalized. Failure to request and obtain a stay (delay the effective date) of the transfer order will result in loss of appellate jurisdiction.

b. ☐ The petition to transfer is denied because one of the following circumstances exist:

(1) ☐ One or both of the child's parents opposes the transfer.
Name of opposing parent:

(2) ☐ The child's tribe has informed this court that it does not have a tribal court or other administrative body as defined in 25 U.S.C. § 1903.

(3) ☐ The tribal court or other administrative body of the child's tribe declines the transfer.

c. ☐ The petition to transfer is denied because good cause exists not to transfer the case.

(1) ☐ Name of opposing party: has submitted information or evidence in writing to the court and all parties.

(2) ☐ Petitioner has had the opportunity to provide information or evidence in rebuttal.

(3) ☐ The party opposing the transfer has established that good cause not to transfer the proceeding exists as follows:

(a) ☐ The evidence necessary to decide the case cannot be presented in the tribal court without undue hardship to the parties or the witnesses, and the tribal court is unable to mitigate the hardship by making arrangements to receive and consider the evidence or testimony by use of remote communication, by hearing the evidence or testimony at a location convenient to the parties or witnesses, or by use of other means permitted in the tribal court's rules of evidence or discovery.

(b) ☐ The proceeding was at an advanced stage when the petition to transfer was received and the petitioner did not file the petition within a reasonable time after receiving notice of the proceeding. The notice complied with:

☐ Family Code section 180 or
☐ Probate Code section 1460.2 or
☐ Welfare and Institutions Code section 224.2.

(Note: The fact that a party waited until after reunification efforts failed and reunification services were terminated is not good cause to deny transfer.)

(c) ☐ The Indian child is over 12 years of age and objects to the transfer.

(d) ☐ The parents of the child, over five years of age, are unavailable, and the child has had little or no contact with the child's tribe or members of the child's tribe.

(e) ☐ *Other (specify):*

(4) ☐ The court provided a tentative decision in writing with reasons to deny the transfer in advance of the hearing at which the order to deny was made.

6. ☐ Proof that tribe has accepted transfer is attached and jurisdiction is terminated.

7. ☐ Hearing is set for *(date):* *(time):* *(dept.):*
to confirm that tribe has accepted transfer and to terminate jurisdiction.

Date:

JUDICIAL OFFICER

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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*):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
NOTICE OF APPEAL—JUVENILE	CASE NUMBER:

— NOTICE —

- You or your attorney **must** fill in items 1 and 2 and sign this form at the bottom of the page. If possible, to help process your appeal, fill in items 4–6 on the reverse of this form.
- Rule 8.406 says that to appeal from an order or judgment, you must file a written notice of appeal within **60** days after rendition of the judgment or the making of the order being appealed or, in matters heard by a referee, within **60** days after the order of the referee becomes final.
- You are advised that if you wish to file an appeal of the order for transfer to a tribal court, you (1) may ask the juvenile court to stay (delay the effective date of) the transfer order and (2) must file the appeal before the transfer to tribal jurisdiction is finalized. Read rule 5.483 and the advisory committee comment.

1. I appeal from the findings and orders of the court *(specify date of order or describe order):*

2. This appeal is filed by
   a. Appellant *(name):*
   b. Address: c. Phone number:
   d. Name, address, and phone number of person to be contacted *(if different from appellant):*

3. ☐ I request that the court appoint an attorney on appeal. I ☐ was ☐ was not represented by an appointed attorney in the superior court.

Date:

TYPE OR PRINT NAME

▶ SIGNATURE OF ☐ APPELLANT ☐ ATTORNEY

4. Items 5 through 7 on the reverse are ☐ completed ☐ not completed.

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Form Approved for Optional Use
Judicial Council of California
JV-800 [Rev. Jan 1, 2016]

Cal. Rules of Court, rule 8.400, 8.401, 8.405, 8.406
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

5. Appellant is the
   a. ☐ child
   b. ☐ mother
   c. ☐ father
   d. ☐ guardian
   e. ☐ de facto parent
   f. ☐ county welfare department
   g. ☐ district attorney
   h. ☐ child's tribe
   i. ☐ other *(state relationship to child or interest in the case):*

6. This notice of appeal pertains to the following child or children *(specify number of children included):*
   a. Name of child:
      Child's date of birth:
   b. Name of child:
      Child's date of birth:
   c. Name of child:
      Child's date of birth:
   d. Name of child:
      Child's date of birth:
      ☐ Continued in Attachment 5.

7. The order appealed from was made under Welfare and Institutions Code *(check all that apply):*
   a. ☐ **Section 305.5** (transfer to tribal court)
      ☐ Granting transfer to tribal court
   b. ☐ **Section 360** (declaration of dependency) ☐ Removal of custody from parent or guardian ☐ Other orders
      ☐ with review of section 300 jurisdictional findings
      Dates of hearing *(specify):*
   c. ☐ **Section 366.26** (selection and implementation of permanent plan in which a petition for extraordinary writ review that substantively addressed the specific issues to be challenged was timely filed and summarily denied or otherwise not decided on the merits)
      ☐ Termination of parental rights ☐ Appointment of guardian ☐ Planned permanent living arrangement
      Dates of hearing *(specify):*
   d. ☐ **Section 366.28** (order designating a specific placement after termination of parental rights in which a petition for extraordinary writ review that substantively addressed the specific issues to be challenged was timely filed and summarily denied or otherwise not decided on the merits)
      Dates of hearing *(specify):*
   e. ☐ Other appealable orders relating to dependency *(specify):*
      Dates of hearing *(specify):*
   f. ☐ **Section 725** (declaration of wardship and other orders)
      ☐ with review of section 601 jurisdictional findings
      ☐ with review of section 602 jurisdictional findings
      Dates of hearing *(specify):*
   g. ☐ Other appealable orders relating to wardship *(specify):*
      Dates of hearing *(specify):*
   h. ☐ Other *(specify):*

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SPR15-27

Family and Juvenile Law: Transfers to Tribal Court under Indian Child Welfare Act (Amend Cal. Rules of Court, rules 5.483 and 5.590; revise Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction (form ICWA-060) and Notice of Appeal—Juvenile (form JV-800))

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

	Commentator	Position	Comment	Committee Response
1.	California Indian Legal Services, Delia Parr, Directing Attorney , Eureka Office (Statewide Tribal organization with offices in Bishop, Escondido, Eureka and Sacramento)	N	These comments are submitted in opposition to the proposed amendments to Cal. Rules of Court 5.483, 5.590 and 8.406; the adoption of Cal. Rules of Court 8.418; and, revisions to the associated court forms. This proposal would create a delay of 12 court days in transferring a case from state court to tribal court, which is contrary to the intent of the Indian Child Welfare Act, as well as recently published federal guidelines and pending federal regulations. The proposal is not in the best interest of Indian children, was not developed in consultation with Indian tribes, lacks statutory authority and is inconsistent with existing practice. The ICWA was passed by Congress in 1978 to protect the best interest of Indian children. Jurisdiction over Indian child welfare matters is presumptively tribal even in PL 280 states like California, meaning that when a tribe petitions to transfer a case, it *must* be transferred absent good cause. Of great importance, recently-published federal ICWA guidelines and pending federal regulations clearly define the good cause exception and give greater deference to tribal jurisdiction. The current proposal is inconsistent with the intent and spirit of the ICWA in delaying such transfers.	In response to this and other comments, the proposal has been revised so that it no longer creates a 12 court day delay in finalizing a transfer to tribal court. Instead objecting parties will be advised that they must file an appeal before the transfer has finalized and that they may request a stay of the order if they intend to appeal. Instead the proposal addresses the issue by means of advisement.

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SPR15-27

Family and Juvenile Law: Transfers to Tribal Court under Indian Child Welfare Act (Amend Cal. Rules of Court, rules 5.483 and 5.590; revise Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction (form ICWA-060) and Notice of Appeal—Juvenile (form JV-800))

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

	Commentator	Position	Comment	Committee Response
			The proposal will have detrimental consequences, including at times leaving Indian children in "stranger care" pending the transfer of physical custody from state court to tribal court. For example, in one recent CILS case, a newborn was detained at birth by a county child welfare agency. The child's Indian tribe had been following the mother and planned to detain at birth, but since the hospital called the county at birth and not the tribe, the county detained before the tribe had a chance. The tribe had determined that placement with the maternal grandparents, who had been with the baby in the hospital since birth, was appropriate. However, one of the grandparents had a criminal conviction that would not allow county placement without an exemption. The tribe therefore sought a transfer to tribal court, which fortunately was granted. If the proposed amended Rules of Court were in place, however, this could have meant an unnecessary delay of as much three weeks during which the baby would either remain in the hospital or be placed in stranger care. This situation is likely to occur time and again under the proposed rule, since hospital staff as mandated reporters contact counties at birth, not tribes. This avoidable situation of putting Indian children in stranger care will not be limited to newborns, though. It could potentially occur anytime a	

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SPR15-27

Family and Juvenile Law: Transfers to Tribal Court under Indian Child Welfare Act (Amend Cal. Rules of Court, rules 5.483 and 5.590; revise Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction (form ICWA-060) and Notice of Appeal—Juvenile (form JV-800))

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

	Commentator	Position	Comment	Committee Response
			child is detained by a state agency and a tribe is seeking jurisdiction, since counties and tribes are often at odds over appropriate placements. The proposal would broaden appellate rights against transfers to tribal court beyond what is allowed by statute. When a statute contemplates a particular appeal process for a certain proceeding, it usually directs the creation of a Rule of Court on point. The current statutes regarding transfers to tribal court do no such thing. And although the proposal is ostensibly linked to recently-passed SB 1460, that bill does not actually include any mention of appeals from transfer orders. At present, parties opposing a transfer to tribal court must request a stay of the proceedings and/or immediately file a writ of supersedeas. (See *In re M.M.* (2007) 154 Cal.App.4th 897.) Even if there were statutory authority to alter the current process, the clarified federal guidelines regarding transfers to tribal court make any additional time to decide whether to oppose a transfer unnecessary. The proposal is in conflict with existing practice. Existing practice in this area is consistent with transfers between counties – an order transferring custody is issued upon receipt of confirmation that a tribal court has accepted	

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SPR15-27

Family and Juvenile Law: Transfers to Tribal Court under Indian Child Welfare Act (Amend Cal. Rules of Court, rules 5.483 and 5.590; revise Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction (form ICWA-060) and Notice of Appeal—Juvenile (form JV-800))

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

	Commentator	Position	Comment	Committee Response
			jurisdiction, which is in line with the ICWA and is in the best interest of Indian children. There is tremendous positive movement around the ICWA currently. It is our overall position that the Judicial Council should take no action in this area pending the promulgation of new federal regulations. This matter is not time sensitive, as it is in response to a 2007 appellate decision. The proposed amendments have not been necessary in the past eight years, and it is unclear why they are being proposed now, since again they have no backing in the recent legislation. When the federal regulations are finalized, state legislation will likely be needed. That legislative update may look much like SB 678 in 2006, which codified the ICWA into state law. This is an issue that would properly be addressed at that time, in order to avoid piecemeal fixes that confuse both parties and courts. In closing, we are deeply troubled that there was no collaboration or consultation with tribes in the development of this proposal. Also of great concern, it will have the practical effect of encouraging appeals of transfers to tribal court. It is difficult to view this as anything other than	The proposal was circulated for comment to a Listserve of tribal leaders, tribal court judges and tribal advocates. All comments received have been considered and in response to those comments, revisions have been made to address

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SPR15-27

Family and Juvenile Law: Transfers to Tribal Court under Indian Child Welfare Act (Amend Cal. Rules of Court, rules 5.483 and 5.590; revise Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction (form ICWA-060) and Notice of Appeal—Juvenile (form JV-800))

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

	Commentator	Position	Comment	Committee Response
			an affront to the presumptive jurisdiction of tribal courts, which both the U.S. Supreme Court and California appellate courts have long recognized. (*Mississippi Band of Choctaw Indians v. Holyfield* (1989) 490 U.S. 30, 36; *In re M.M., supra*; *In re Jack C., III* (2011) 192 Cal.App.4th 967, 982.)	the concerns raised.
2.	The Executive Committee of the Family Law Section of the State Bar of California (FLEXCOM)	N	The Executive Committee of the Family Law Section of the State Bar (FLEXCOM) does not agree with this proposal. FLEXCOM believes that the proposed Rule 8.448 would impair appellate rights, particularly those of indigent litigants. The proposed rule requires litigants who oppose a transfer order to the tribal court to file a request to stay and a writ of supersedeas within seven court days after the order becomes final. This is an unrealistic timeline. Trial counsel in dependency proceedings are usually appointed, and trial counsel almost never represents the same litigants in the appeals process. Drafting a writ of supersedeas, however, requires the expertise of an appellate counsel. Most litigants are unable to obtain appellate counsel within seven court days, let alone file a notice of appeal and a writ of supersedaes. Even assuming that a litigant is able to obtain	In response to this and other similar comments, the proposal has been revised to remove the unique time frame for appeal, and the other unique features such as request for a stay and writ of supersedeas. Instead, the proposal now requires the court granting an order for transfer to provide the parties with an advisement regarding the potential loss of appellate jurisdiction if a transfer to tribal court is finalized before an appeal is taken.

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SPR15-27

Family and Juvenile Law: Transfers to Tribal Court under Indian Child Welfare Act (Amend Cal. Rules of Court, rules 5.483 and 5.590; revise Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction (form ICWA-060) and Notice of Appeal—Juvenile (form JV-800))

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

	Commentator	Position	Comment	Committee Response
			counsel, the requirement for a request to stay and a writ of supersedeas to be simultaneously filed with seven court days of the transfer order is onerous on litigants. To begin with, a writ of supersedeas is a complex legal document that often requires time to prepare. California Rules of Court, rule 8.824 governs the requirements for the filing of a writ of supersedeas. Under Rule 8.824 (a)(3), the petition for a writ of supersedeas must explain the necessity for the writ and include a memorandum. In addition, a complete trial record, which is usually filed with a writ, is typically not obtainable within seven court days, as proposed by Rule 8.406. Although Rule 8.824 does allow the filing of a writ of supersedeas even if the record has not been filed with the reviewing court, the petition must then include a number of documents as required by Rule 8.824 (a)(4). Thus, it would be a near impossibility for a litigant to have sufficient time within seven court days to be able to file a writ of supersedeas along with a request for stay. Finally, the Bureau of Indian Affairs published Guidelines for State courts and Agencies in Child Custody Proceedings in February of this year, which may require further changes on the state level. There is also pending federal	

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SPR15-27

Family and Juvenile Law: Transfers to Tribal Court under Indian Child Welfare Act (Amend Cal. Rules of Court, rules 5.483 and 5.590; revise Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction (form ICWA-060) and Notice of Appeal—Juvenile (form JV-800))

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

	Commentator	Position	Comment	Committee Response
			litigation challenging the constitutionality of these guidelines. Given the uncertainly regarding the federal rules, this proposal should be deferred with the possibility that further changes may be required. In light of the foregoing, FLEXCOM does not support these proposed rules.	
3.	Hon. Raymond J. Ikola Associate Justice California Court of Appeal, Fourth Appellate District, Division Three	N	I am concerned that this proposal attempts to accomplish much too much in an effort to avoid the result of *In re M.M.*, a case now some eight years old, and involving a relatively rare event. In particular, the seven day time limit for filing the notice of appeal is a trap for the unwary, despite the new requirement that the court advise the parties of the shortened time. Despite best intentions, the advisement may be missed, or the parties may not remember it. For decades, California lawyers have been accustomed to a 60-day appeal period for both civil and criminal appeals. The proposed shortened appeal period will be an aberration. Under this proposal, a lawyer is just as likely to miss the shortened appeal period, resulting in a loss of appellate jurisdiction, as to miss the opportunity to request a stay from the trial court. This proposal attempts too much and will replace one problem with another. We should not attempt to lawyer a case by rule.	In response to this comment, the proposal has been revised to delete the seven day time limit for filing a notice of appeal and instead to require an advisement to the parties that any appeal of an order granting transfer must be filed before the transfer is finalized and that the parties may request a stay of the transfer order if they intend to file an appeal. The advisement also refers the parties to rule 5.483 and the advisory committee comment for more information. Also, the rule has been revised to clarify that failure to request and obtain a stay of the order will result in a loss of appellate jurisdiction.

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SPR15-27

Family and Juvenile Law: Transfers to Tribal Court under Indian Child Welfare Act (Amend Cal. Rules of Court, rules 5.483 and 5.590; revise Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction (form ICWA-060) and Notice of Appeal—Juvenile (form JV-800))

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

	Commentator	Position	Comment	Committee Response
4.	Orange County Bar Association, Ashleigh Aitken, President	A	No substantive comments.	No response required.
5.	Pechanga Band of Luisenio Indians, Hon. Mark Macarro, Chairman (Riverside County)	N	These comments are submitted on behalf of the Pechanga Band of Luisenio Indians, a federally-recognized and sovereign Indian nation, in opposition to the proposed amendments to Cal. Rules of Court 5.483, 5.590 and 8.406; the adoption of Cal. Rules of Court 8.418; and revisions to the associated court forms. This proposal creates a delay of 12 court days in transferring a case from state court to tribal court, which is contrary to the intent of the Indian Child Welfare Act, as well as recently published federal guidelines and pending federal regulations. The proposal is not in the best interest of Indian children, was not developed in consultation with Indian tribes, lacks statutory authority and is inconsistent with existing practice. The ICWA was passed by Congress in 1978 to protect the best interest of Indian children. Jurisdiction over Indian child welfare matters is presumptively tribal even in PL 280 states like California, meaning that when a tribe petitions to transfer a case, it must be transferred absent good cause. The current proposal is inconsistent with the intent and spirit of the ICWA in	In response to this comment and others, the proposal has been revised to eliminate the 12 court day stay on completing a transfer to tribal court. See response to comments of California Indian Legal Services above

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

	Commentator	Position	Comment	Committee Response
			delaying such transfers. The proposal will have detrimental consequences, including at times leaving Indian children in "stranger care" pending the transfer of physical custody from state court to tribal court. The proposal would broaden appellate rights around transfers to tribal court beyond what is allowed by statute. Although the proposal is ostensibly linked to recently-passed SB 1460, that bill does not actually include any mention of appeals from transfer orders. The proposal creates appellate rights that do not currently exist. At present, a party must simply request a stay of the proceedings and/or immediately file a writ of supersedeas. (See *In re M.M.* (2007) 154 Cal.App.4th 897.) The proposal is in conflict with existing practice. Existing practice in this area is consistent with transfers between counties -- an order transferring custody is issued upon receipt of confirmation that a tribal court has accepted jurisdiction, which is in line with the ICWA and is in the best interest of Indian children. There is tremendous positive movement around the ICWA currently. It is our overall position that the Judicial Council should take	

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SPR15-27

Family and Juvenile Law: Transfers to Tribal Court under Indian Child Welfare Act (Amend Cal. Rules of Court, rules 5.483 and 5.590; revise Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction (form ICWA-060) and Notice of Appeal—Juvenile (form JV-800))

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

	Commentator	Position	Comment	Committee Response
			no action in this area pending the promulgation of new federal regulations. This matter is not time sensitive, as it is in response to a 2007 appellate decision. The proposed amendments have not been necessary in the past eight years, and it is unclear why they are being proposed now, since again they have no backing in the recent legislation. In closing, we are deeply troubled that there was no collaboration or consultation with tribes in the development of this proposal. Also of great concern, it will have the practical effect of encouraging appeals of transfers to tribal court. It is difficult to view this as anything other than an affront to the presumptive jurisdiction of tribal courts, which both the U.S. Supreme Court and California appellate courts have long recognized. *(Mississippi Band of Choctaw Indians v. Holyfield* (1989) 490 U.S. 30, 36; *In re M.M., supra; In re jack C., III* (2011) 192 Cal.App.4th 967, 982.)	See response to the comments of California Indian Legal Services above.
6.	Santa Clara County Office of the County Counsel Julie Fulmer McKellar, Lead Deputy County Counsel	A	We would agree with those proposing to defer SPR15-27 in light of the BIA's recently published "Guidelines for State Courts and Agencies in Indian Child Custody Proceedings" to prevent multiple modifications to forms and rules of court in successive years.	The forum and committee considered this option but concluded that because finalization of the regulations and a California legislative response may take several years, the immediate need to ensure compliance with federal law and protect parties appellate rights justifies moving forward

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SPR15-27

Family and Juvenile Law: Transfers to Tribal Court under Indian Child Welfare Act (Amend Cal. Rules of Court, rules 5.483 and 5.590; revise Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction (form ICWA-060) and Notice of Appeal—Juvenile (form JV-800))

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

	Commentator	Position	Comment	Committee Response
				with the proposal at this time.
7.	Superior Court of Orange County Blanca Escobedo Principal Administrative Analyst Family Law & Juvenile Court	NI	**Does the proposal appropriately address the stated purpose?** The proposal's stated purpose is clear for juvenile court. However, we request clarification/impact of *In re M.M.* to family court. **Is it necessary to address the appellate issues discussed in the *In re M.M.* decision through an amendment to the rules and forms?** We recommend expanding on the impact of *In re M.M.* as it applies to appellate rules and forms. **Is the time for filing an appeal of an order for transfer to tribal court appropriate?** We are concerned about the appeal time being too short. It may not allow counsel/party enough time to file an appeal. We also need clarification on the appeal time period. CRC reflects *7 court days **after service** of the copy of order* and the JV-800 notice reflects *within 7 court days or before the transfer to tribal court is finalized*. To minimize confusion, we recommend using similar language on the rule of court and notice. Also, should courts add the	Rule 5.483 applies to family court cases governed by the Indian Child Welfare Act. No reply necessary in light of the revisions being made to the proposal. In response to this and other comments, the proposal has been revised. The proposal no longer shortens the time for appeal. Instead an advisement has been added in several places, including the JV-800 to alert the parties to the requirement to file an appeal before the transfer to tribal court is finalized, and the need to request a stay to ensure the appellate court does not lose jurisdiction.

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SPR15-27

Family and Juvenile Law: Transfers to Tribal Court under Indian Child Welfare Act (Amend Cal. Rules of Court, rules 5.483 and 5.590; revise Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction (form ICWA-060) and Notice of Appeal—Juvenile (form JV-800))

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

	Commentator	Position	Comment	Committee Response
			standard five days to allow for mailing in addition to the seven court days, for a total of twelve days? **Should this proposal proceed at this time or should it be deferred in light of the new *Bureau of Indian Affairs Indian child Welfare Act Guidelines for State Courts and Agencies in Indian Child Custody Proceedings* and the possibility that further changes may be required?** We recommend deferring this proposal to align with other changes introduced by the Bureau of Indian Affairs Indian Child Welfare Act Guidelines for State Courts and Agencies in Indian Child Custody Proceedings. We recommend the following changes to the proposed forms: • **Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction (ICWA-060)** o We recommend making this a mandatory form. o Item 5(e) should also reflect or electronic copies for courts that maintain electronic records. o Item 6 is related to item 5(a), so we recommend moving it right	Consideration was given to deferring the proposal, however, the proposal implements legislation and is not inconsistent with the new BIA Guidelines nor proposed regulations. The proposal makes this form mandatory. Not all tribal courts may have the capacity to accept electronically transferred documents. The form has been reorganized in line with this comment.

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Family and Juvenile Law: Transfers to Tribal Court under Indian Child Welfare Act (Amend Cal. Rules of Court, rules 5.483 and 5.590; revise Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction (form ICWA-060) and Notice of Appeal—Juvenile (form JV-800))

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

	Commentator	Position	Comment	Committee Response
			after item 5(a). This will avoid the advisement from being missed. o Recommend adding verbiage to clarify item #8 applies to juvenile court. • **Notice of Appeal – Juvenile (JV-800)** Last bullet in the Notice box should reflect, "….appeal within 7 court days *from the date the order is made* or before…"	Item 8 applies to any court in which the case governed by the Indian Child Welfare Act arises – juvenile, family or probate. This proposal has now been revised so that there is no longer a 7 day appeal time.
8.	Superior Court of San Diego County Mike Roddy, Executive Officer	AM	This proposal would delay the effective date of an order transferring jurisdiction to a tribal court and would significantly shorten the time to appeal from such an order. Juvenile appeals and writs are governed by CRC 8.400 - 8.474. The time to file an appeal is set by a rule of court, not by a statute. Therefore, a new rule of court shortening the time to file an appeal would be appropriate. The proposed new rule (8.418) says 7 court days after service of a copy of the order being appealed, the ICWA-060 says 7 court days after the date of this order, and the JV-800 just says within 7 court days. They need to be consistent. The two forms also introduce ambiguity by citing the 60-day	The proposal had been revised to no longer shorten the time for appeal of an order granting transfer to tribal court. The proposal has been revised and no longer includes these provisions

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Family and Juvenile Law: Transfers to Tribal Court under Indian Child Welfare Act (Amend Cal. Rules of Court, rules 5.483 and 5.590; revise Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction (form ICWA-060) and Notice of Appeal—Juvenile (form JV-800))

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	Commentator	Position	Comment	Committee Response
			rule, which must be clarified and/or corrected as well.	

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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: October 27, 2015

Title
Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings

Rules, Forms, Standards, or Statutes Affected
Adopt Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JC-224

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Probate and Mental Health Advisory Committee
Hon. John H. Sugiyama, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2016

Date of Report
August 27, 2015

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Executive Summary

The Family and Juvenile Law Advisory Committee and the Probate and Mental Health Advisory Committee recommend adopting one rule of court, adopting four Judicial Council forms (including a joint findings form), and revoking two separate findings forms. The rule and forms are needed to implement Senate Bill 873 (Stats. 2014, ch. 685), which clarified the superior court's authority to make the factual findings needed for an undocumented child to apply for federal classification as a Special Immigrant Juvenile (SIJ) and incorporated relevant elements of the federal Immigration and Nationality Act into California law. The rule and forms are intended to guide a party requesting SIJ findings from a superior court in a child custody, guardianship, or

juvenile dependency or delinquency proceeding, and to supply the court with a sufficient factual basis to make accurate, just, and effective findings under California law.

Recommendation

The Family and Juvenile Law (F&J) and the Probate and Mental Health (PMHAC) Advisory Committees recommend that the Judicial Council, effective January 1, 2016:

1. Adopt rule 7.1020 of the California Rules of Court to specify procedural requirements for seeking SIJ findings in probate guardianship proceedings;

2. Adopt *Request for Special Immigrant Juvenile Findings—Family Law* (form FL-356) to request SIJ findings in a family law custody proceeding;

3. Adopt *Petition for Special Immigrant Juvenile Findings* (form GC-220) to request SIJ findings in a probate guardianship proceeding;

4. Adopt *Request for Special Immigrant Juvenile Findings* (form JV-356) to request SIJ findings in a juvenile dependency or delinquency proceeding;

5. Adopt *Special Immigrant Juvenile Findings* (form FL-357/GC-224/JV-357); and

6. Revoke *Order Regarding Eligibility for Special Immigrant Juvenile Status—Probate Guardianship* (form GC-224) and *Order Regarding Eligibility for Special Immigrant Juvenile Status* (form JV-224).

The text of rule 7.1020 and the new and revoked forms are attached at pages 14–28.

Previous Council Action

The Judicial Council has not previously adopted any California Rules of Court[1] related to Special Immigrant Juvenile (SIJ) findings.

The council adopted *Order Regarding Eligibility for Special Immigrant Juvenile Status* (form JV-224) for mandatory use, effective January 1, 2007, and revised it once, effective July 1, 2011.

The council adopted *Order Regarding Eligibility for Special Immigrant Juvenile Status—Probate Guardianship* (form GC-224) for mandatory use, effective January 1, 2014.

Rationale for Recommendation

In response to the increase in unaccompanied, undocumented children entering the southwestern United States and being released to sponsors around the country,[2] as well as perceived

[1] All subsequent rule references are to the California Rules of Court unless otherwise specified.

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uncertainty over the authority of the superior courts to make SIJ findings, California enacted a new law regarding immigrant children, effective September 27, 2014.[3] New section 155 of the Code of Civil Procedure[4] incorporates many of the provisions of the federal SIJ statute as interpreted by the California Court of Appeal. Subdivision (a) codifies the holding in *B.F. v. Superior Court* that the superior court has jurisdiction to make the SIJ findings in appropriate child custody proceedings.[5] Subdivision (b) requires the superior court to make those findings when requested if there is sufficient evidence to support them and provides that the evidence may consist of, but is not limited to, a credible declaration by the child who is the subject of the requested findings. Subdivision (b) also incorporates, almost verbatim, the elements of the federal SIJ definition that require documentation by state court findings. Subdivision (e) of section 155 specifically requires the Judicial Council to adopt any rules of court and forms needed to implement the new section. This recommendation constitutes the first and most extensive effort to fulfill the statutory mandate.

Underlying federal law

Special Immigrant Juvenile (SIJ) status was created by federal law in 1990 in response to concerns raised at the national level by local California child welfare agencies that child welfare and child custody determinations—especially permanent placements in juvenile dependency proceedings—were being undermined, and the health, safety, and welfare of undocumented children were being placed in jeopardy by the risk of these children's deportation. To mitigate that risk, Congress amended the Immigration and Nationality Act (INA)[6] to include specified immigrant children within the class of "special immigrants," eligible for admission to the United States and authorized to apply for adjustment to lawful permanent resident (LPR) status.[7]

The INA defines an SIJ as an immigrant child[8] present in the United States: (1) "who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an

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[2] Of the 68,541 unaccompanied children detained entering the U.S. in federal fiscal year 2014 (Oct. 1, 2013–Sept. 30, 2014), 53,550 of those children were released from custody to private sponsors. A sponsor may be an adult relative (parent, aunt or uncle, sibling, cousin), family friend, or volunteer. Of the 5,842 unaccompanied children released to sponsors in California, more than half of those went to in Los Angeles County.

[3] Stats. 2014, ch. 685 (Sen. Bill 873), §§ 1–2, 12–13, 15–16, 20, http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB873.

[4] Added by Sen. Bill 873 (Stats. 2014, ch. 685), § 1.

[5] See *B.F. v. Superior Court* (2012) 207 Cal.App.4th 621, 627–629 (*B.F.*). (The order appointing a guardian under the Probate Code was a "juvenile court" custody determination placing the children in the custody of an individual appointed by the court.)

[6] Pub.L. No. 82-414 (June 27, 1952) 66 Stat. 163, codified as amended at 8 U.S.C. § 1101 et seq.

[7] Immigration Act of 1990 (Pub.L. No. 101-649 (Nov. 29, 1990) 104 Stat. 4978), § 153.

[8] Under the INA, a child is an unmarried person under 21 years old. 8 U.S.C. § 1101(b)(1), (c)(1). Compare the definition of an "unaccompanied alien child" in the Homeland Security Act of 2002 as, among other elements, "a child … who has not attained 18 years of age…." 6 U.S.C. § 279(g)(2).

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individual or entity appointed by a State or juvenile court located in the United States"; (2) whose reunification with one or both of his or her parents is not viable because of abuse, neglect, abandonment, or a similar basis under state law; and (3) for whom it has been determined, by a juvenile court or authorized administrative agency, that it would not be in his or her best interest to be returned to his or her country of nationality or last habitual residence.[9]

To be eligible to apply for SIJ classification, a child must first obtain a "juvenile court order" finding that the applicant satisfies each of these three elements of the statutory SIJ definition.[10] The INA relies on state court findings, made under state law, in recognition that the federal immigration agencies are neither authorized nor competent to make child custody and child welfare decisions or resolve issues of abuse, neglect, abandonment, or a child's best interest.

Since their adoption, the SIJ implementing regulations have defined a "juvenile court" broadly as "a court located in the United States having jurisdiction to make judicial determinations about the custody and care of" children.[11] A straightforward application of this definition to California courts would include not only superior court divisions with jurisdiction over dependency and delinquency proceedings under the Juvenile Court Law (Welf. & Inst. Code, §§ 200–987), but also court divisions with jurisdiction over custody proceedings brought under the Family Code[12] and under the guardianship provisions of the Probate Code.[13] The original statutory definition of an SIJ, however, required the child to have been declared a dependent of the state court and deemed eligible for long-term foster care.[14] These provisions restricted requests for SIJ findings in California to juvenile dependency proceedings. Amendments to the INA by the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008 expanded the SIJ definition so that all California courts fitting the regulatory definition of "juvenile court" now have jurisdiction to make the determinations necessary to file a federal SIJ petition.[15]

To help protect immigrant child victims of human trafficking, the TVPRA expanded the INA's definition of an SIJ in two significant ways. First, it expanded the types of state court orders that a child could use to satisfy the first SIJ criterion to include (1) an order committing a child to a state agency or department and (2) an order placing the child under the custody of a state agency

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[9] INA, 8 U.S.C. § 1101(a)(27)(J).

[10] See 8 C.F.R. § 204.11(d)(2).

[11] *Id.*, at § 204.11(a); 58 Fed.Reg. 42843, 42850 (Aug. 12, 1993).

[12] See Cal. Fam. Code, §§ 200, 3020–3048.

[13] See Cal. Prob. Code, §§ 800, 1510–1516.

[14] Immigration Act of 1990, *supra* note 6, at § 153. To curb perceived abuses, the definition was further restricted in 1997 to children deemed eligible for long-term foster care "due to abuse, neglect, or abandonment." Pub.L. No. 105-119, § 113 (Nov. 26, 1997) 111 Stat. 2440, 2460–2461.

[15] Pub.L. No. 110-457 (Dec. 23, 2008), 122 Stat. 5044; see *Leslie H. v. Superior Court* (2014) 224 Cal.App.4th 340, 349 (*Leslie H.*).

or department or an individual or entity appointed by the court.[16] The addition of an order of commitment opened the possibility that a ward of the juvenile court under section 602 of the Welfare and Institutions Code would qualify for the findings.[17] Furthermore, the inclusion of an order placing the child in or under the custody of an individual or entity opened the possibility that a child placed in the custody of a legal guardian or in the sole custody of one parent would also qualify.[18]

Second, the TVPRA eliminated the requirement that the child be eligible for long-term foster care, with its implication that the child not be able to reunify with any parent. In its place, the TVPRA inserted the requirement that the child not be able to reunify with "1 or both" parents because of "abuse, neglect, abandonment, or a similar basis" under state law.[19] The United States Citizenship and Immigration Services (USCIS) consistently adjudicates SIJ petitions of children placed in the custody of one parent, but unable to reunify with another parent because of abuse, neglect, abandonment, or similar conduct by the latter parent.[20]

The TVPRA also added protection against "aging out" of the jurisdiction of the state court and eligibility for SIJ classification.[21] Today, USCIS will not, based on age or custody status, deny an SIJ petition if, at the time of filing, the youth was under 21 years of age and had been the subject of a valid state court order that was terminated solely because the youth reached the age of majority under state law.[22]

Rule 7.1020

Other than form GC-224, adopted last year, no statewide guidance has been developed for requesting or making SIJ findings in probate guardianship proceedings. The Probate and Mental Health Advisory Committee has developed proposed rule 7.1020 to provide that guidance.

The rule requires a request for SIJ findings to be made by verified petition (rule 7.1020(b)(2)(A)). Whether filed concurrently with a petition for the appointment of a guardian or later in the guardianship proceeding, the SIJ petition must be filed as a separate petition (rule

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[16] TVPRA, *supra* note 15, at § 235(d)(1)(A).

[17] See *Leslie H.*, 224 Cal.App.4th at pp. 351–352 (adjudication as a ward, placement in juvenile hall, and commitment to ongoing supervision on release are sufficient to satisfy the first SIJ criterion).

[18] See *B.F.*, *supra* note 5, at pp. 627–629.

[19] TVPRA, *supra* note 15, at § 235(d)(1)(A).

[20] See *In re Israel O.* (2015) 233 Cal.App.4th 279, 291 (*Israel O.*) (citing United States Citizenship and Immigration Services, *Immigration Relief for Abused Children: Information for Juvenile Court Judges, Child Welfare Workers, and Others Working With Abused Children* (April 2014)).

[21] TVPRA, *supra* note 15, at § 235(d)(6).

[22] See U.S. Citizenship and Immigration Services, *Policy Memorandum: Implementation of the Special Immigrant Juvenile* Perez-Olano *Settlement Agreement* (June 25, 2015; PM 602-0117), at p. 2.

7.1020(b)(2)(B)). However, an SIJ petition filed concurrently with an appointment petition may be heard and determined together with the latter (rule 7.1020(e)(1).

The majority of requests for SIJ findings come before the probate court in uncontested guardianship proceedings. In that context, the probate court must receive the verified petition as evidence (Prob. Code, § 1022, and rule 7.1020(e)(5)) and may decide whether to make the requested findings based on the facts alleged in the petition. However, the committee believes that if evidence is taken in a contested matter in support of or opposition to the requested findings, it should be heard and weighed in open court subject to cross-examination, and not simply in declarations (see rule 7.1020(e)(4)).

Any person eligible to petition for the appointment of a guardian under Probate Code section 1510, including the minor if over the age of 12 years, may file a request for SIJ findings (rule 7.1020(b)(1)). In a case with multiple minors, each age-eligible minor may file a petition only for him- or herself; however, his or her petition could be heard and determined with the SIJ petitions by or on behalf of other minors in the same guardianship proceeding (rule 7.1020(b)(1)(A), (e)(2)).

The rule requires notice of a hearing on the petition and a copy of the petition to be served by mail on the minor's parents and the persons listed in Probate Code section 1460(b) (rule 7.1020(c)). Any person entitled to notice of the petition may object or file an opposition to it (rule 7.1020(d); see also Prob. Code, § 1043). The rule also confirms the court's authority to either appoint counsel for the minor under Probate Code section 1470 or appoint a guardian ad litem under section 1003 for a minor who files a request for SIJ findings in a guardianship proceeding or who is the subject of a petition filed on his or her behalf by another (rule 7.1020(b)(1)(B)).

In cases involving more than one (proposed) ward seeking SIJ findings, the court is required to issue separate findings for each qualified minor in the case (rule 7.1020(f)). Separate findings are advisable because the federal immigration court proceedings for all qualified minors in the same guardianship case may not be similarly combined.

Forms for requesting SIJ findings

Proposed new *Request for Special Immigrant Juvenile Findings—Family Law* (form FL-356), *Petition for Special Immigrant Juvenile Findings* (form GC-220), and *Request for Special Immigrant Juvenile Findings* (form JV-356) provide separate, but similar, formats for requesting SIJ findings. Each form is intended to solicit all information necessary for the superior court to determine a request for SIJ findings.

Format. The probate guardianship petition follows the text of rule 7.1020 and is somewhat more formal in tone and structure than the family and juvenile forms, in keeping with the procedural requirements of the Probate Code and title 7 of the California Rules of Court. The form must be filed as a separate, verified petition. Item 1 on the form tracks the requirements of Probate Code

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section 1510 and proposed rule 7.1020(b)(2) as to the identity of the petitioner or petitioners. The form also tacitly incorporates the ordinary procedural requirements of guardianship practice under the Probate Code and title 7 of the rules of court.

The family law request form is styled as an attachment to a petition, response, *Request for Order* (form FL-300), or other request or responsive filing. It enumerates in item 5 the range of Family Code actions that typically underlie a request for SIJ findings. The common denominator of these actions is that all may support a request for child custody under division 8 (beginning with section 3000) of the Family Code.

On the other hand, the juvenile law request form is intended to stand alone. A child or person on behalf of the child may request SIJ findings at any point in the proceedings after the court has made the necessary underlying order. In family law and probate guardianship proceedings, on the other hand, the request for findings may be filed concurrently with or after the initial petition.

First finding. The first required finding—that the child has been declared a dependent of the court or committed to or placed under the custody of a state agency or department or an individual or entity appointed by the court—depends on the court's decision in the underlying state law "custody" proceeding. The forms, therefore, ask the person requesting the findings to document that the necessary relief has been requested and to state whether that request is pending or has been granted. If the court has granted the underlying relief at the time the SIJ request is filed, the forms also require the requesting person to indicate the date of the court order. The forms specify the nature of the relief that would warrant the court making the first finding.

The family and juvenile law request forms go on to request expressly that the court make the first finding. The probate guardianship form leaves that request implicit in the statements in items 3 and 4.

Second finding. The forms next provide the opportunity to request the second finding of fact needed to enable a child to file a federal petition for SIJ classification: that reunification of the child with one or both of his or her parents is not viable because of abuse, neglect, abandonment, or a similar basis under California law.[23] The forms provide space for detailed statements of facts in support of this finding to allow the court to make an accurate and just decision.

The finding that family reunification is not viable includes two parts: (a) that reunification is not viable; and (b) that abuse, neglect, abandonment, or conduct fitting a similar description under

[23] Until this year, it was uncertain whether a child, placed with one parent but unable to reunify with the other parent because of abuse, neglect, or abandonment by that parent, qualified for this finding under California law. Two recent appellate cases, *Israel O.*, *supra* note 20, in the First Appellate District, and *Eddie E. v. Superior Court* (2015) 234 Cal.App.4th 319 (*Eddie E. 2*), in the Fourth Appellate District, have made clear that a child in those circumstances does qualify for this finding.

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California law is the basis for that finding. With respect to reunification, an order denying or terminating reunification services in a juvenile dependency or delinquency foster care case would almost certainly be sufficient. Other juvenile dispositional orders, such as placement with a previously noncustodial parent or appointment of a guardian, with or without declaring dependency, might also suffice. Item 5 on the juvenile request form requires the identification by date of any orders relevant to the viability of the child's reunification with one or both parents.

In family and probate guardianship law, the precise meaning of reunification is less firmly established than in juvenile law. Because orders may be modified on a showing that the circumstances that required the initial order have changed and that modification would be in the child's best interest, no family court custody order or guardianship is ever truly final or permanent.[24] Reunification—in the sense of the child's return to the physical custody of the noncustodial parent—is never completely foreclosed. However, part 2 of division 8 of the Family Code (beginning with section 3020), which governs both family law custody and probate guardianship determinations, provides a clue to the effect of a guardianship or custody order on the prospects of family reunification. Specifically, Family Code section 3026 expressly prohibits the court from ordering reunification services in the context of a child custody or visitation proceeding.[25] The court must base its custody determination not on the child's short-term best interest, but on his or her overall, long-term best interest. Thus, reunification with a parent who is not awarded custody or guardianship of the child, even under a plan agreed on by the parties, is outside the scope of the family or probate court's authority and, therefore, arguably not viable as a matter of law as long as that order remains in effect.[26] This interpretation is consistent with juvenile law, which regards court-ordered placement of a child in the physical custody of a previously noncustodial parent or appointment of a legal guardian for the child as "permanent plans" available only after reunification services have been denied or terminated.[27]

If facts constituting abuse, neglect, abandonment, or a similar basis for denying custody to one or more parents have not been shown to the court's satisfaction in the underlying guardianship, custody, dependency, or delinquency proceeding, the requesting party will need to show that reunification is not viable on one of those grounds. Under California law, many different definitions of abuse, neglect, or abandonment exist.[28] For purposes of supporting the SIJ finding, parental conduct falling within any of those definitions would seem to suffice. In addition, other grounds under California law, such as a finding that placement with a parent would be

[24] This is also true in juvenile proceedings, unless parental rights have been terminated. See Welf. & Inst. Code, §§ 366.26, 366.3, 388.

[25] See *In re Kaylee J.* (1997) 55 Cal.App.4th 1425, 1430–1433 ("Once a … guardianship is established and a nonparent guardian is appointed …, the court has no authority to take steps to return custody to a parent" while the guardianship is in effect.)

[26] *Id.*

[27] See Welf. & Inst. Code, §§ 361.2(b), 361.5, 366.26(b), 727.2, 727.3(b).

[28] See, e.g., Fam. Code, §§ 6203, 6211, 7822–7823; Pen. Code §§ 270–273.5, 11165.1–11165.6; Welf. & Inst. Code, §§ 300, 361, 361.5.

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detrimental to the child's health, safety, or welfare under Family Code section 3041, may supply a sufficiently similar basis for the finding. Persons requesting findings should be prepared to include detailed statements of facts supporting the reasons that reunification is not viable.

Third finding. The third necessary finding, as indicated above, is that it is not in the child's best interest to be returned to the child's or parent's country of nationality or last habitual residence. Under California law, all determinations affecting child custody, whether in family, juvenile, or probate court, are guided by the standard of the best interest of the child. An award of custody under California law to an individual or entity located in the United States could be understood to imply that the child's best interest will not be served by removing the child from that custodial placement and returning him or her to his or her country of nationality. Nevertheless, the person requesting this finding should be prepared to introduce evidence of the circumstances facing the child in the country of nationality or last habitual residence in the event that the court has occasion to question the basis for this finding.

Form for making SIJ findings

The committees propose adopting a joint form for the superior court in a family law custody proceeding, a probate guardianship proceeding, a juvenile dependency proceeding, or a juvenile delinquency proceeding to make the SIJ findings when requested, warranted under California law, and supported by sufficient evidence. This joint form, *Special Immigrant Juvenile Findings* (form FL-357/GC-224/JV-357), replaces the existing standalone SIJ findings forms *Order Regarding Eligibility for Special Immigrant Juvenile Status—Probate Guardianship* (form GC-224) and *Order Regarding Eligibility for Special Immigrant Juvenile Status* (form JV-224), which are revoked. In fashioning the new combined form, the committees changed the title of the revoked forms to clarify that the superior court is not making a determination of a child's eligibility for immigration relief. The court is rather documenting findings of fact and conclusions under state law that are necessary, but not sufficient, conditions for USCIS to consider an application for SIJ status.

In addition to combining the existing guardianship and juvenile SIJ findings forms into a single multipurpose form, the new form gives the family court a platform for making the SIJ findings. The use of a joint form ensures that California forms submitted to USCIS in support of an SIJ petition share a common format and articulate a reasonable factual basis for the judicial findings.

The joint findings form gives the court space to make detailed findings and to specify the grounds for each of its findings. In addition, the trial court, if it has "reason to doubt the petitioner's good faith," may take the opportunity urged on it by the Fourth Appellate District, in *Eddie E. 2*, to "include findings of any relevant facts that the court deems pertinent to the federal government's inquiry."[29]

[29] *Eddie E. 2, supra* note 22, 234 Cal.App.4th at p. 333.

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Comments, Alternatives Considered, and Policy Implications

External comments

As part of the spring 2015 invitation-to-comment cycle (April 17 to June 17), the proposal was sent out for public comment to the standard mailing list for family and juvenile law proposals, as well as to the regular rules and forms mailing list, which included judges, court administrators, attorneys, mediators, family law facilitators and self-help attorneys, and other family and juvenile law professionals and attorney organizations. In addition, committee staff sent the proposal to immigration attorneys, nonprofit immigrants' rights organizations, and the USCIS Office of Policy and Strategy. Eighteen comments were received; all commentators supported the proposal in principle.[30] Four commentators agreed with the proposal as circulated, while 14 commentators suggested modifications.

The committees requested comment on whether a rule of court for requesting SIJ findings in proceedings under the Family Code would be useful. The six commentators who addressed this question all agreed that a family law rule would be useful in promoting the fairness and efficiency of proceedings on requests for SIJ findings. The Family and Juvenile Law Advisory Committee considered trying to incorporate a family law rule into this proposal, but determined that the rule would benefit from more extended consideration and circulation for public comment. The committee intends to develop a family law rule for circulation in winter 2016.

The committees also requested comment on the usefulness of an information sheet or form to guide litigants and pro bono counsel through the process of requesting SIJ findings in proceedings under the Family or Probate Code. The three commentators who responded to this question agreed that an information sheet would be useful. The committees intend to consider the appropriate format and content for an information sheet in the coming months.

Several commentators suggested that the probate rule and the family, juvenile, and probate request forms be modified to clarify that a petitioner or requesting party is permitted to attach additional documents, including declarations and memoranda of points and authorities. The PMHAC has determined that the suggested clarification is not needed. Although addenda are permitted to be attached to mandatory Judicial Council forms in probate matters under rule 7.101, the inclusion of all necessary information in the verified petition will promote more effective and efficient proceedings. F&J agreed that inclusion of as much information as possible in the request forms is desirable, but recognized that circumstances may arise in which attachment of additional documents is necessary. The committee has added an item to the family and juvenile law SIJ request forms to indicate when additional documents are attached.

Many commentators suggested clarifying rule 7.1020 to specify that there is no separate filing fee for a petition for SIJ findings. The PMHAC declined to address this issue in the rule. Filing

[30] A chart providing the full text of the comments and the complete committee responses is attached at pages 27–101.

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fees for proceedings under the Probate Code are set by sections 70650–70663 of the Government Code. The committee does not have authority to depart from or waive those fees in a rule of court. The committee anticipates, however, that almost all SIJ petitions will be filed concurrently with petitions for appointment of a guardian of the person only, or after such a guardian has been appointed. In those circumstances, Government Code sections 70657(e), 70658(c)(1), and 70658.5 provide that no fee may be charged for filings in those circumstances. In other circumstances, the petitioner may seek a waiver of fees under Government Code sections 68630–68641 and new rule 7.5, effective September 1, 2015. F&J intends to consider whether a provision clarifying fees is necessary and appropriate when developing the family law rule referred to above.

Some commentators also suggested that rule 7.1020 and form GC-220 be modified to permit multiple wards to file a single, joint request for SIJ findings in a guardianship proceeding. The PMHAC declined to make the suggested change. The court is required to issue separate SIJ findings for each child who warrants them. The requirement of a separate SIJ petition for each child is intended to ensure that the court receives facts applicable to each individual child so that it may tailor its findings to the specific circumstances of each child. For the same reasons, the family and juvenile SIJ request forms also require submission of a separate request for each child. The committees note that the SIJ petitions may be consolidated for hearing if sufficient common elements exist.

Commentators also suggested eliminating the requirement for a separate notice of hearing on an SIJ petition in guardianship proceedings. The PMHAC does not recommend eliminating this requirement. The rule's notice requirements are quite limited. In addition to the guardian and the ward, the rule requires that the child's parents receive notice. Parental notice is appropriate because the SIJ findings, especially a finding that parental conduct constituted abuse, neglect, or abandonment of the child, may have collateral legal consequences for the parent. Furthermore, the court may, under section 1460(e) of the Probate Code, dispense with notice for good cause.

Several commentators suggested explicitly requiring the court to hold a hearing on an uncontested SIJ petition before denying the petition. The PMHAC has concluded that there is no need to require a hearing in the rule because sections 1041 and 1043 of the Probate Code require a hearing to be held on every petition, contested or not. Indeed, because section 1043(b) permits an objection to be raised orally at the hearing, the court has no way to determine that a petition is uncontested without holding the hearing set under section 1041.

Many commentators suggested revising the presentation of "a similar basis under California law" on all forms. Most of these commentators suggested incorporating this language into each of the three enumerated bases—abuse, neglect, and abandonment—for determining that reunification with one or both parents is not viable. The committees do not recommend this change. Eliminating the "similar basis" as a separate, fourth basis and, instead, incorporating it into the specified bases might unnecessarily restrict the bases that a party might assert or a court might

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deem sufficiently similar to make the finding. F&J has revised the family and juvenile forms to simplify the language soliciting an alternative basis for requesting the finding.

Some commentators suggested that form FL-356, the family law SIJ request, be made a standalone form instead of an attachment to promote confidentiality and procedural clarity. F&J does not recommend that form FL-356 be a standalone form. Confidentiality may be protected by attaching the request to a separate *Request for Order* (form FL-300) rather than to a petition, response, or combined request for order. The court may then place the request in the confidential portion of the family law file, as it does with other confidential documents. The clarity sought by commentators would compromise the court's flexibility to consider and determine SIJ requests in a variety of procedural contexts. The lack of flexibility might, in turn, operate to preclude the court from granting relief in a timely manner or otherwise harm the petitioner's interests.

For confidentiality reasons, most commentators objected reasons to the requirement on form JV-356, the juvenile request form, that the underlying juvenile court findings and orders be attached. F&J has revised the form to require specification of the dates of the underlying orders. The committee has concluded that the date should be enough information for judicial officers or court staff to identify and access the relevant orders.

Two commentators requested that the committees add an item and additional space to the joint SIJ findings form for the court to use to deny the request and give its reasons. The committees do not recommend adding the suggested item. Because the primary purpose of the form is to document the SIJ findings for submission to the U.S. Citizenship and Immigration Services (USCIS) and the form will not be submitted to USCIS if the court declines to make even one of the findings, the addition of space for a denial or explanation is not warranted. If the court denies a request for one or more of the findings, reasons articulated on the findings form in the space under the appropriate finding or on the minute order will suffice to provide a basis for the requesting party to seek a writ.

The committees also made several clarifying modifications to the forms in response to comments received.

Alternatives considered

The committees considered whether existing rules and forms were adequate to address the mandates of SB 873, and determined that a new probate rule and new forms are needed. The current "order" forms, GC-224 and JV-224, solicit only conclusions from the court without providing sufficient opportunities for the court to specify the factual bases for those conclusions. Furthermore, the absence of forms for requesting SIJ findings had led to great variation in the structure and content of the requests. This variation in turn, frustrated the development of standard procedures for adjudicating the requests. The proposed request forms encourage parties to frame their requests to bring material issues to the court's attention by tying relevant supporting evidence and information to the specific findings requested.

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The Family and Juvenile Law Advisory Committee considered proposing the adoption of rules of court to specify procedures for requesting SIJ findings in family and juvenile court proceedings. The committee determined provisionally that the recommended forms solicited the information required for the court to make determinations necessary for the findings, and that requests could be filed under existing request for order procedures in family and juvenile law proceedings. Commentators, however, uniformly supported the development of a rule for bringing and adjudicating requests for SIJ findings in proceedings under the Family Code. The committee intends to develop a rule for SIJ findings in family law as soon as possible.

The committees also considered the alternatives presented by each suggestion submitted by commentators and modified the rule and forms in several respects in response, as documented in the attached chart of comments.

Implementation Requirements, Costs, and Operational Impacts

Implementation of this proposal should require only modest implementation and training costs. The adoption of standard forms for requesting SIJ findings that elicit the required information, in formats familiar to the court divisions receiving the requests, should reduce overall court costs by narrowing the issues, ensuring that relevant evidence is linked to those issues, and reducing the need for contested hearings. Implementing the requirements of Code of Civil Procedure section 155 without the structural guidance of the proposed forms, in the face of an anticipated increase in requests for SIJ findings, would almost certainly be less efficient and effective.

The forms will require some training of family, juvenile, and probate court staff. Family law and probate divisions will require training on processing requests and proposed SIJ findings in any event. Juvenile court staff familiar with SIJ findings will need training only in processing the forms. The joint findings form will promote uniformity in the content of the findings in the trial courts and should enhance the effectiveness of the underlying state court order by preventing its vitiation by inconsistent federal immigration rulings.

Attachments and Links

1. Cal. Rules of Court, rule7.1020, at pages 14–16
2. Forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357, at pages 17–28
3. Chart of comments, at pages 29–103

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Rule 7.1020 of the California Rules of Court is adopted, effective January 1, 2016, to read:

Rule 7.1020. Special Immigrant Juvenile Findings in Guardianship Proceedings

(a) Application

This rule applies to a request by or on behalf of a minor who is a ward or a proposed ward in a probate guardianship proceeding for judicial findings needed as a basis for filing a petition for classification as a Special Immigrant Juvenile (SIJ) under federal immigration law. The term "request under this rule" as used in this rule refers exclusively to such a request. This rule also applies to any opposition to a request under this rule, any hearing on such a request and opposition, and any findings of the court in response to such a request.

(b) Request for findings

(1) *Who may file request*

Any person or entity authorized under Probate Code section 1510 to petition for the appointment of a guardian of the person of a minor, including the ward or proposed ward if 12 years of age or older, may file a request for findings regarding the minor under this rule.

(A) If there is more than one ward or proposed ward in the proceeding, a minor eligible to file a request for findings under this rule may do so only for himself or herself.

(B) The court may appoint an attorney under Probate Code section 1470 or a guardian ad litem under Probate Code sections 1003 and 1003.5 to file and present a request for findings under this rule for a minor or to represent the interests of a minor in a proceeding to decide a request filed on the minor's behalf by another.

(2) *Form of request*

(A) A request for findings under this rule must be made by verified petition. A separate request must be filed for each minor seeking SIJ findings.

(B) A request for findings under this rule by or on behalf of a minor filed concurrently with a petition for the appointment of a guardian of the person of the minor must be prepared and filed as a separate petition, not as an attachment to the petition for appointment.

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(c) Notice of hearing

Notice of a hearing of a request for findings under this rule, and a copy of the request, must be sent to the minor's parents and the persons listed in section 1460(b) of the Probate Code, in the manner and within the time provided in that section, subject to the provisions of subdivision (e) of that section and sections 1202 and 1460.1 of that code.

(d) Opposition to request

Any of the persons who must be given notice of hearing of a request for findings under this rule may file an objection or other opposition to the request.

(e) Hearing on request

(1) If filed concurrently, a request for findings under this rule by or on behalf of a minor and a petition for appointment of a guardian of the person of that minor may be heard and determined together.

(2) Hearings on separate requests for findings under this rule by or on behalf of more than one ward or proposed ward in the same guardianship proceeding may be consolidated on the motion of any party or on the court's own motion.

(3) Hearings on requests for findings under this rule by or on behalf of minors who are siblings or half-siblings and are wards or proposed wards in separate guardianship proceedings may be consolidated on the motion of any party in either proceeding or on the motion of the court in either proceeding. If multiple departments of a single court or courts in more than one county are involved, they may communicate with each other on consolidation issues in the manner provided for inter-court communications on venue issues in guardianship and family law matters under section 2204 of the Probate Code and rule 7.1014.

(4) Hearings on contested requests for findings under this rule must be conducted in the same manner as hearings on other contested petitions under the Probate Code.

(5) Probate Code section 1022 applies to uncontested requests for findings under this rule.

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(f) Separate findings in multi-ward cases under this rule

The court must issue separate findings for each minor in a guardianship proceeding in which more than one minor is the subject of a request under this rule.

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PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:

REQUEST FOR SPECIAL IMMIGRANT JUVENILE FINDINGS—FAMILY LAW
—This is not a court order—

Attachment to:

☐ **Petition** ☐ **Response** ☐ **Request for Order** ☐ **Responsive Declaration to Request for Order**

☐ Other *(specify):*

1. 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.

2. This court has jurisdiction to make a child custody determination about the child in item 3 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/GC-120) is attached.

3. Child's name:* *(date of birth):*
   is a national of *(country):*

4. The child's parents are *(name each):*
   ☐ Mother ☐ Father ☐ Other legal parent
   ☐ Mother ☐ Father ☐ Other legal parent

5. A petition has been filed ☐ earlier in this proceeding ☐ at the same time as this request ☐ in a different family law case *(specify court and case number):*
   a. ☐ *Petition—Marriage/Domestic Partnership* (form FL-100), asking for sole physical custody.
   b. ☐ *Petition to Establish Parental Relationship* (form FL-200), asking for sole physical custody.
   c. ☐ *Petition for Custody and Support of Minor Children* (form FL-260), asking for sole physical custody.
   d. ☐ *Request for Domestic Violence Restraining Order* (form DV-100), asking for sole physical custody.
   e. ☐ *Adoption Request* (form ADOPT-200).
   f. ☐ Another petition or request for sole physical custody of the child *(specify):*

6. ☐ This court made an order about physical custody of the child on *(date):* . That order remains in effect.
   ☐ The case in item 5 is pending in this court.

7. After the court has granted the orders requested in item 5, the child will be legally placed under the custody of an individual appointed by the court. The court has jurisdiction to modify or terminate these orders, unless another court acquires valid jurisdiction, until the child reaches 18 years of age.

8. 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 ordered sole physical custody to one parent, return of the child to the physical custody of another parent (reunification) will not be legally permissible while that order is in effect.

***** ***(Prepare 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 [New January 1, 2016]

REQUEST FOR SPECIAL IMMIGRANT JUVENILE FINDINGS—FAMILY LAW

Code Civ. Proc., § 155; Fam. Code, §§ 3020–3031;
8 U.S.C. § 1101(a)(27)(J);
8 C.F.R. § 204.11
www.courts.ca.gov

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PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:

I REQUEST THAT THE COURT MAKE THE FOLLOWING FINDINGS:

9. The child has been placed in the physical custody of *(name):* ,
   who is an individual appointed by the court as described in the order referred to in items 5 and 6.

10. Reunification of the child with ☐ the mother ☐ the father ☐ the other legal parent 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 10.

11. 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 11.

12. ☐ 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)

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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**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
GUARDIANSHIP OF THE PERSON ☐ AND ESTATE OF *(Name):* ☐ MINOR ☐ MINORS	
PETITION FOR SPECIAL IMMIGRANT JUVENILE FINDINGS	CASE NUMBER:

Petitioner *(name each):* alleges:

1. Petitioner is *(check all that apply to a single petitioner or to more than one petitioner):*
   a. ☐ The proposed guardian of the person or the person and estate of the minor named in item 2. This petition is filed concurrently with the petition for my appointment as guardian.
   b. ☐ The guardian of the person or the person and estate of the minor named in item 2. The order appointing me was filed in this case on *(date):* . Letters of Guardianship were issued on *(date):* .
   c. ☐ The minor named in item 2. I am at least 12 years of age. I was born on *(date):* .
   If there are two or more wards or proposed wards in this case, I am asking the court for an order only for myself.
   d. ☐ The *guardian ad litem* for the minor named in item 2. A certified or conformed copy of the *Order Appointing Guardian Ad Litem—Probate* (form GC-101) is attached to this petition as Attachment 1d.
   e. ☐ An adult relative *(specify relationship):* or other person on behalf of the minor named in item 2.

2. *(Name of Minor):**
   is a national of *(country):* .

3. This court has jurisdiction under California law "to make judicial determinations about the custody and care of juveniles" within the meaning of section 101(a)(27)(J) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1101(a)(27)(J), and 8 C.F.R. § 204.11(a). The minor named in item 2 is under this court's jurisdiction and will remain under that jurisdiction if the court appoints (or has appointed) a guardian of his or her person in this proceeding.

4. If a guardian of the person of the minor named in item 2 has been appointed and has qualified in this proceeding, the minor is placed under the custody of an individual or entity appointed by a California state or juvenile court located in the United States within the meaning of INA section 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J).

**** (In a guardianship case involving more than one ward, prepare a separate petition for each ward for whom you are seeking SIJ findings.)***

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GUARDIANSHIP OF *(Name):*	CASE NUMBER:
☐ MINOR ☐ MINORS	

Requested Findings

5. Reunification of the minor named in item 2 with ☐ one parent ☐ both parents is not viable under California law because of *(check all that apply):*

   ☐ abuse
   ☐ neglect
   ☐ abandonment
   ☐ another legal basis *(specify):*

   Facts in support of this finding are stated below *(for each parent with whom reunification is not viable, state the reasons that apply to that parent):*

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☐ Additional facts are stated on Attachment 5 to this petition. *(You may use* Attachment to Judicial Council Form *(form MC-25) for this purpose.)*

GUARDIANSHIP OF *(Name):*	CASE NUMBER:
☐ MINOR ☐ MINORS	

6. It is not in the best interest of the minor named in item 2 to be returned to the minor's or the parent's previous country of nationality or country of last habitual residence. (*specify country or countries):*

Facts in support of this finding are stated below:

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☐ Additional facts are stated on next page.

GUARDIANSHIP OF *(Name):*	CASE NUMBER:
☐ MINOR ☐ MINORS	

6. *(continued):*

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☐ Additional facts are stated on Attachment 6 to this petition. *(You may use* Attachment to Judicial Council Form *(form MC-25) for this purpose.)*

7. All attachments to this form are incorporated by this reference as though placed here in this form. There are ___ pages attached.

Date:

(TYPE OR PRINT NAME OF ATTORNEY)

▶ (SIGNATURE OF ATTORNEY*)

*** All petitioners must also sign (Prob. Code, § 1020).**

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)

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF PETITIONER)

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF PETITIONER)

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**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
REQUEST FOR SPECIAL IMMIGRANT JUVENILE FINDINGS	CASE NUMBER:

I allege the following:

1. The child *(name):** *(date of birth):*
   is a national of *(name of country):*

2. The child's parents are *(name each):*
   ☐ Mother ☐ Father ☐ Other legal parent
   ☐ Mother ☐ Father ☐ Other legal parent
   ☐ Mother ☐ Father ☐ Other legal parent

3. The court found that the child was described by Welfare and Institutions Code section ☐ 300 ☐ 602 ☐ other *(specify):*
   and assumed jurisdiction over the child on *(date):* .
   The child is currently under the court's jurisdiction.

4. The child was *(check all that apply):*
   ☐ declared a dependent child of the court on *(date):*
   ☐ ordered committed to a state agency or department *(name):*
   on *(date):* for a term of months. The commitment order remains in effect.
   ☐ ordered placed under the custody of an individual or entity *(name, unless confidential):*
   on *(date):* . The placement or custody order remains in effect.

5. The court *(check and complete all that apply):*
   ☐ ordered the child removed from the custody of *(name(s)):* on *(date):*
   ☐ declined to place the child in the custody of *(name(s)):* on *(date):*
   ☐ denied services to *(name(s)):* on *(date):*
   ☐ terminated services to *(name(s)):* on *(date):*
   ☐ appointed *(name):* as the child's guardian on *(date):*
   ☐ terminated the parental rights of *(name):* on *(date):*

(Prepare a separate form JV-356 for each child for whom you are requesting Special Immigrant Juvenile findings.)

Form Adopted for Mandatory Use
Judicial Council of California
JV-356 [New January 1, 2016]

Code Civ. Proc., § 155;
8 U.S.C. § 1101(a)(27)(J);
8 C.F.R. § 204.11
www.courts.ca.gov

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CASE NAME:	CASE NUMBER:

I REQUEST THAT THE COURT MAKE THE FOLLOWING FINDINGS:

6. The child has been *(check all that apply):*
   - ☐ declared a dependent of the court
   - ☐ committed to the custody of *(name of state agency or department):*
   - ☐ placed in or under the custody of *(name of individual or entity, unless confidential):*

   by virtue of the court order referred to above in item 4.
7. Reunification of the child with *(name(s)):*
   - ☐ mother ☐ father ☐ other legal parent is not viable under California law because of *(check all that apply):*
   - ☐ abuse
   - ☐ neglect
   - ☐ abandonment
   - ☐ another legal basis *(specify):*

   Facts supporting this finding, including any order listed in item 5 *(specify):*

   ☐ Continued on Attachment 7.
8. It is not in the best interest of the child to be returned to the child's or parent's country of nationality or country of last habitual residence *(specify country or countries):*

   Facts supporting this finding *(specify):*

   ☐ Continued on Attachment 8.
9. ☐ 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)

REQUEST FOR
SPECIAL IMMIGRANT JUVENILE FINDINGS

DRAFT

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**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
SPECIAL IMMIGRANT JUVENILE FINDINGS	CASE NUMBER:

1. Child's name: Date of birth:
2. ☐ The petition or request for Special Immigrant Juvenile (SIJ) findings was heard:
   a. Date of hearing: Time: Dept.: Room:
   b. Judicial officer *(name):*
   c. Persons and attorneys present *(names):*

The court has reviewed the evidence and finds the following:

3. Notice of the underlying proceeding was given as required by law.
4. a. ☐ The child was declared a dependent of the juvenile court of the county of *(specify):* on ***(date):*** and remains under the court's jurisdiction.

   OR

   b. ☐ The child was
      i. ☐ placed under the custody of an individual *(name, unless confidential):*
      ii. ☐ placed under the custody of an entity *(name):*
      iii. ☐ committed to a state agency or department *(name):*

      appointed by this court or another California court on ***(date):***

   The custody or commitment order remains in effect.

Supporting legal conclusions or factual findings, if necessary:

DRAFT

☐ Continued on Attachment 4.

CASE NAME:	CASE NUMBER:

5. Reunification of the child with his or her *(check all that apply):* ☐ mother ☐ father ☐ other legal parent is not viable under California law because of parental ☐ abuse, ☐ neglect, ☐ abandonment, or ☐ a similar legal basis *(specify):*

   as established on ***(date):*** , for the following reasons *(for each parent with whom reunification is not viable, state the reasons that apply to that parent):*

☐ Continued on Attachment 5.

6. It is not in the child's best interest to be returned to the child's or parent's country of nationality or country of last habitual residence *(specify country or countries):*
   for the following reasons:

☐ Continued on Attachment 6.

Date:

JUDICIAL OFFICER

☐ SIGNATURE FOLLOWS LAST ATTACHMENT

SPECIAL IMMIGRANT JUVENILE FINDINGS

DRAFT

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO. *(Optional):* E-MAIL ADDRESS *(Optional):* ATTORNEY FOR *(Name):*	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
GUARDIANSHIP OF THE PERSON ☐ AND ESTATE OF *(Name):* ☐ MINOR ☐ MINORS*	
ORDER REGARDING ELIGIBILITY FOR SPECIAL IMMIGRANT JUVENILE STATUS—PROBATE GUARDIANSHIP	CASE NUMBER:

REVOKED

The court has reviewed the supporting material on file, heard the arguments of counsel, and found the following:

1. *(Name):* ☐ the minor ☐ one of the minors named above, was legally committed to, or placed under the custody of, a state agency or department, or an individual or entity appointed by this court, on *(specify date):* . He or she remains under this court's jurisdiction.
2. Reunification of the minor with one or both of his or her parents was deemed not to be viable on *(date):* . This finding was made by reason of the abuse, neglect, or abandonment of the minor or by reason of a similar basis under California law.
3. It is not in the best interest of the minor to be returned to his or her previous country of nationality or country or countries of last habitual residence *(specify country or countries):*

   or to his or her parents' previous country or countries of nationality or country or countries of last habitual residence *(specify country or countries):*
4. It is in the minor's best interest to remain in the United States.
5. ☐ Additional findings about the minor or his or her parents are ☐ provided on Attachment 5. ☐ stated below:

Date:

JUDICIAL OFFICER

☐ SIGNATURE FOLLOWS LAST ATTACHMENT

* ***(In a guardianship case involving more than one ward, prepare a separate order for each ward whose eligibility for special immigrant juvenile status is at issue.)***

Form Adopted for Mandatory Use
Judicial Council of California
GC-224 [New January 1, 2014]

ORDER REGARDING ELIGIBILITY FOR SPECIAL IMMIGRANT JUVENILE STATUS—PROBATE GUARDIANSHIP
(Probate—Guardianships and Conservatorships)

Immigration and Nationality Act, § 101(a)(27)(J), 8 U.S.C. § 1101 (a)(27)(J); 8 C.F.R. § 204.11
www.courts.ca.gov

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO. *(Optional):* E-MAIL ADDRESS *(Optional):* ATTORNEY FOR *(Name):*	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
ORDER REGARDING ELIGIBILITY FOR SPECIAL IMMIGRANT JUVENILE STATUS	CASE NUMBER:

REVOKED

The court has reviewed the supporting material on file, heard the arguments of counsel, and found the following:

1. The child was found to be within the jurisdiction of the juvenile court under Welfare and Institutions Code section 300 or 602.
   The child was declared dependent on the juvenile court of the county of *(specify):*
   The child was legally committed to, or placed under the custody of, a state agency or department, or an individual or entity appointed by a state or juvenile court, on *(specify date):*
   The child remains under this court's jurisdiction.

2. Reunification of the child with one or both of the child's parents was deemed not to be viable on *(specify date):*
   This finding was made by reason of the abuse, neglect, or abandonment of the child or by reason of similar basis under California law.

3. It is not in the best interest of the child to be returned to his or her previous country of nationality or country of last habitual residence *(specify country or countries):*
   or his or her parents' country or countries *(specify country or countries):*
   It is in the child's best interest to remain in the United States.

4. ☐ Specific factual findings about the child and/or the child's parents are set forth below or provided on Attachment 4.

Date:

JUDICIAL OFFICER

Form Adopted for Mandatory Use
Judicial Council of California
JV-224 [Rev. July 1, 2011]

Immigration and Nationality Act, § 101(a)(27)(J),
8 U.S.C. § 1101 (a)(27)(J),
8 C.F.R. § 204.11 (2009)
www.courts.ca.gov

SPR15-28

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	**Position**	**Comment**	**Committee Response**
1.	Bet Tzedek Legal Services Erikson Albrecht, Kinship Attorney Los Angeles	AM	While Bet Tzedek is grateful for the clarity that passage of SB 873 has provided and supports the adoption of Rules of Court to better implement the process of securing the predicate findings required for specific relief as a Special Immigrant Juvenile, the proposed rule and proposed forms do not adequately meet that goal and, in some circumstances, may hinder application of the legislation. Therefore, Bet Tzedek opposes their adoption unless several modifications, discussed below, are made. * * * Bet Tzedek is grateful for passage of SB 873 and similarly supports the adoption of Rules of Court and forms to implement California Code of Civil Procedure section 155. The modifications discussed in the comments above, however, are necessary if the proposed rule and proposed forms are to achieve their purposes and comply with the spirit and intent [of] existing law. Therefore, Bet Tzedek opposes the adoption of the proposed rule and forms as written. *See comments on specific issues, below.	The Family and Juvenile Law Advisory Committee (FJLAC) and the Probate and Mental Health Advisory Committee (PMHAC) (jointly, committees) thank you for your comment. See further responses to specific comments, below.
2.	Peggy J. Bristol, Attorney Law Office of Peggy Bristol-Wright Oakland	AM	As a relatively new attorney with four years of practice in immigration law, I specialize in SIJS cases and have represented clients in probate and family courts in Contra Costa, Alameda, San Francisco, San Mateo, Santa Clara, and San Joaquin counties. I have also mentored a number of pro bono attorneys. I have nothing but the highest praise for California's recent legislation	The committees thank you for your comment. See further responses to specific comments, below.

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List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	**Position**	**Comment**	**Committee Response**
			supporting immigrant youth, and the Judicial Council's response to *B.F. v. Superior Court of Los Angeles County* and the appellate cases—*Leslie H.*, *Eddie E.*, and *Israel O.*—that followed. This is my first time responding to an Invitation to Comment. **<u>SIJS issues in Probate Court: the matter of "one-parent" guardianships in probate courts</u>** As a matter of federal law, California courts now acknowledge that "reunification with one or both parents is not viable due to abandonment, abuse, or neglect" means that a state court may properly issue *SIJS factual findings* if a child lives with one parent. However, as a matter of probate law, a threshold issue still remains: whether a probate court can appoint a *guardian* when the child's parent also lives in the home. The CEB Guardianship Practice Manual clearly refers to the one-parent guardianship scenario as a "technical change of custody," as in cases where the grandparent has medical coverage but the parent does not; where the parent lives in the home but has a drug problem; or where the parent has a terminal illness. With respect to SIJS cases, some probate courts have also granted one-parent guardianships based on the argument that the parent is undocumented or already has an order of deportation, and as such cannot guarantee that he or she will always be	The PMHAC does not recommend addressing this issue in the rules of court, as it raises a substantive legal question appropriately resolved by the appellate courts or the Legislature.

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List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	**Position**	**Comment**	**Committee Response**
			there to act in the child's best interest. Appointing a close relative or family friend as guardian will give the child an additional level of safety and security that the parent cannot offer. However, other probate courts (San Mateo County comes to mind) have flatly refused to grant a single-parent guardianship and completely rejected the CEB practice manual's reference to "technical change of custody." **<u>SIJS "Age-Out" Issues for both Probate and Family Courts</u>** Finally, one more comment with respect to SIJS cases in California. The federal statute states that a young person can file his or her I-360 SIJS petition with USCIS up until age 21. However, in California the actual cutoff age is 18, the age of majority in this state. As a result, many young people and their advocates are scrambling to file cases in superior courts before the minor's 18th birthday; otherwise, three years of additional eligibility under the federal standard are lost. Some courts will honor and accommodate the urgency of an age-out filing; others will not, and the result may literally be a matter of life or death for some young people. Some judges have asked why the minor waited so long to file a guardianship or family law petition. It's not always a matter of procrastination on the part of a minor or his/her attorney; many young people are escaping from gang-related violence	The committees do not recommend addressing this issue through the rules of court. The age of majority in California is set at 18 by sections 6500–6502 of the Family Code. Under current law, the superior court loses authority to appoint a guardian or award custody when a child reaches age 18. Although the court may expedite review of a petition for guardianship or a request for custody because of exigent circumstances, that decision is properly left to the discretion of the court in each case.

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List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	**Position**	**Comment**	**Committee Response**
			that reaches a point of critical mass as they enter their late teens. I would think that age-out cases also place additional strain on the superior courts, most of whom are already dealing with budget cuts. The great majority of my own SIJS cases have come from low-income families that easily qualified for fee waivers. The courts' caseloads are increasing as more and more SIJS cases are filed, particularly age-out cases, but with reduced staffing, reduced hours at filing windows, etc., I hope the Judicial Council's committees will be able to explore ways that California courts may ease the strain on everyone involved by granting SIJS orders beyond a young person's 18th birthday. *See additional comments on specific issues, below.	The committees do not recommend addressing this issue through a rule of court. The jurisdiction of the superior court is conferred by statute over specified proceedings. If the Legislature wishes to expand the court's jurisdiction, it may do so. SIJ request cases may indeed place a strain on the superior courts. But it seems counterintuitive to expand the superior court's jurisdiction to hear additional cases that include requests for SIJ findings as a way to reduce that strain.
3. s	California Judges Association Joan P. Weber, President	A	The proposed rule and forms are needed to implement SB 873, which clarified the superior court's authority to make predicate findings to enable an undocumented child to petition the federal government for classification as a Special Immigrant Juvenile (SIJ) and incorporated relevant elements of the federal Immigration and Nationality Act (INA) into California law. The proposed rule and forms are intended to specify the process for requesting SIJ predicate findings from a court in a family law, probate guardianship, juvenile dependency, or juvenile delinquency proceeding, and to supply the court	The committees thank you for your comment. See further responses to specific comments, below.

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List of All Commentators, Overall Positions on the Proposal, and General Comments				
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			with a sufficient factual basis to make accurate, just, and effective findings if warranted under California law. We support the proposed rule and forms. Not only does this improve the findings forms with one form for Family/Juvenile/Probate, but it also creates a Request for findings form which, in effect, requires the requesting party to state a detailed basis which can then be used on the findings form. This now places the burden on the requesting party to provide the Court with the detailed findings.	
4.	Immigrant Legal Resource Center San Francisco Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney	AM	The Immigrant Legal Resource Center (ILRC) submits the following comments.… The ILRC has extensive experience working at the cross-section of state juvenile court systems and immigration law. In our work with immigrant youth advocates, we have seen many youth in California who meet the federal eligibility requirements for [Special Immigrant Juvenile Status (SIJS)] struggle to navigate through the state court systems that are empowered to make predicate eligibility findings for SIJS. We thank the Judicial Council for its thoughtful efforts to streamline the process for immigrant youth in state court proceedings through this proposed Rule of Court and Judicial Council forms and submit the following comments with the hope of further clarifying the processes for SIJS-eligible youth in our state courts.	The committees thank you for your comment. See further responses to specific comments, below.

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SPR15-28

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	**Position**	**Comment**	**Committee Response**
			*See additional comments on specific issues, below.	
5.	Legal Advocates for Children and Youth (LACY), San Jose Neha Marathe, Senior Attorney	AM	LACY supports the comments to the Proposed Rules and Forms submitted by the Immigrant Legal Resource Center (ILRC) to the Judicial Council. In addition, as advocates providing direct representation to SIJS-eligible children and youth in state court, we would like to emphasize certain points below. *See additional comments on specific issues, below.	The committees thank you for your comment. See further responses to specific comments, below.
6.	Legal Aid Foundation of Los Angeles Ji-Lan Zang, Supporting Families Attorney	AM	We are family law and immigration advocates … with experience working with clients in Special Immigrant Juvenile Status (SIJS) cases. We have reviewed the Judicial Council's SPR15-28 relating to SIJS findings and we respectfully offer the following comments, feedback, and suggestions. *See additional comments on specific issues, below.	The committees thank you for your comment. See further responses to specific comments, below.
7.	Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney	AM	Legal Services for Children submits the following comments.… [LSC] has been representing children in [SIJS] cases since the law was first passed in 1990. Since that time, our staff and pro bono attorneys have represented hundreds of youth in [SIJS] petitions. We have sought SIJS predicate findings from state juvenile and probate courts, for youth in foster care, on probation, or in probate guardianships. …	The committees thank you for your comment. See further responses to specific comments, below.

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SPR15-28

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	**Position**	**Comment**	**Committee Response**
			Through both our individual clients and our consultations with other advocates around California, we have seen too many youth … who meet the federal SIJS eligibility criteria fall through the cracks because they are unable to obtain the state court predicate order necessary to apply. We thank the Judicial Council for its thoughtful efforts to streamline the process for immigrant youth in state court proceedings through this proposed rule of court and Judicial Council forms and submit the following comments with the hope of further clarifying the processes to SIJS-eligible youth in our state courts. *See additional comments on specific issues, below.	
8.	Los Angeles County Counsel's Office Dawyn Harrison, Assistant County Counsel	AM	*See comments on specific issues, below.	The committees thank you for your comment. See further responses to specific comments, below.
9.	Orange County Bar Association Ashleigh Aitken, President	A	*See comments on specific issues, below.	The committees thank you for your comment. See further responses to specific comments, below.
10.	Public Counsel Kristen Jackson, Senior Staff Attorney	A	I am writing in support of the Immigrant Legal Resource center's (ILRC) comments on the Judicial Council's proposed rule of court and forms related to Special Immigrant Juvenile Status (SIJS).… Public Counsel is widely recognized as a leader on SIJS cases.… Since the Judicial Council issued its Invitation to Comment, we have collaborated closely with the ILRC to shape its recommendations. Our attorneys with SIJS	The committees thank you for your comment. See further responses to specific comments, below.

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List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	**Position**	**Comment**	**Committee Response**
			expertise in juvenile, probate, and family court provided input during the drafting process. We are in full support of the ILRC recommendations, and we look forward to the expansion of access to SIJS in the California court system. *See additional comments on specific issues, below.	
11.	San Diego Volunteer Lawyer Program Amy Fitzpatrick, Chief Executive Officer	AM	San Diego Volunteer Lawyer Program, Inc., (SDVLP) writes in support of the proposed rules and forms regarding SPR15-28, if modified. *[The SDVLP submitted comments identical to those submitted by the ILRC. For brevity and ease of review, these comments and the committees' responses are presented together below, with both organizations credited.]	The committees thank you for your comment. See further responses to specific comments, below.
12.	State Bar of California Executive Committee of the Family Law Section (FLEXCOM) Saul Bercovitch, Legislative Counsel	AM	The Executive Committee of the Family Law Section of the State Bar (FLEXCOM) supports this proposal, with modifications. *See comments on specific issues, below.	The committees thank you for your comment. See further responses to specific comments, below.
13.	State Bar of California Office of Legal Services Standing Committee on the Delivery of Legal Services Maria Livingston, Chair	AM	**Does the proposal appropriately address the stated purpose?** Yes. The proposal appropriately addresses the stated purpose of implementing Senate Bill 873. The only other existing form adopted last year, GC-224, as mentioned in the background did not fully satisfy the requirements needed of a predicate finding. *See additional comments on specific issues,	The committees thank you for your comment. See further responses to specific comments,

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SPR15-28

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	**Position**	**Comment**	**Committee Response**
			below.	below.
14.	Superior Court of Los Angeles County	AM		The committees thank you for your comment. See further responses to specific comments, below.
			Does the proposal appropriately address the stated purpose? Yes.	No response required.
			Would the proposal provide cost savings? If so please quantify. If modified, the proposal may result in shorter hearings and reduce the likelihood of additional hearings.	See responses to specific comments, below.
			What would the implementation requirements be for the 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. New document, party type (GAL) and result codes need to be created in CMS. Staff will need to be trained and be familiarized with the new forms. If the petition may be filed within an open family law case, it may create additional work to keep these documents confidential within an otherwise public file.	The committee acknowledges that implementation will require trial courts to make some procedural changes, though the committee does not understand why the court would consider a guardian ad litem (GAL) to be a new party type. The committee intends the proposed forms to streamline the SIJ findings process for both courts and litigants.
			Would 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Probably.	No response required.
			Would this proposal have different effects on	

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List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	**Position**	**Comment**	**Committee Response**
			courts of different sizes? How so? Probably not. *See additional comments on specific issues, below.	No response required.
15.	Superior Court of Orange County Family Law and Juvenile Court Operations Managers	AM	*See comments on specific issues, below.	The committees thank you for your comment. See further responses to specific comments, below.
16.	Superior Court of Sacramento County Tim Ainsworth, Executive Officer	AM	"… the person requesting this finding should be prepared to introduce evidence of conditions in the child's country of nationality or last habitual residence" This statement is contrary to case law—*Israel O.* *See additional comments on specific issues, below.	The committees thank you for your comment. The committees do not recommend withdrawing this statement and have included a similar statement on page 9 of the Judicial Council report. A person seeking a judicial determination that a child's best interest requires permission to remain in the U.S. rather than to return to his or her country of origin would be well advised to offer all evidence relevant to that determination, including the circumstances to which the child would return. Nothing in *Israel O.* counsels otherwise. The court in that case limited its observations regarding the best interest finding to these: "[T]he juvenile court did not address the question of whether a return to his home country was in Israel's best interest. [citation omitted] Although nothing in this record indicates that care and support is available for Israel in Mexico, a finding on this issue is best made by the juvenile court in the first instance." (*In re Israel O.* (2015) 233 Cal.App.4th 279, 291.) These observations imply that evidence of

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List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	**Position**	**Comment**	**Committee Response**
				conditions in the child's country of origin, including but not necessarily limited to whether care and support would be available there, would appropriately inform the trial court's determination of the issue. See further responses to specific comments, below.
17.	Superior Court of San Diego County Mike Roddy, Executive Officer	A	No narrative comments submitted.	The committees thank you for your comment. No further response required.
18.	Trial Court Presiding Judges and Court Executives Advisory Committees' Joint Rules Subcommittee (JRS)	A	This proposal simplifies and clarifies the *State* findings that must be made to support the minor's request for special immigrant status in the minor's *Federal* immigration proceeding. The current procedure requires lawyers and the courts to rewrite existing forms, and often leads to multiple hearings to get the California order to include the language required by the Federal court. The only impact is that it is another form for each court to implement, but it will create operational efficiencies. The clerks and self-help staff will have less work after very brief initial training; those who seek these orders will find it a faster, simpler and less mystifying process. *See additional comments on specific issues, below.	The committees thank you for your comment. See further responses to specific comments, below.

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SPR15-28

Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Need for Family Law Rule		
Commentator	**Comment**	**Committee Response**
Peggy J. Bristol, Attorney Law Office of Peggy Bristol-Wright	**Draft a Rule of Court on Procedure in Family Court.** (This is an excellent recommendation, as many family courts are just becoming familiar with SIJS and some judges, despite multiple trainings on the immigration impact of family court decisions, appear to be unable or unwilling to accept requests for SIJS findings and in more than one county have gone to amazing lengths to circumvent granting an SIJS order, including redefining the hearsay rule in order to exclude a minor's testimony about a parent's *actions.*)	The FJLAC agrees that family courts and litigants would be able to proceed more effectively and efficiently with a rule of court to guide them. The committee intends to develop a rule of procedure for requesting and considering SIJ findings in proceedings under the Family Code and circulate that rule for public comment at the earliest opportunity.
	The ILRC recommends a Rule of Court stating that a finding of paternity (or maternity, for that matter) is <u>not</u> required prior to making SIJS findings. There are many cases where a father's name is not on a child's birth certificate; certain Central Americans will not state the father's name if he was not personally present to register the child's birth. Some family law courts do not want to accept the other parent's word alone, even in a verified declaration, which allows them to circumvent adjudicating <u>both</u> petitions for custody and for SIJS factual findings. I agree with this recommendation. * * * It would be extremely helpful if the Judicial Council could issue Rules of Court or some other form of state-wide guidance for family courts regarding the following:	The committee will consider, but is not likely to recommend, addressing this issue in a rule of court. Whether the parentage of a custodial parent must be legally established for the court to award custody to that parent and make SIJ findings is a substantive legal question better left to the appellate courts or the Legislature to resolve. Similarly, whether parentage of a noncustodial parent must be conclusively established for the court to find that reunification with that parent is not viable is also a substantive legal question better left to the appellate courts or the Legislature to resolve.
	1. Whether one parent may seek sole custody for SIJS purposes if the other parent is deceased.	1. The committee will consider whether to incorporate the suggested provision into a future rule of court.
	2. Whether, in family law cases, a parent's inability to provide for a child due to poverty may also be considered a form of	2. The committee will consider whether to incorporate the suggested provision into a future rule of court.

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Need for Family Law Rule		
Commentator	**Comment**	**Committee Response**
	neglect. (This is a valid argument in probate courts, but was rejected by a family court in Alameda County.) **3.** That abandonment by a parent need not be willful, e.g., where a parent died without making adequate provisions for the child's future care. (This was recently addressed in *D.L. v. Superior Court of San Mateo County,* [2015], case number A144960, an unpublished appellate decision overturning the family court's refusal to issue SIJS findings because it held that the parent's death did not constitute *willful* abandonment.) **4.** Flexibility in requirements for personal service of process when the non-custodial parent cannot be found. As an immigration attorney, I rely on family court practitioners for guidance in parental custody cases. They consistently advise that family courts require proof of personal service in parentage/custody cases. However, there are numerous cases where a child has been abandoned and the non-custodial parent's whereabouts are now unknown. In guardianship cases, the petitioner and the attorney can both file verified declarations of due diligence and the probate court can dispense with the requirement of notice. The family courts should be able to do the same; custody orders are not	3. The committee will consider, but is not likely to recommend, addressing this issue in the rules of court. Whether and in what circumstances a parent's death constitutes abandonment of the child is a substantive legal question. The federal INA relies on state laws to define abuse, neglect, and abandonment. The Legislature has addressed abandonment in sections 3402 and 7822 of the Family Code and section 300(g) of the Welfare and Institutions Code. As the commentator notes, the Court of Appeal has found no requirement in these provisions that parental abandonment have been willful. Rule 7.1020, as circulated, does not include such a requirement. The committee perceives no ambiguity appropriate for clarification in a rule. 4. The committee will consider, but is not likely to recommend, modifying the requirements for notice and service of process through the rules of court. Notice requirements are governed by state and federal statutes within the United States, as well as by international treaties, including the Hague Service Convention, when serving notice abroad. These laws include provision for substitute service when a party cannot be located through the exercise of due diligence. The committee will consider, but is not likely to recommend, addressing this issue in the rules of court. The Code of Civil Procedure, supplemented by the Family Code, specifies detailed procedural requirements

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Need for Family Law Rule		
Commentator	**Comment**	**Committee Response**
	necessarily permanent, and the non-custodial parent can always request that a custody order be modified if circumstances change.	for serving notice to parties in proceedings under the Family Code. When a party lives abroad, these requirements operate in conjunction with federal statutes and rules as well as international treaties, such as the Hague Service Convention.
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer	**Draft a Rule of Court on Procedures in Family Court.** Given the newness of the practice of requesting SIJS findings in family court custody cases, the lack of clarity on a range of procedural issues that have arisen, and the inconsistency in how these requests are handled in different jurisdictions and courtrooms, we believe that a rule of court clarifying the procedure in family court custody cases is necessary. It would be helpful for such a rule to address the following: • that a minor over the age of 12 can be the petitioner in a parentage or custody proceeding; • that the court properly exercises jurisdiction over a minor until the day he or she turns 18 for purposes of child custody determinations;	The committee agrees that family courts and litigants would be able to proceed more effectively and efficiently with a rule of court to guide them. The committee is developing a rule of procedure for requesting and considering SIJ findings in proceedings under the Family Code. The committee will propose circulating the rule for public comment at the earliest opportunity. • The committee will consider, but is not likely to recommend, including the suggested provision in the proposed rule. Section 7630 of the Family Code expressly permits a child to bring a parentage action. Sections 7630(b) and 7650 permit "any interested person" to bring an action to establish, respectively, a mother-and-child or presumed–parent-and-child relationship. Section 7635 expressly permits or, if the child is 12 years of age or older, requires the child whose parentage is at issue to be made a party to the action. • The committee will consider, but is not likely to recommend, including the suggested provision in the proposed rule. Section 3010 of the Family Code establishes a parental right to custody of an "unemancipated minor child." Section 3022 grants the court authority to make an order for custody of a

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		child "during minority." Section 6500 clearly states that a child remains a minor until the first minute of the day on which he or she reaches 18 years of age. It is unlikely that a rule of court would provide additional clarity.
	• under what circumstances a guardian ad litem is required in custody cases;	• The committee will consider whether to include in the proposed rule a provision clarifying when the court should appoint a guardian ad litem for a minor child in a parentage action.
	• that a paternity/maternity finding is not required prior to making SIJS findings;	• The committee will consider whether to incorporate the suggested provision in the proposed rule.
	• that personal jurisdiction over the non-custodial parent is not required if the court otherwise has jurisdiction over the child custody matter under the UCCJEA;	• The committee will consider, and is likely to recommend, including the suggested provision in the proposed rule. Although the comment raises a substantive legal issue, the court of appeal settled that issue in 1981, holding that the "stringent notice requirements" and "integrated, detailed plan for jurisdiction in child custody proceedings" in the predecessor to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) satisfied the requirements of due process and that personal jurisdiction over an out-of-state parent is therefore not required to make a binding custody determination. (*In re Marriage of Leonard* (1981) 122 Cal.App.3d 443, 458–459.) The notice requirements under the current UCCJEA are, if anything, more stringent that those under the earlier statute. This case remains binding legal precedent.

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	• whether a single request may be filed for multiple children who are part of the same case; and • any other matters that the Judicial Council finds germane to the efficient and consistent adjudication of these requests.	• The committee will consider whether to include the suggested provision in the proposed rule. • The committee intends to develop a rule of court that will promote the consistent and efficient adjudication of requests for SIJ predicate findings in proceedings under the Family Code.
Legal Aid Foundation of Los Angeles Ji-Lan Zang, Supporting Families Attorney	**Ambiguities to be Resolved by Analogous SIJS Rules in Family Court Proceedings** Although SPR15-28 only proposed rule 7.1020, which involves guardianship proceedings, it would be useful to propose analogous rules in the family law context. There is much confusion regarding SIJS requests among the courts, counsel, and litigants. First, similar to the proposed rule 7.1020, analogous rules in the family court should stipulate who may file a request for SIJS orders. Specifically, the minor child himself/herself should be allowed to petition for a SIJS order in a paternity action. In fact, many advocates in Los Angeles have already structured paternity actions as child versus parent, although not all courts accept this form of paternity action. However, an action brought by the child against a parent for paternity is permissible under Family Code section 7630. In particular, this type of action is often necessary where one parent has abandoned the child and that parent cannot be located. Thus, the only manner in which a SIJS request could be brought forth would be under a paternity action where the child sues the parent whose whereabouts are known. Thus, any proposed rule should make clear that SIJS orders may be obtained in a paternity action where the child is the petitioner.	The committee agrees that family courts and litigants would be able to proceed more effectively and efficiently with a rule of court to guide them. The committee is developing a rule of procedure for requesting and considering SIJ findings in proceedings under the Family Code. The committee will propose circulating the rule for public comment at the earliest opportunity. The committee will consider whether to include the suggested provision in the proposed rule.

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	Second, proposed rules for family court should also specify that any SIJS hearing could proceed by default, as with all other family law cases. In Los Angeles, several bench officers have raised the issue of "collusion" where the responding party in the family law case fails to respond. The judges surmise that the respondent does not respond on purpose and that petitioner and respondent parents are "in collusion" in order to confer an immigration benefit onto the child. These assertions are speculative at best and prejudicial at worst. Many family law cases proceed by default, without any negative inference of "collusion". Therefore, the proposed rules should also clarify that while a judicial officer may conduct a default evidentiary hearing in order to make the necessary findings, the bench cannot make any presumptions of collusion in a default case where one party has failed to respond to the SIJS order request.	The committee will consider whether to include the suggested provision in the proposed rule.
State Bar of California Office of Legal Services Standing Committee on the Delivery of Legal Services Maria Livingston, Chair	**Would rules of procedure for requesting SIJ findings in juvenile and family court proceedings, analogous to proposed rule 7.1020, be useful to courts, counsel, and litigants? If so, what ambiguities should those rules attempt to clarify?** Yes. Rules of procedure analogous to proposed rule 7.1020 would be useful to courts, counsel, and litigants. Ambiguities that the rules should attempt to clarify are what a description of the similar basis under California law would be. Although it is noted that abuse, neglect and abandonment would qualify under California law under the footnote provided in the background section, it is still unclear what other basis would be acceptable for a predicate finding under California law. This description should be included in any informational form as well. The rules of procedure for requesting SIJS findings, similar to proposed Rule 7.1020, would be helpful in family law court proceedings	The committee agrees that family courts and litigants would be able to proceed more effectively and efficiently with a rule of court to guide them. The committee is developing a rule of procedure for requesting and considering SIJ findings in proceedings under the Family Code. The committee will propose circulating the rule for public comment at the earliest opportunity.

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Commentator	**Comment**	**Committee Response**
	because SIJS cases are a newer practice area. Ideally, rules of procedure would set forth the step by step application process, requests for hearing, notice requirements, opportunity to respond and contest, and issuance of findings. The Rule would help establish a standard statewide procedure to avoid variability between counties. SCDLS also suggests the adoption of forms and rules of procedure specific to implementing the confidentiality requirements under the new law, and providing a less complex and entailed procedure for requests for sealing SIJS proceedings records in family law, notwithstanding Rules of Court, rule 2.550 and 2.551.	The committee does not recommend the suggested change at this time. The current statutory and rule-based confidentiality and sealing provisions provide a level of protection for children seeking SIJ findings in state court. In addition, pending legislation would modify and, in some respects, simplify the process of sealing court records in juvenile proceedings. The committees will consider proposing rules and forms in a future cycle if experience shows they are needed.
Superior Court of Los Angeles County	**Would the rules of procedure requesting SIJS findings in juvenile and family court proceedings, analogous to proposed rule 7.1020, be useful to courts, counsel and litigants? If so, what ambiguities should these rules attempt to clarify?** Yes.	The committee agrees that family courts and litigants would be able to proceed more effectively and efficiently with a rule of court to guide them. The committee is developing a rule of procedure for requesting and considering SIJ findings in proceedings under the Family Code. The committee will propose circulating the rule for public comment at the earliest opportunity. The committee does not recommend developing a rule for SIJ findings in juvenile court at this time.
Superior Court of Orange County Family Law and Juvenile Court Operations Managers	**Would rules of procedure for requesting SIJ findings in juvenile and family court proceedings, analogous to prosed rule 7.1020, be useful to courts, counsel, and litigants? If so, what ambiguities should those rules attempt to clarify?** Rules analogous to proposed rule 7.1020, would be helpful to counsel/parties to better understand required forms, filing fees	The committee agrees that family courts and litigants would be able to proceed more effectively and efficiently with a rule of court to guide them. The committee is developing a rule of procedure for requesting and considering SIJ findings in proceedings under the Family Code. The committee will propose

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	(if any), and litigation type filing guidelines. We also need direction on denied petitions - are they appealable? **Does the proposal appropriately address the stated purpose?** The proposal addresses the stated purpose. However, clarification is needed when processing these petitions in family court. Is there a filing fee? What are the hearing requirements (e.g., are *Memos to Set* required)? Are there recommended processing time standards? Are courts required to provide interpreters for these hearings?	circulating the rule for public comment at the earliest opportunity. The committee does not recommend developing a rule for SIJ findings in juvenile court proceedings at this time. The committee intends to clarify issues within its purview through the development of a rule for requesting and considering SIJ findings in proceedings under the Family Code.

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Need for Information Form		
Commentator	**Comment**	**Committee Response**
State Bar of California Office of Legal Services Standing Committee on the Delivery of Legal Services Maria Livingston, Chair	An informational form would indeed be useful especially because the proposed rule 7.1020 is very brief and the language of an informational form would also help pro per litigants without any reference to the proposed rule. Specifically, the informational form could help the self-represented better understand: 1) the steps for requesting SIJS findings; 2) the purpose of the form; and 3) the information the form solicits for purposes of the requested findings to ensure the court's order is sufficient.	The committees will consider developing an informational form to explain the process for seeking SIJ findings in California child custody proceedings, including custody proceedings under the Family Code, guardianship proceedings under the Probate Code, and dependency and wardship proceedings under the Welfare and Institutions Code.
Superior Court of Los Angeles County	**Would an informational form to accompany from FL-[356] or any other of the forms in this proposal be useful, for example to explain the process for requesting SIJS findings?** Yes.	The committees will consider developing an informational form to explain the process for seeking SIJ findings in California child custody proceedings, including custody proceedings under the Family Code, guardianship proceedings under the Probate Code, and dependency and wardship proceedings under the Welfare and Institutions Code.
Superior Court of Orange County Family and Juvenile Court Operations Managers	It would be beneficial to create an informational form that would provide information on the following: 1. Limitations of the superior court with regard to making the findings 2. Litigation type filing guidelines 3. Filings fees, if any 4. Options when petitions are denied (are they appealable)? Further, we recommend the information form be created in multiple languages.	The committees will consider developing an informational form to explain the process for seeking SIJ findings in California child custody proceedings, including custody proceedings under the Family Code, guardianship proceedings under the Probate Code, and dependency and wardship proceedings under the Welfare and Institutions Code. The committees recommend and anticipate that any immigration-related Judicial Council forms will be translated into Spanish and any other language for which a sufficient demand exists.

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Rule 7.1020. Special Immigrant Juvenile Predicate Findings in Guardianship Proceedings		
Commentator	**Comment**	**Committee Response**
	Permit attachments to the petition, including memorandums, declarations, etc.	
Bet Tzedek Legal Services Erikson Albrecht, Kinship Attorney	**Eliminate the prohibition of the use of motions, memorandums, and other supporting documents as means of requesting SIJ findings (Rule 7.1020(b)(2)(A)).** Pursuant to California Rule of Court 1.31, forms adopted by the Judicial Council for mandatory use must be used by all parties; whereas, California Rule of Court 1.32 makes the use of forms approved by the Judicial Council optional. Therefore, the adoption of Council's proposed Rule 7.1020(b)(2)(A) and the corresponding proposed form for mandatory use would require a request for SIJS findings in Probate Court to be made by verified petition *exclusively* through the use of the proposed form GC-220. While subsection (b)(2)(A) of the proposed rule does not explicitly prohibit the use of motions requesting SIJ findings, the Invitation to Comment issued by the council specifies that the proposed rule would prohibit a request for SIJS findings made by a motion supported by declarations. Given the expressed objective of this subsection, the proposed rule unnecessarily limits the means by which a request for SIJS findings may be made, eliminating the current, universal practice of filing a petition for SIJS findings accompanied by a memorandum of points and authorities and supporting declarations. The council's own Invitation to Comment fails to provide any compelling reason for this restrictive change; it merely declares that Rule 7.1020 was created because "no statewide guidance has been developed for requesting or making SIJ findings in guardianship proceedings." In fact, while California Code of Civil Procedure section 155 may lack detailed procedural instructions, what technical guidance it does offer, regarding declarations by the child, seems to	The PMHAC does not recommend the suggested change. Nothing in the rule, as circulated, prohibits the inclusion with or attachment to the petition of memorandums, affidavits, declarations, or other supporting documents. The committee recognizes that a number of methods have been used to seek SIJS findings in the past. The committee considered these various methods as part of developing these proposed rules and forms. After careful consideration, the committee concluded that the petition procedure, rather than a motion procedure, would be preferable both for petitioners and for the courts. The petition is intended to provide a common structure to a filing that has proved challenging for litigants and courts. Moreover, the petition is the preferred method of seeking relief in probate proceedings. See Probate Code section 1020. In guardianship proceedings, the petition procedure is intended to conform applications for SIJ findings to familiar probate practice; this conformity should improve efficiency and efficacy for all involved in these proceedings. This procedure gives the petitioner an opportunity to assert in the verified petition all facts that separate declarations would otherwise contain. If unopposed, the petition would be admitted into evidence

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	have been wholly ignored in the creation of these proposed rules and forms. (see section b., below) Since the Trafficking Victims Protection and Reauthorization Act (TVPRA) was enacted in 2008, SIJS has been a potential form of relief for individuals in guardianship proceedings or otherwise under the Probate Court's jurisdiction as a result of guardianship proceedings. Without the guidance of Rule 7.1020 and the GC-220 form, such individuals have been requesting and obtaining SIJ findings through the use of pleadings entitled "Petition" or "Motion," memorandum of points and authorities, and supporting declarations. Given the recent increase in individuals potentially eligible for SIJS relief, executing more efficient policies and procedures is a commendable goal, however, not at the cost of quality. In fact, a more efficient but less effective administration of justice does more harm. To be clear, while it is clear that the adoption of a mandatory form and a rule prohibiting motions and supporting declarations may provide some benefit of uniformity for court personnel, the proposed prohibition diminishes the appearance of, access to, and application of justice. This prohibition of motions and supporting declarations limits the amount and quality of evidence by which a court may make a ruling upon a request for findings and it is therefore contrary to justice. Given the substantial confusion of law which led to the drafting and passage of SB 873, it is baffling that the council would develop a rule that prohibits SIJ finding requests from incorporating statutory and appellate authority.	under section 1022 to support the findings, notwithstanding the petitioner's possible lack of personal knowledge of each fact asserted. If contested, the matter would be set for trial, at which live testimony would be required, subject to exceptions applicable to all civil trials. Neither the rule nor the form prohibits the filing of any other documents, including memorandums of points and authorities or affidavits, *with or as part of* the petition. (See Prob. Code, § 1022, which refers not only to verified petitions, but also to affidavits. Declarations are legally and functionally equivalent to affidavits (Code of Civ. Proc., § 2015.5).) Sufficient evidence in the petition, including any attached declarations, would support an uncontested request for SIJ findings. In a contested matter, neither the petition nor any separate

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		declarations would be sufficient. In that situation, under ordinary legal principles, the witnesses would be required to testify in court and be subject to cross examination. If the witnesses are not available at the time set for trial, there are procedures currently available from regular civil practice to obtain, preserve, and present their testimony at trial.
	It is still frequently necessary, in order to succeed in court, for litigants to be able to cite case law, both in their pleadings and at the hearing, regarding one or more of the SIJ findings. The use of a verified petition in the format of a mandatory form handicaps litigants by disallowing a thorough recitation of facts, law, and the correct application of the latter to the former. Furthermore, the evidence that supports SIJS findings continues to be litigated at the trial and appellate court level; preventing litigants from presenting full and robust legal argument at the petition stage limits their ability to make a record sufficient for shaping and creating appellate case law.	As noted above, nothing in the rule or form precludes a thorough recitation of the facts or presentation of the law as part of the verified petition. The litigant may attach a memo of points and authorities to the petition at the time of filing. At the hearing on the petition, whether contested or not, the petitioner will have the opportunity to present argument on the law and its application to the facts before the court. The committee intends the rule and form to guide litigants, both represented by counsel and self-represented, in presenting relevant facts and applicable law in a format that will allow both the parties and the court to focus on the issues needing resolution.
	Finally, while we believe it to be appropriate, necessary, and permissible, despite the proposed rule and form, to continue to submit a separate Memorandum of Points and Authorities to supplement the petition, it is foreseeable that the proposed rule and form will discourage many litigants and counsel from continuing to adequately present their cases in this manner.	The committee does not believe that the proposed form petition will discourage self-represented persons from seeking SIJ relief. Rather, the committee intends the form to provide guidance as to the legal theories and factual allegations needed to support a petition for SIJ findings. This guidance should encourage eligible self-represented persons to seek relief. The committee fully expects that counsel, including the commentators, will be able to work within the framework present in probate matters. Consultation with experienced probate

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		practitioners will help attorneys with other practice areas to adapt to these procedures.
	Accordingly, we suggest the current use of pleadings entitled "Petition" or "Motion," memorandum of points and authorities, and supporting declarations remain authorized means by which an individual may seek SIJ findings in guardianship proceedings. This current practice can be incorporated into proposed Rule 7.1020(b)(2)(A) rather than prohibited by it. In the alternative, as discussed in detail in the next section of our comment, we suggest altering the proposed form GC-220 to specifically reference and incorporate the attachment of legal argument, points and authorities, and, most importantly, supporting declarations.	For the reasons stated above, the committee does not recommend the suggested change.
	Incorporate the use of declarations as attachments to the petition as evidence in support of the request (Rule 7.1020(b)(2)(A)). In pursuit of the SIJS relief created by federal law, litigants in California are guided by California Code of Civil Procedure Section 155, which details superior courts' authority, the procedure for petitioning to secure predicate findings from such courts, and the evidentiary basis for making such findings. California Code of Civil Procedure section 155 requires a superior court to issue an order making the necessary findings regarding SIJS where there is evidence to support those findings; the statute *specifically* identifies a declaration by the child who is the subject of the petition as a source of such evidence. Despite the fact that this specific reference to such a declaration is within the statute that mandates that the Judicial Council create forms accordingly, the council's proposed form for mandatory use	The committee does not recommend the suggested change. As noted above, nothing in the rule or form bars the submission of a child's supporting declaration with the petition for SIJ findings. The procedure outlined in the rule also permits the inclusion of the essence of the child's testimony in the petition itself, thereby obviating the need, in at least some cases, for the submission of a separate declaration.

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	does not reference the need for or option to submit or attach a declaration of the child; rather, the proposed form GC-220 provides spaces for the petitioner to provide "facts in support of" the requested findings. While the proposed form does allow for additional facts to be submitted by way of an attachment, there is no reference to or instructions for a declaration by any person with personal knowledge of evidence material to the SIJS findings. Furthermore, where the petitioner is not the child, the format of the proposed form provides no method for the child to submit a declaration themselves, again despite the fact that such a declaration was anticipated by the legislature and is referenced in California Code of Civil Procedure section 155 as an evidentiary basis for the requested findings.	
No Separate Filing Fee		
Bet Tzedek Legal Service	**Clarify that there is no separate filing fee for an SIJS petition (Rule 7.1020(b)(2)(B)).** While the expressed purpose of proposed rule 7.1020(b)(2)(B) is to provide guidance, a consequence of the requirement that SIJS findings be filed as a separate petition, rather than as an attachment to the petition for appointment of guardian is the potential for additional fees to be assigned. We oppose the assessment of fees on petitions for SIJ findings because such an assessment is problematic in principle and largely meaningless in practice. The fundamental premise of Special Immigrant Juvenile Status is the recognition of that fact that a child afforded such status has suffered abuse, abandonment and/or neglect; to assess fees for the process of securing findings of those facts runs counter to the humanitarian foundation upon which the relief was created. As a more practical matter, these children are almost exclusively impoverished and have no means by	The committee does not recommend addressing this issue in the rules of court. Fees for civil proceedings, including matters arising under the Probate Code and Family Code, are set by statute (See Gov. Code, §§ 70600–70677). Filings fees for a petition regarding appointment of a guardian of the person are set in section 70654. Section 70658.5 provides that no separate fee will be charged for a petition combining a request for relief with a guardianship petition. Sections 70657(e) and 70658(c)(1) prohibit fees for petitions or applications filed in a proceeding for a guardianship of the person after the issuance of letters of temporary or general guardianship. Section 70670 sets the fee for the initial filing in a proceeding under the Family Code. Section 70677 provides that only one fee will be charged for a filing that combines requests for relief on more than one issue, e.g., parentage, custody, and SIJS.

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	which to pay court fees and costs. Accordingly, we suggest that no fees be created or assessed for petitions requesting SIJ findings. Assessing fees would, at best, incur additional work for court personnel in processing all but certain applications for waiver of fees and costs.	Section 212 of the Welfare and Institutions Code bars fees for filing or serving papers in juvenile dependency or delinquency proceedings. Moreover, sections 68630–68641 of the Government Code provide for fee waivers based on the parties' financial condition. Rules 3.50–3.58 of the California Rules of Court implement the fee waiver statutes by creating procedures and mechanisms for applying for, determining, and modifying fee waivers. In guardianship cases, eligibility for a fee waiver is now based on the ward's financial condition. (See Gov. Code, § 68631.5, eff. Jan. 1, 2015; Cal. Rules of Ct., rule 7.5, eff. 9/1/15.) The committee does not intend the proposed rule to create any new filing fees.
Peggy J. Bristol	Clarify that there is no separate filing fee for the SIJS petition.	See the committee's response to Bet Tzedek's comment, above.
Immigrant Legal Resource Center San Diego Volunteer Lawyer Program, Inc.	**Clarify that there is no separate filing fee for the SIJS petition (Rule 7.1020(b)(2)(B)).** Subsection (b)(2)(B) would require that a request for SIJS findings must be filed as a separate petition, rather than as an attachment to the petition for appointment of guardian. We understand and agree with the shift to making the request for SIJS findings by way of a separate petition, rather than as an attachment to the guardianship petition. However, clarification is needed that the separate petition for SIJS findings does not require a separate filing fee. Otherwise, there is concern that legal services providers or pro se applicants who qualify for a	See the committee's response to Bet Tzedek's comment, above.

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	fee waiver will have to prepare a separate fee waiver request when they are filing requests for SIJS findings for multiple wards in connection with one guardianship petition, which would be a burden on applicants and create additional work for the courts. ***Recommendation***: Clarify that there is no separate filing fee for the SIJS petition.	
Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney	**Clarify that there is no separate filing fee for the SIJS petition (Rule 7.1020(b)(2)(B)).** Subsection (b)(2)(B) would require that a request for SIJS findings must be filed as a separate petition, rather than as an attachment to the petition for appointment of guardian. We understand and agree with the shift to making the request for SIJS findings by way of a separate petition, rather than as an attachment to the guardianship petition. However, clarification is needed that the separate petition for SIJS findings does not require a separate filing fee, under GC 70657(e), even if the guardianship petition and SIJS petition are filed concurrently. Otherwise, there is concern that legal services providers or pro se applicants who qualify for a fee waiver will have to prepare a separate fee waiver request when they are filing requests for SIJS findings for multiple wards in connection with one guardianship petition, which would be a burden on applicants and create additional work for the courts, or wait until after the guardianship petition is granted and letters are issued in order to file the SIJS petition, which would create additional delays for eligible youth and might lead to some youth aging out of jurisdiction before obtaining the SIJS predicate order, and would also create administrative inefficiencies. ***Recommendation***: Clarify that there is no separate filing fee for	See the committee's response to Bet Tzedek's comment, above.

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	the SIJS petition.	
Permit Multiple Wards to File a Single Petition for SIJ Findings		
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer	**Allow the filing of one petition for SIJS findings for multiple wards (Rule 7.1020(b)(1)(A)).** Subsection (b)(1)(A) of the proposed Rule would require that in the case of multiple wards in one proceeding, each minor would have to file a petition for SIJS findings for him- or her-self. However, in many cases where multiple wards are requesting SIJS findings, it is far more efficient for the wards to file one consolidated request for SIJS findings. The procedure that the proposed rule contemplates will require additional forms and motions, in that a separate request will have to be prepared for each ward, followed by a motion to consolidate proceedings. There is also the potential that each ward will have to prepare and file a separate fee waiver request. Given that multiple children may file one joint guardianship petition, it is reasonable that such children may also file one joint request for SIJS findings. To the extent that there is a need to separate out the factual bases for each child, the proposed GC-220 could state: "If the petition contains a request for more than one minor, specify the factual basis for each minor." If additional room is needed, the petitioners may state additional facts on Attachment 5 using MC-25, as is already instructed on the proposed GC-220. Further, if the factual basis for each minor is significantly different, the petitioners can choose to file separate petitions for SIJS findings, but this need not be obligatory, as is contemplated by the proposed Rule. ***Recommendation:*** Allow multiple wards the option of filing a joint request for SIJS findings by making the following changes to Rule 7.1020(b)(1)(A) (deletions in ~~strikethrough~~, additions underlined):	a. The committee does not recommend the suggested change. In cases involving multiple wards seeking SIJ findings, either at their own request or on the request of others, separate petitions are preferable. The only necessary common element in a multi-ward case is the proposed or appointed guardian (Prob. Code, § 2106). Multiple wards may be wholly unrelated or related only remotely to one another. Cousins, possibly involving common grandparents or more remote ancestors but no common parents, often appear together in these cases. Their factual situations material to SIJS determinations may be entirely distinct. Separate orders on their petitions are necessary because these findings will be presented in separate immigration proceedings for each applicant. On the other hand, if there are significant common elements, say, for whole- or even half-siblings, there is no need to move for "consolidation" of the proceedings in a multi-ward case. There is only one guardianship proceeding. If all the guardianship and SIJ petitions were unopposed, there would be no trial hearing beyond the required probate calendar hearing, which would be on the same date and in the same court department if the petitions are filed together, at which hearing the petitions will be admitted into evidence (Prob. Code, § 1022). If multiple petitions are contested, they may be tried together if there are sufficient common elements, such as witnesses and other evidence.

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Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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Rule 7.1020. Special Immigrant Juvenile Predicate Findings in Guardianship Proceedings		
Commentator	**Comment**	**Committee Response**
	(A) If there is more than one ward or proposed ward in the proceeding, a minor eligible to file a request for findings under this rule may do so ~~only~~ for himself or herself, or jointly with the other ward(s) or proposed ward(s). **As discussed above, multiple wards should be permitted to request SIJS findings in a joint petition (Rule 7.1020(e)(2)).** For the reasons discussed above, multiple wards should be permitted to request SIJS findings in a joint petition. If multiple wards are required to file separate petitions as contemplated by Rule 7.1020, then they will also have to move to consolidate proceedings as set forth in this subsection, which creates an unnecessary burden on petitioners. ***Recommendation*:** Allow multiple wards to request SIJS findings in a joint petition, which will lessen the need for this provision setting forth the procedure by which proceedings may be consolidated.	See the committee's response, above.
Legal Advocates for Children and Youth (LACY) Neha Marathe, Senior Attorney	LACY supports ILRC's recommendation to Proposed Rule 7.1020(b)(1)(A), to allow multiple wards the option of filing a joint request for SIJS findings in a guardianship proceeding. We believe doing so would make the process more streamlined for the proposed wards and guardians and allow traumatized children to achieve stability with greater ease. Further, as LACY can only provide direct representation to minors age 12 and over, allowing a minor to file a petition for SIJS findings jointly for him/herself and his/her younger siblings will ensure that LACY can provide legal representation to all SIJS-eligible minors in the proceeding (rather than the siblings under age 12 needing to secure new counsel to petition for SIJS findings, which would be burdensome and most often unfeasible).	See the committee's response to the ILRC's comment, above.

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Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Rule 7.1020. Special Immigrant Juvenile Predicate Findings in Guardianship Proceedings		
Commentator	**Comment**	**Committee Response**
Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney	**Allow the filing of one petition for SIJS findings for multiple wards (Rule 7.1020(b)(1)(A)).** Subsection (b)(1)(A) of the proposed Rule would require that in the case of multiple wards in one proceeding, each minor would have to file a petition for SIJS findings for him- or her-self. However, in many cases where multiple wards are requesting SIJS findings, it is far more efficient for the wards to file one consolidated request for SIJS findings. The procedure that the proposed rule contemplates will require additional forms and motions, in that a separate request will have to be prepared for each ward, followed by a motion to consolidate proceedings. There is also the potential that each ward will have to prepare and file a separate fee waiver request. Given that multiple children may file one joint guardianship petition, it is reasonable that such children may also file one joint request for SIJS findings. To the extent that there is a need to separate out the factual bases for each child, the proposed GC-220 could state: *"If the petition contains a request for more than one minor, specify the factual basis for each minor."* If additional room is needed, the petitioners may state additional facts on Attachment 5 using MC-25, as is already instructed on the proposed GC-220. Further, if the factual basis for each minor is significantly different, the petitioners can choose to file separate petitions for SIJS findings, but this need not be obligatory, as is contemplated by the proposed Rule. ***Recommendation:*** Allow multiple wards the option of filing a joint request for SIJS findings by making the following changes to Rule 7.1020(b)(1)(A) (deletions in ~~strikethrough~~, additions <u>underlined</u>):	See the committee's response to the ILRC's comment, above.

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

Rule 7.1020. Special Immigrant Juvenile Predicate Findings in Guardianship Proceedings		
Commentator	**Comment**	**Committee Response**
	(A) If there is more than one ward or proposed ward in the proceeding, a minor eligible to file a request for findings under this rule may do so ~~only~~ for himself or herself, or jointly with the other ward(s) or proposed ward(s).	
No Separate Notice of Hearing on Petition for SIJ Findings		
Bet Tzedek Legal Services	**Eliminate the requirements for a separate notice of hearing on an SIJS petition (Rule 7.1020(c).)** As written, proposed subsection (c) of Rule 7.1020 would require that notice of a hearing on a request for SIJS findings be sent to the persons listed in section Probate Code section 1460(b). The rights of all persons described in section 1460(b) remain completely unimpinged upon the granting of SIJS findings. Similarly, there is no statutory basis or legal precedent indicating that any person other than the child themselves has standing to assert a position to the court regarding the request for SIJ findings. Therefore, there is simply no need for additional notice to be required as proposed by subsection(c) of Rule 7.1020. Accordingly, we suggest eliminating the requirement for separate notice of a hearing on an SIJS Petition by deleting the current subsection (c).	The committee does not recommend the suggested change. In most cases, the rule requires notice only to the proposed ward's parents and, by reference to Probate Code section 1460(b), to the guardian and the ward. The determination of a request for SIJ findings impacts the legal rights of the ward. The guardian, by virtue of the care, custody, and control of the ward with which he or she is charged, also has a legitimate interest in the hearing. The SIJ findings—especially a finding that reunification with one or both is not viable because of abuse, neglect, abandonment, or a similar basis—may also have collateral consequences for the ward's parents. The rule's requirement is not unduly burdensome. Section 1460(e), incorporated in the rule, authorizes the court for good cause to dispense with notice to any person otherwise entitled to notice under section 1460(b). Section 1460.1 limits the duty to provide notice to a ward under the age of 12. The rule also relieves parties of the more extensive notice requirements for a hearing on the underlying guardianship petition in section 1511.
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney	**Eliminate the requirement for separate notice of a hearing on an SIJS petition. In the alternative, specify that airmail is the correct method of mail delivery for purposes of mailed notice, and create a procedure for parents to waive notice of the hearing on the SIJS findings (Rule 7.1020(c)).**	See the committee's response to Bet Tzedek's comment, above.

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Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Rule 7.1020. Special Immigrant Juvenile Predicate Findings in Guardianship Proceedings		
Commentator	**Comment**	**Committee Response**
San Diego Volunteer Lawyer Program, Inc.	Subsection (c) would require that notice of a hearing on a request for SIJS findings be sent to the minor's parents and the persons listed in section 1460(b), in the manner and within the time provided in that section, subject to the provisions of subdivision (e) of that section and sections 1202 and 1460.1. Given that a request for SIJS findings may only be filed after a guardianship is already in place or concurrently with a guardianship petition, notice to all persons required by Section 1511 of the Probate Code will be completed or waived for good cause in every case in which SIJS findings are made. Separate notice of the hearing on a request for SIJS findings should not be required in light of the fact that notice of the underlying guardianship proceedings will have been provided or waived for good cause in every case, the petitions are frequently heard at the same hearing, and SIJS findings are simply factual findings that do not affect parental rights. For these reasons, we urge a change in this rule to provide that separate notice of the SIJS petition is not required. However, should this provision remain, we ask for two clarifying changes. First, although we appreciate that pursuant to this Rule, notice may be provided by mail, it would be helpful for the Rule to cite to Section 1215 which states that airmail is the correct method of mail delivery for purposes of notice mailed abroad. Currently, practices range in different counties, with a small number of judges and counties requiring that notice be provided by certified, international mail despite Section 1215. Second, we request that a form be developed for waiver of notice of the hearing on the Petition for SIJS findings, similar to the GC-211 that is used for guardianship petitions. This will	

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Rule 7.1020. Special Immigrant Juvenile Predicate Findings in Guardianship Proceedings		
Commentator	**Comment**	**Committee Response**
	allow parents who may be willing to waive notice of the hearing to submit such waiver to the court, which will save the attorney or pro se applicant significant time in not having to prepare notice by mail. ***Recommendation***: Eliminate the requirement for separate notice of a hearing on an SIJS Petition by deleting the current subsection (c) and replacing it with a statement that no separate notice is required for a hearing on the SIJS petition. In the alternative, specify that airmail is the correct method of mail delivery for purposes of mailed notice, pursuant to Section 1215, and create a procedure for parents to waive notice of the hearing on the SIJS findings.	
Legal Advocates for Children and Youth (LACY) Neha Marathe, Senior Attorney	LACY supports ILRC's recommendation to Proposed Rule 7.1020(c) to eliminate the requirement for a separate notice of hearing of a request for SIJS findings. While notice of a petition for guardianship is expressly required under state law through the Probate Code, we note there is no requirement for notice of a request for SIJS findings under federal law (8 U.S.C. §1101(a) (27)(J)). As the ILRC letter notes, notice of the petition for guardianship will have been provided or attempted in each probate guardianship matter and a request for SIJS findings will not affect parental rights. Imposing additional notice requirements for SIJS petitions that are not required by law would not only be burdensome, but it would force minors to disclose detailed facts regarding past abuse, neglect, and/or abandonment to the very persons responsible for the trauma. Doing so could also put the minors and proposed guardians at risk for retaliatory action and could damage the minor's connections to family members that continue to be important for the minor's well-being. While LACY feels strongly that a separate notice of hearing of a	See the committee's response to Bet Tzedek's comment, above.

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Rule 7.1020. Special Immigrant Juvenile Predicate Findings in Guardianship Proceedings		
Commentator	**Comment**	**Committee Response**
	request for SIJS findings should not be required, if such a requirement remains, we request that parties be permitted to file a request for SIJS findings on an ex parte basis (as permitted by Probate Code section 2250(f) for petitions for temporary guardianship), or request that the court waive notice of the request for SIJS findings for good cause (as permitted by Probate Code section 2250(e) for petitions for temporary guardianship).	
Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney	**Eliminate the requirement for separate notice of a hearing on an SIJS petition. In the alternative, specify that airmail is the correct method of mail delivery for purposes of mailed notice, and create a procedure for parents to waive notice of the hearing on the SIJS findings (Rule 7.1020(c)).** Subsection (c) would require that notice of a hearing on a request for SIJS findings be sent to the minor's parents and the persons listed in section 1460(b), in the manner and within the time provided in that section, subject to the provisions of subdivision (e) of that section and sections 1202 and 1460.1. Given that a request for SIJS findings may only be filed after a guardianship is already in place or concurrently with a guardianship petition, notice to all persons required by Section 1511 of the Probate Code will be completed or waived for good cause in every case in which SIJS findings are made. Separate notice of the hearing on a request for SIJS findings should not be required in light of the fact that notice of the underlying guardianship proceedings—the only petition which actually affects the parental rights to custody and care of their child—will have been provided or waived for good cause in every case, the petitions are frequently heard at the same hearing, and SIJS findings are simply factual findings that do not affect parental rights. Additionally, the petitions are frequently heard at the same hearing, and SIJS findings are simply a summary of	See the committee's response to Bet Tzedek's comment, above.

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Rule 7.1020. Special Immigrant Juvenile Predicate Findings in Guardianship Proceedings		
Commentator	**Comment**	**Committee Response**
	the factual findings that provided the basis for the guardianship and do not affect parental rights. Under California law, all determinations affecting child custody are guided by the standard of the best interest of the child, so in awarding custody of the child to an individual in the United States, the Court has already made a determination that it is not in the child's best interests to return to his or her home country. For these reasons, we urge a change in this rule to provide that separate notice of the SIJS petition is not required. However, should this provision remain, we ask for two clarifying changes. First, although we appreciate that pursuant to this Rule, notice may be provided by mail, it would be helpful for the Rule to cite to Section 1215 which states that airmail is the correct method of mail delivery for purposes of notice mailed abroad. We would also request that if service by mail is not practicable, that any other reasonable means of service which provides actual notice to the required parties be accepted. Legal Services for Children has found that many SIJS-eligible youth have family members who live in remote areas in other countries where regular mail service is not reliable. We have found that often, family members will receive more timely notice if we ask them to find a local store or internet cafe where we can send them the documents by fax or email, and families are often able to fax or email back a notice and acknowledgement of receipt or consent and waiver of notice. Finally, we request that a form be developed for waiver of notice of the hearing on the Petition for SIJS findings, similar to the GC-211 that is used for guardianship petitions. This will allow parents who may be willing to waive notice of the	The committee does not recommend the suggested change at this time. Rules 7.51 and 7.52 provide detailed guidance on acceptable methods of substituted service. The committee is also concerned that Probate Code section 1215, last amended in 1990 and first enacted in 1987, may not be current on international mailing requirements imposed by treaties, conventions, or changes in U.S. Postal Service mailing policies. Concerning other substitutes for mailing notices of hearing: the Probate Code currently specifies only mailing or personal service. The committee will soon be working on legislation that would modernize all mailing provisions of the Probate Code to permit electronic delivery in lieu of mailing or personal delivery. The committee will examine section 1215's international mailing provision as part of that project. The committee will consider developing a generic waiver of notice form, but suggests that a simple separate waiver of notice may be prepared for that purpose using the waiver language in form GC-211

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Rule 7.1020. Special Immigrant Juvenile Predicate Findings in Guardianship Proceedings		
Commentator	**Comment**	**Committee Response**
	hearing to submit such waiver to the court, which will save the attorney or pro se applicant significant time in not having to prepare notice by mail. ***Recommendation***: Eliminate the requirement for separate notice of a hearing on an SIJS Petition by deleting the current subsection (c) and replacing it with a statement that no separate notice is required for a hearing on the SIJS petition. In the alternative, specify that airmail is the correct method of mail delivery for purposes of mailed notice, pursuant to Section 1215, and create a procedure for parents to waive notice of the hearing on the SIJS findings.	modified to refer expressly to the hearing on the SIJS petition. Form GC-211 is designed for use only for waiver of notice of a petition for the appointment of a guardian. It is not suitable for waiver of notice of any other hearing because it also consents to the appointment of the guardian sought in the appointment petition.
Require hearing before denial of uncontested petition for SIJ findings		
Peggy J. Bristol	Add a provision indicating that in the event the court intends to deny an uncontested request for SIJS findings, a hearing must be held on the matter before the request is denied.	The committee does not recommend addressing this issue by amending the rules of court. Existing statutes and rules provide procedures for filing and adjudicating petitions and requests for orders. For example, sections 210–218 of the Family Code and rules 5.90–5.125 govern filing and processing of requests for orders in proceedings under the Family Code. When a petition is filed under the Probate Code, it is set for hearing before it is served. Petitioner or counsel must be present in court at the hearing. If notice is proper and no objection, written or oral, is raised before or at the hearing, the verified petition may be offered into evidence. If so offered, the court must receive it in evidence. (Prob. Code, § 1022). If the facts alleged in the unopposed petition are sufficient to support the relief requested, the petition will be granted without an additional hearing. That process constitutes the evidentiary hearing in an uncontested matter under the

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Rule 7.1020. Special Immigrant Juvenile Predicate Findings in Guardianship Proceedings		
Commentator	**Comment**	**Committee Response**
		Probate Code. (See Prob. Code, §§ 1041, 1043(a), (b).) If the facts alleged in an unopposed petition are not sufficient to support the relief requested or notice is defective, the probate court—before the hearing through the court's "probate notes" procedure—would require the filing of a supplement to the petition or completion and proof of service to provide the missing facts or establish proper notice. If there were a legal bar to the relief requested disclosed by the allegations of the petition, the petitioner would have an opportunity at the hearing to argue against denial of the petition and establish a clear record for appellate review of the court's action. Thus, in every guardianship case, there will be a hearing.
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc.	**Add a provision noting that the court must hold a hearing and take testimony if the court intends to deny a request for SIJS findings (Rule 7.1020(e)(5)).** Subsection (e)(5) would require that uncontested requests for findings be governed by Probate Code section 1022, meaning that the court would take the verified petition in evidence and decide whether to make the requested findings based on the facts and circumstances alleged therein. We appreciate the effort to simplify the procedure for requesting and obtaining SIJS findings. However, we are concerned that this provision leaves open the possibility that a court could deny a petition for SIJS findings without ever holding a hearing. This would be very problematic because it will deny the petitioner the opportunity to present live testimony and legal arguments prior to a court's denial, both incredibly important not only for the opportunity that they provide the court to hear additional evidence and answers to any of its questions, but also in the	See the committee's response to Peggy J. Bristol's comment, above.

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Rule 7.1020. Special Immigrant Juvenile Predicate Findings in Guardianship Proceedings		
Commentator	**Comment**	**Committee Response**
	event of an appeal. Again, we understand and appreciate the desire to streamline the process for requesting SIJS findings by allowing for a decision without a hearing in uncontested cases, but are deeply troubled by the possibility that a judge could deny a request without ever taking testimony on the matter or hearing legal arguments. Should this situation arise, it would compromise the petitioner's right to fully present his or her case. ***Recommendation***: Add a provision indicating that in the event the court intends to deny an uncontested request for SIJS findings, a hearing must be held on the matter before the request is denied. If this exception is not added to this provision, we recommend in the alternative that this subsection be stricken.	
Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney	**Add a provision noting that the court must hold a hearing and take testimony if the court intends to deny a request for SIJS findings (Rule 7.1020(e)(5)).** Subsection (e)(5) would require that uncontested requests for findings be governed by Probate Code section 1022, meaning that the court would take the verified petition in evidence and decide whether to make the requested findings based on the facts and circumstances alleged therein. We appreciate the effort to simplify the procedure for requesting and obtaining SIJS findings. However, we are concerned that this provision leaves open the possibility that a court could deny a petition for SIJS findings without ever holding a hearing. This would be very problematic because it will deny the petitioner the opportunity to present live testimony and legal arguments prior to a court's denial, both incredibly important not only for the opportunity that they provide the court to hear additional evidence and answers to any of its questions, but also in the	See the committee's response to Peggy J. Bristol's comment, above.

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Rule 7.1020. Special Immigrant Juvenile Predicate Findings in Guardianship Proceedings		
Commentator	**Comment**	**Committee Response**
	event of an appeal. In Legal Services for Children's SIJS practice over the past 24 years, we have encountered numerous occasions where a judge was initially inclined to deny an SIJS petition either due to a misunderstanding of the law or confusion regarding the facts which make the child eligible for SIJS. In these cases, we believe it is imperative to have an opportunity to provide legal argument and offer testimony of the child, guardian, social worker, or other relevant party to clarify these concerns. We understand and appreciate that in many cases, children are clearly eligible for SIJS and allowing the Court to make that finding based on the verified petition would be beneficial for the child, who would not have to miss school or endure the anxiety of another hearing, and for the administrative convenience of the Court. However, we do believe that if a Court does not believe the evidence set forth in the petition is sufficient to establish the child's eligibility for SIJS, the child should have the opportunity to provide testimony and further legal argument at a hearing. ***Recommendation***: Keep subsection (e)(5) but add a provision indicating that in the event the court intends to deny an uncontested request for SIJS findings, a hearing must be held on the matter before the request is denied. If this exception is not added to this provision, we recommend that this subsection be stricken.	
Miscellaneous comments on rule 7.1020		
Bet Tzedek Legal Services	**Eliminate Rule 7.1020(e)(4).**	The committee does not recommend the suggested

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Rule 7.1020. Special Immigrant Juvenile Predicate Findings in Guardianship Proceedings		
Commentator	**Comment**	**Committee Response**
	As discussed above, there is no statutory basis or legal precedent indicating that any person other than the child themselves has standing to assert a position to the court regarding the request for SIJ findings. Accordingly, we suggest eliminating the subsection (e)(4) of proposed Rule 7.1020.	change. All persons entitled to notice of proceedings under the Probate Code have the right to object. The rule and section 1460(b) prescribe the legally required notice.
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer	**Focus on the provision of appointed counsel rather than guardians ad litem (Rule 7.1020(b)(1)(B)).** Subsection (b)(1)(B) would provide that the court may appoint a guardian ad litem under Probate Code sections 1003 and 1003.5, or an attorney under Probate Code section 1470 to file a request for SIJS findings for a minor or to represent the interests of a minor in a proceeding to decide a request for SIJS filed on the minor's behalf by another. Given the provision of this section that allows for the appointment of an attorney under Probate Code section 1470 to file and present a request for SIJS findings or to represent the interests of a minor in a proceeding to decide a request filed on the minor's behalf by another, we find the need for a guardian ad litem to be alleviated. Appointed counsel is preferable because an attorney is better suited to help a child navigate the petitioning process and represent their interests in an adversarial setting. ***Recommendation***: Delete the reference to appointment of a guardian ad litem in Rule 7.1020(b)(1)(B) in the following manner (deletions in ~~strikethrough~~, additions <u>underlined</u>): (B) The court may appoint~~ a guardian ad litem under Probate Code sections 1003 and 1003.5 or~~ an attorney under Probate Code section 1470 to file and present a request for findings under this rule for a minor or to represent the interests of a minor in a proceeding to decide a request filed on the minor's	The committee has reversed the order of the two options in the rule.

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Rule 7.1020. Special Immigrant Juvenile Predicate Findings in Guardianship Proceedings		
Commentator	**Comment**	**Committee Response**
	behalf by another.	
State Bar of California Office of Legal Services Standing Committee on the Delivery of Legal Services Maria Livingston, Chair	The proposed rule 7.1020 should address what other basis under California law is acceptable if the case does not fall under the purview of abuse, neglect, or abandonment.	The committee does not recommend addressing this issue in a rule of court. Whether another basis for determining that reunification of a child with a parent is not legally viable is sufficiently similar to abuse, neglect, or abandonment is a substantive legal question appropriately left to the Legislature or the appellate courts to resolve.
Superior Court of Los Angeles County	The proposal (page 5) says that a verified petition can be filed concurrently with a petition for GAL or later, but Rule 7.1020 (b)(2)(B) only addresses when it is filed concurrently. Also, we suggest that the Rule address whether the petition should be handled as a petition within another case or if it creates a new case with a separate case number. If a separate case is opened, should it be ordered related or consolidated with any existing Family Law case? If it is filed within an existing case, it will be difficult to ensure the confidentiality of the proceedings.	The committee notes that the discussion at page 5 of the invitation to comment and rule 7.1020(b)(2)(B) address a petition for appointment of a guardian of the person, not a guardian ad litem (GAL). Rule 7.1020(b)(1)(B) addresses appointment of a guardian ad litem (GAL) to pursue SIJ findings on behalf of a proposed ward. That provision covers the only situation where a GAL may file a request for findings under the rule: at the time of or after his or her appointment. A GAL could not file such a request before appointment, so there is no reason to cover that situation in the rule. The committee is not expert on the matter of assigning new case numbers, but it does not perceive any reason that a petition for SIJ findings filed in a guardianship proceeding should not always bear the same case number as the underlying proceeding. Assignment of a different case number might frustrate the effect of the findings when the youth presents them to USCIS.
Superior Court of Sacramento County Tim Ainsworth, Executive Officer	"SIJ petition must be filed separately"—Good!	No response required.

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

Form FL-356—Request for Special Immigrant Juvenile Findings—Family Law[1]		
Commentator	**Comment**	**Committee Response**
Revise presentation of "similar basis under California law"		
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer	**Revise Number 8 on Page 2, Which Requests That the Petitioner List the Similar Basis Under California Law, and Choose Whether Reunification is Not Viable With the Petitioner, Respondent, or Other Parent.** In number 8 on page 2, the petitioner must select whether reunification is not viable because of abuse, neglect, abandonment, and/or a similar basis under California law. If the petitioner selects "A similar basis under California law," he or she is then tasked with specifying the similar basis. This will undoubtedly confuse petitioners, as it is unclear whether the petitioner is then supposed to list the facts in support of the similar basis under California law, the code provision supporting the similar basis, or some other information. This will be particularly confusing to pro se petitioners. Further, guidance from USCIS makes clear that if a court finds that reunification is not viable due to a similar basis under state law, the petitioner bears the burden of establishing to USCIS that such basis is similar to abandonment, abuse, or neglect. Accordingly, the most easily understood and helpful way of setting up this question on the Form would be for the petitioner to select whether the basis is similar to abandonment, abuse, or neglect. ***Recommendation***: Revise Number 8 to read (deletions in ~~strikethrough~~; additions underlined): Reunification of the child with ~~[] the petitioner [] the respondent [] the other parent~~ the [] mother [] father is not	The FJLAC does not recommend combining the "similar basis" language with the three bases specified in federal law. Eliminating the "similar basis" as a separate, 4th basis and combining it with the other bases could unnecessarily restrict the types of basis for nonviability of reunification that a party might assert or a court might deem sufficiently similar to make the finding. The committee does recommend using simpler language and has revised the form accordingly.

[1] Forms FL-356 and JV-356 were circulated for comment as FL-317 and JV-317. The numbers were revised to associate these request forms more closely with the findings form, FL-357/GC-224/JV-357. The numbers in the comments have been updated in brackets for ease of reference.

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Form FL-356—Request for Special Immigrant Juvenile Findings—Family Law[1]		
Commentator	**Comment**	**Committee Response**
	viable because of [] Abuse or a similar basis under California law [] Neglect or a similar basis under California law [] Abandonment or a similar basis under California law ~~[] A similar basis under California law (specify):~~	
Add an item to indicate that supporting documents may be and are attached		
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer	**Add a Box for "Other Documents Attached," Such That the Petitioner Can Note if There Are Additional Documents Attached to the Request.** There is currently no field on the Form where a petitioner can indicate whether there are additional documents attached to the FL-[356], beyond the specific attachments that are noted in numbers 10 and 11. However, some petitioners may wish to attach other documents to the FL-[356], such as a declaration, a Memorandum of Points and Authorities, or additional documentary evidence. We appreciate that the [form] is intended to simplify the SIJS request process and that in many cases, the child's eligibility for SIJS will be straightforward and additional evidence and/or legal arguments may be unnecessary. Nonetheless, eligibility is not straightforward in every case and it is important to make clear that petitioners may submit additional documentary evidence as well as legal arguments. ***Recommendation***: Add a box that states: "Additional Documents Attached (*specify*):" to allow petitioners to write in, for example, declaration of child, declaration of proposed guardian, Memorandum of Points and Authorities in Support of Petition for Special Immigrant Juvenile Predicate Findings, etc.	The committee agrees with the suggestion and has added item 12 to the form to allow the requesting party to indicate that supporting materials, such as declarations or memorandums of points and authorities, are attached.

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

Form FL-356—Request for Special Immigrant Juvenile Findings—Family Law[1]		
Commentator	**Comment**	**Committee Response**
Legal Aid Foundation of Los Angeles Ji-Lan Zang, Supporting Families Attorney	**Form FL-[356] Should Contain an Advisement Regarding Inclusions of Additional Declarations and Points and Authorities** As the proposal currently stands, Form FL-[356] makes no mention of additional declarations and points and authorities that may be necessary for making a SIJS finding. The proposed FL-[356] makes it seem as though no additional information beyond the form itself would be needed for the issuance of a SIJS order. In addition, Form FL-[356] presumably could only be completed by the parent, who may or not have personal knowledge of the facts and circumstances supporting certain SIJS findings. A child's declaration, however, could be a vital piece of evidence that the court needs in order to make a SIJS finding. In fact, SB 873 specifically states that evidence to support a SIJS finding, "may consist of, but is not limited to, a declaration by the child who is the subject of the petition." Furthermore, SIJS cases are still legally complex cases that involve both state and federal law, and the court may require legal briefing on the issues. Form FL-[356] should advise litigants that they may include additional declarations, including those of the child, and possibly also a memorandum of points and authorities to support the request for SIJS findings.	See the committee's response to the ILRC's comment, above. Nothing prohibits the attachment of the child's declaration or other documents to the request form. The committee will consider ways to clarify the process further when developing the formation form referred to above.
State Bar of California Executive Committee of the Family Law Section (FLEXCOM) Saul Bercovitch, Legislative Counsel	FLEXCOM believes that forms JV-[356] and FL-[356] should have a box indicating that additional forms can be attached. For example, a supporting declaration from the minor may be necessary in order to provide the facts necessary to support the predicate findings. Adding some type of indicator that such documents are acceptable should help avoid confusion among individuals petitioning the court.	See the committee's response to the ILRC's comment, above.

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Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form FL-356—Request for Special Immigrant Juvenile Findings—Family Law[1]		
Commentator	**Comment**	**Committee Response**
Revise reference to parents in item 8 to be consistent with other SIJ forms		
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer	With respect to the selection of whether reunification is not viable with the petitioner, respondent, or other parent, we suggest that these choices be deleted, and instead replaced with the selection of mother or father, to more closely track the proposed order. ***Recommendation***: Revise Number 8 to read (deletions in ~~strikethrough~~; additions underlined): Reunification of the child with ~~[] the petitioner [] the respondent [] the other parent~~ the [] mother [] father is not viable …	The committee agrees in part with this comment and has revised this item to request a finding that reunification is not legally viable with the child's mother, father, or other legal parent. This requires the addition of an item to the form to identify the child's parents. The committee has incorporated that as item 2 on the form.
State Bar of California Office of Legal Services Standing Committee on the Delivery of Legal Services Maria Livingston, Chair	FL-[356], No. 8, and JV-[356], No. 7, should reflect one another with the following choices for mother, father, or both parents rather than petitioner, respondent, or other parent. This makes it confusing and it would be clearer for immigration purposes if the choices reflect the INA SIJ definition.	The committee agrees in part with this comment and has revised this item to request a finding that reunification is not legally viable with the child's mother, father, or other legal parent. This requires the addition of an item to the form to identify the child's parents. The committee has incorporated that as item 2 on the form.
Clarify the proper context for filing a request for SIJ findings		
Legal Aid Foundation of Los Angeles Ji-Lan Zang, Supporting Families Attorney	**The Family Law Request Form Should be Styled as an Attachment to a Petition, a Response, or a Request for Order:** SPR15-28 states that the family law request form is "styled as attachment to a *Request for Order* (form FL-300)." However, a request for order is not the only manner in which a litigant could raise the request for SIJS findings. For example, a litigant could request SIJS orders as a part of the initial family law petition. Should the opposing party fail to respond, the matter could be set for a default trial. If the opposing party responds, then the matter could be set for a contest trial. Similarly, a respondent in a family law proceeding could also request SIJS	The committee agrees and intends that form FL-356 be attachable to a petition, response, request for order, or another appropriate filing. As circulated, the form itself offered these options. The committee regrets any confusion caused by the abbreviated characterization in the invitation to comment.

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Form FL-356—Request for Special Immigrant Juvenile Findings—Family Law[1]		
Commentator	**Comment**	**Committee Response**
	orders as part of the response to any family law proceeding. Litigants seeking SIJS orders should be encouraged to request such orders in a manner that is the most convenient or most efficient for that particular case. There is no reason to limit a request for SIJS order only to hearings as a result of a request for order, when SIJS issues could just as well be decided as a matter for trial. **SIJS Orders Cannot be Affirmatively Requested in a Responsive Declaration to Request for Order** Family Code Section 213 provides that in a hearing on an order to show cause, or on a modification thereof, or in a hearing on a motion, other than for contempt, the responding party may seek affirmative relief alternative to that requested by the moving party, on the same issues raised by the moving party, by filing a responsive declaration within the time set by statute or rules of court. There is no authority for the court to consider issues that were not raised in the initial request for order. Thus, if a request for SIJS orders was not raised in the moving papers for a hearing, the opposing party would not be able to raise it in the responsive declaration to request for order. Our recommendation is that the reference on FL-[356] to SIJS orders being raised in a responsive declaration to request for order should be deleted.	The committee does not recommend the suggested change. If custody or visitation are raised in a petition or request for order, then an alternative custody order may be requested in a responsive declaration and a request for SIJ findings, if appropriate, may be attached to the responsive declaration.
State Bar of California Office of Legal Services Standing Committee on the Delivery of Legal Services Maria Livingston, Chair	Proposed form FL-[356] might be better suited as a standalone petition or request for SIJS findings similar to Proposed Form JV-[356]—Request for Special Immigrant Juvenile Findings, and Proposed Form GC-220—Petition for Special Immigrant Juvenile Predicate Findings. The proposed format as an attachment can lead to confusion when attached to a Petition or Response. Thus, raising the following questions:	The committee designed form FL-356 as an attachment to allow its use throughout a case without triggering the need for a hearing or additional filing fee if none is required.

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Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form FL-356—Request for Special Immigrant Juvenile Findings—Family Law[1]		
Commentator	**Comment**	**Committee Response**
	1) At what point will the court render its findings?	1) The court would render its findings at different times depending on the procedure used to request them. For example, the court might enter them as part of a default judgment or at the time of trial if the form were attached to a petition. It might make them at or after a hearing if the form were attached to a request for order.
	2) Will the court set a hearing on its own motion when the attachment for request for SIJS findings is filed along with a petition or a response?	2) The committee will consider this issue in developing the rule of court, but there currently seems to be no reason to require a hearing if the request is filed with a petition and response. If the other party is properly served and does not respond, a default may be appropriate.
	3) Will the requesting party have to file a request for hearing to obtain predicate findings and orders from the court?	3) The committee will consider this issue in developing the rule of court, but there currently seems to be no reason to require a hearing if the request supplies sufficient basis for the court to determine the findings. It might be appropriate for a proposed order to be submitted if a default is possible.
Superior Court of Los Angeles County	1. Family Law Request FL-[356] – Just as the Guardianship and Juvenile requests are standalone forms, we believe the Family Law Request should be a standalone form as well, which would make it easier to manage the confidentiality requirements outlined in CCP 155(c).	1. The committee does not recommend the suggested change at this time. The committee designed form FL-356 as an attachment to allow its use throughout a case without triggering the need for a hearing or additional filing fee if none is required. If confidentiality is a concern, form FL-356 may be submitted separately from other requests for orders, under cover of a separate form FL-300. The committee will also consider this issue in developing the rule of court.
TCPJAC/CEAC Joint Rules Subcommittee	The JRS recommends that form FL-[356] be a stand-alone document. This would help staff deal with confidentiality.	The committee does not recommend the suggested change at this time. The committee designed form FL-

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Form FL-356—Request for Special Immigrant Juvenile Findings—Family Law[1]		
Commentator	**Comment**	**Committee Response**
		356 as an attachment to allow its use throughout a case without triggering the need for a hearing or additional filing fee if none is required. If confidentiality is a concern, form FL-356 may be submitted separately from other requests for orders, under cover of a separate form FL-300. The committee will also consider whether to incorporate clarification regarding confidentiality and the process for filing form FL-356 into a family law rule of court.
Miscellaneous comments on form FL-356		
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer	**Add an Additional Signature Line in the Event That the Signature of the Guardian ad Litem is Required.** In cases where a child is self-petitioning for custody orders, the appointment of a guardian ad litem may be required. In those cases, the court may then require that the guardian ad litem co-sign forms with the minor. Accordingly, we suggest the addition of an optional signature line for a guardian ad litem, should one be appointed in the case. ***Recommendation***: Add an additional signature line for use by the guardian ad litem, should one be appointed in the case. **Add a Clarifying Note to the FL-[356] That Indicates That the Attachment of the FL-[356] Does Not Itself Trigger a Hearing.** Given that the FL-[356] may be submitted as an attachment to the Petition, Response, Request for Order, Responsive Declaration to Request for Order, or Other, some of which trigger hearings and some of which do not, we believe that to best avoid confusion about whether the attachment of the FL-[356] itself triggers a hearing, a clarifying note should be included, either on the FL-[356] itself, or in an informational	The committee does not recommend the suggested change. If the court appoints a guardian ad litem for the child, the GAL has the authority to sign the form if the request is filed on the child's behalf. The child's signature is not required. If the GAL submits the child's declaration in support of the request, though, the child would need to sign the declaration. The committee will consider this issue in developing the rule of court, but there currently seems to be no reason to require a hearing if the request is filed with a petition and response. If the other party is properly served and does not respond, a default may be appropriate.

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Form FL-356—Request for Special Immigrant Juvenile Findings—Family Law[1]		
Commentator	**Comment**	**Committee Response**
	sheet that accompanies the Form. ***Recommendation***: Add a clarifying note to the FL-[356] or to an informational sheet for the FL-[356] that makes clear that the attachment of the FL-[356] itself does not trigger a hearing.	
State Bar of California Office of Legal Services Standing Committee on the Delivery of Legal Services Maria Livingston, Chair	Also, it is suggested that item 3 a–f, of the proposed form FL-[356], be revised so that it specifies that both types of custody, legal and physical, are requested in the respective petitions itemized on the form. Therefore, item 3 a–f should be changed from: "…asking for sole custody", to: "…., asking for sole legal and sole physical custody." This is consistent with the requirements for SIJS findings. Further, it is suggested that adopted informational forms be written in simple standard English. FL-[356], No. 9, and JV-[356], No. 8, suggested edit: "It is not in the best interest of the child to be returned to the child's or parent's previous country of nationality or country of last habitual residence."	The committee agrees in part and has revised item 3 to specify that the listed petitions sought sole *physical* custody. If granted, sole physical custody with one parent would be sufficient to sustain a finding that reunification with any other parent is not legally viable. The committee agrees and intends to draft any proposed informational forms using plain-language principles. The committee agrees and has incorporated the suggested language into both forms.
Superior Court of Los Angeles County	FL-[356], item #3 – The form requires entry of the court and case number, but there is no room to insert the information. FL-[356], item #6 – This language is very confusing for a litigant, particularly for an immigrant who may have limited English proficiency.	The committee agrees and has added space to insert the information. The committee acknowledges that the language is complex, and has revised former item 6 (now 8) to clarify it. The committee will consider additional ways to present this information in developing an informational form. The committee also anticipates that this form will be translated into Spanish, thereby assisting a native Spanish speaker.
Superior Court of Orange County Family Law and Juvenile Court	• Item #5 substitute "appointed" with "ordered."	• The committee does not recommend the suggested change. "Appointed" mirrors the language of the

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Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form FL-356—Request for Special Immigrant Juvenile Findings—Family Law[1]		
Commentator	**Comment**	**Committee Response**
Operations Managers	• Item #6 remove wording within parenthesis "that is, return of the child to the custody of" to avoid confusion. • Item #7 remove reference to parent – should read, "…placed in the custody of (name)." In this same paragraph substitute "appointed" with "ordered." • Item #8 remove reference to attachment 7, as this number may change if there are multiple children. Instead add, "Continued on Attachment_____."	federal requirement. • The committee agrees that the circulated language was confusing and has revised the item to clarify it. • The committee agrees with the suggestion and has revised the form accordingly. • The committee does not recommend the suggested change. A separate request should be filed for each child seeking SIJ findings, so the form never needs to refer to multiple children. The committee has, however, updated the attachment number to match the item number.
Superior Court of Sacramento County Tim Ainsworth, Executive Officer	"4. [ ] The case in 3 is pending. [ ] An order about sole child custody was made on *(date):* *(Attach a copy of the order.)"* Suggestion is to reverse the order of the items.	The committee agrees and has reversed the order of these items.

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Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form GC-220—Petition for Special Immigrant Juvenile Predicate Findings		
Commentator	**Comment**	**Committee Response**
	Clarify that Attachments Are Permitted	
Bet Tzedek Legal Services Erikson Albrecht, Kinship Attorney	[T]he use of the format chosen for proposed form GC-220 presupposes that the petitioner understands the importance of linking specific facts to specific legal conclusions. In contrast, the ability to file a declaration would allow a petitioner to present information in a manner much more likely to elicit material facts and obviate denials based upon poorly presented facts rather than insufficient merit. Declarations are substantially more beneficial for a court charged with adjudicating a request for SIJS findings. In cases where the petitioner is proceeding in propria persona, a declaration provides a fuller recitation of facts such that the judicial officer may identify determinative facts that the petitioner may not; in cases where the petitioner is represented by counsel, a declaration provides the attorney with concise statements which may be articulated, cited to, and utilized in the application of the law to the specifics of the case. The adoption of a mandatory form may provide uniformity for court personnel; however, the proposed form is not designed to elicit evidence in the manner most useful for proper court review, currently used by such petitioners throughout the state, and arguably anticipated by the legislature, i.e., declarations. Finally, an individual seeking SIJS status may need to attach one or more declarations to the petition in order to ensure that their request for SIJS status, subject to USCIS official scrutiny, demonstrates that sufficient evidence was included in support of the request for findings in the state court. Accordingly, we suggest the elimination of current Items 5	The PMHAC intends the rule and form to guide a litigant or attorney in presenting the facts in a way that links them to the issues to which they are relevant and material. This manner of presentation assumes little knowledge of the legal process and is intended to assist the petitioner in focusing attention on the facts related to each requested finding and supporting any inferences needed to make that finding. The committee intends, and prefers, that all facts be stated in the petition itself. As noted in the committee's response to the comments on rule 7.1020, however, nothing in the rule or form precludes the petitioner from attaching one or more declarations to the petition.

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Form GC-220—Petition for Special Immigrant Juvenile Predicate Findings		
Commentator	**Comment**	**Committee Response**
	and 6 from the proposed form GC-220 and the addition of a line item and box to the proposed form GC-220 indicating the existence of attached supporting declaration(s).	The committee recommends neither the suggested elimination of items 5 and 6 nor the suggested addition of a new item to indicate that supporting declarations are attached. There is no reason to have such a field in the body of the petition. A page inserted after the signature page can be added to identify any other documents attached to the petition, such as points and authorities or additional declarations.
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer	**Add a Box for "Other Documents Attached," Such That the Petitioner Can Note if There Are Additional Documents Attached to the Petition.** Same comment as [submitted with respect to form FL-[356], above at page 44]. ***Recommendation***: Add a box that states: "Additional Documents Attached (*specify*):" to allow petitioners to write in, for example, declaration of child, declaration of proposed guardian, Memorandum of Points and Authorities in Support of Petition for Special Immigrant Juvenile Predicate Findings, etc.	See the committee's response to Bet Tzedek's comment, above.
Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney	**Add a Box for "Other Documents Attached," Such That the Petitioner Can Note if There Are Additional Documents Attached to the Petition.** There is currently no field on the Form where a petitioner can indicate whether there are additional documents attached to the GC-220, beyond the specific attachments that are noted in numbers 5 and 6. However, some petitioners may wish to attach other documents to the GC-220, such as a declaration, a Memorandum of Points and Authorities, or additional documentary evidence. We appreciate that the verified petition is intended to simplify the petitioning process and that in many cases, the child's eligibility for SIJS will be straightforward and additional evidence and/or legal arguments may be	See the committee's response to Bet Tzedek's comment, above.

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Form GC-220—Petition for Special Immigrant Juvenile Predicate Findings		
Commentator	**Comment**	**Committee Response**
	unnecessary. Nonetheless, eligibility is not straightforward in every case and it is important to make clear that petitioners may submit additional documentary evidence as well as legal arguments. ***Recommendation***: Add a box that states: "Additional Documents Attached (*specify*):" to allow petitioners to write in, for example, declaration of child, declaration of proposed guardian, Memorandum of Points and Authorities in Support of Petition for Special Immigrant Juvenile Predicate Findings, etc.	
Revise item 5's presentation of a "similar basis under California law"		
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer	**Revise Number 5 on Page 2, Which Requests That the Petitioner List the Similar Basis Under California Law.** In number 5 on page 2, the petitioner must select whether reunification is not viable because of abuse, neglect, abandonment, and/or a similar basis under California law. If the petitioner selects "A similar basis under California law," he or she is then tasked with specifying the similar basis. This will undoubtedly confuse petitioners, as it is unclear whether the petitioner is then supposed to list the facts in support of the similar basis under California law, the code provision supporting the similar basis, or some other information. This will be particularly confusing to pro se petitioners. Further, guidance from USCIS makes clear that if a court finds that reunification is not viable due to a similar basis under state law, the petitioner bears the burden of establishing to USCIS that such basis is similar to abandonment, abuse, or neglect. Accordingly, the most easily understood and helpful way of setting up this question on the Form would be for the petitioner to select whether the basis is similar to abandonment, abuse, or neglect.	The committee does not recommend the suggested change. It anticipates that self-represented California petitioners will be able to use "abuse, neglect, or abandonment" in almost every case, and that counsel desiring to use "similar basis under California law" will know that "similar basis" must mean a basis *similar to one of those three terms*, and will know the language to insert from an appellate decision, statute, or regulation. And, in the absence of legislative or appellate guidance, the committee has no grounds for specifying additional bases similar to abuse, neglect, or abandonment.

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Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form GC-220—Petition for Special Immigrant Juvenile Predicate Findings		
Commentator	**Comment**	**Committee Response**
	Recommendation: Revise Number 5 to read (deletions in ~~strikethrough~~; additions underlined): Reunification of the minor… [] Abuse or a similar basis under California law [] Neglect or a similar basis under California law [] Abandonment or a similar basis under California law ~~[] A similar basis under California law (specify):~~	
Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney	**Revise Number 5 on Page 2, Which Requests That the Petitioner List the Similar Basis Under California Law.** In number 5 on page 2, the petitioner must select whether reunification is not viable because of abuse, neglect, abandonment, and/or a similar basis under California law. If the petitioner selects "A similar basis under California law," he or she is then tasked with specifying the similar basis. Guidance from USCIS makes clear that if a court finds that reunification is not viable due to a similar basis under state law, the petitioner bears the burden of establishing to USCIS that such basis is similar to abandonment, abuse, or neglect. Accordingly, the most easily understood and helpful way of setting up this question on the Form would be for the petitioner to select whether the basis is similar to abandonment, abuse, or neglect. ***Recommendation***: Revise Number 5 to read (deletions in ~~strikethrough~~; additions underlined): Reunification of the minor… [] Abuse or a similar basis under California law [] Neglect or a similar basis under California law [] Abandonment or a similar basis under California law	See the committee's response to the ILRC's comment, above.

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Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form GC-220—Petition for Special Immigrant Juvenile Predicate Findings		
Commentator	**Comment**	**Committee Response**
	~~☐ A similar basis under California law (specify):~~	
Superior Court of Sacramento County Tim Ainsworth, Executive Officer	Item 5 ☐ A similar basis under California law *(specify):* What does this include? Why not use "other"? This language is confusing to SRL's and will result in being left blank instead of the desired factual statement.	See the committee's response to the ILRC's comment, above.
Reduce Blank Space on Form GC-220		
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer	**Revise the Layout of the Form to Provide a More Appropriate Amount of Space for Facts.** We recommend reducing the amount of space that has been allocated for facts in support of the best interests finding (number 6 on page 3). In particular, we suggest condensing pages 3 and 4 of the Form, as we believe that a half-page is sufficient in most cases to list the facts in support of the best interests finding, and additional facts can always be stated on an Attachment to the Petition using MC-25. The proposed Form FL-[356] reflects what we believe is the more appropriate amount of space for the facts in support of this finding. ***Recommendation***: Combine pages 3 and 4 to eliminate unnecessary space for facts on both pages.	The committee respectfully declines to recommend this change. The amount of space saved would be minimal, at best. The larger amount of space is desirable because it encourages a showing of all facts available, not just a conclusory paragraph buttressed perhaps by declarations of others. This commentator and others appear to suggest the latter option, but the committee has concluded that the preferred method is to allege as many facts as possible in the petition itself. Moreover, the more space available in the petition, the less often will resort to attached additional pages be necessary.

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Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form GC-220—Petition for Special Immigrant Juvenile Predicate Findings		
Commentator	**Comment**	**Committee Response**
Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney	**Revise the Layout of the Form to Provide a More Appropriate Amount of Space for Facts.** We recommend reducing the amount of space that has been allocated for facts in support of the best interests finding (number 6 on page 3). In particular, we suggest condensing pages 3 and 4 of the Form, as we believe that a half-page is sufficient in most cases to list the facts in support of the best interests finding, and additional facts can always be stated on an Attachment to the Petition using MC-25. The proposed Form FL-[356] reflects what we believe is the more appropriate amount of space for the facts in support of this finding. ***Recommendation***: Combine pages 3 and 4 to eliminate unnecessary space for facts on both pages.	See the committee's response to the ILRC's comment, above.
Miscellaneous Comments on Form GC-220		
Los Angeles County Counsel's Office Dawyn Harrison, Assistant County Counsel	Agree with the suggested changes if amended to add a space to form GC-220, section 2, to indicate the child's date of birth.	The committee does not recommend the suggested change. The minor's date of birth is not necessary on this form and is not part of the proof required in the SIJ findings proceeding. Under current law, the ward of a probate guardianship must be under 18 years of age. The ward's date of birth is prominently displayed in the *Petition for Appointment of Guardian of the Person* (form GC-210(P)); or the *Guardianship Petition—Child Information Attachment* (form GC-210(CA)), filed with the *Petition for Appointment of Guardian of Minor* (form GC-210).
State Bar of California Office of Legal Services Standing Committee on the Delivery of Legal Services Maria Livingston, Chair	GC-220 is important because the availability of legal resources for representation is limited in these types of proceedings, leaving many SIJS eligible minors navigating the process without legal representation. Specific comment: p. 14 (GC-220) form should not assume places of birth and country of nationality are related.	No response required. The committee agrees in part with this suggestion. The committee has modified its recommendation to simplify

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Form GC-220—Petition for Special Immigrant Juvenile Predicate Findings		
Commentator	**Comment**	**Committee Response**
	2. (Name of Minor): * Was born in (country): ~~and is a national of that country.~~	the item by deleting the reference to the child's country of birth. Only the country of nationality is relevant to the SIJ findings.
Superior Court of Sacramento County Tim Ainsworth, Executive Officer	Petitions have fees. Is there intent to impose another petition fee? If so, it should be stated.	The committee does not intend the proposed rules and forms to impose a fee separate from or in addition to those established by statute. See also the committee's response to comment on filing fees submitted in reference to rule 7.1020, above.

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Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form JV-356—Request for Special Immigrant Juvenile Predicate Findings—Juvenile		
Commentator	**Comment**	**Committee Response**
Delete or clarify references to "other parent" in items 2 and 7		
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer	**Delete the "Other Parent" Boxes in Number 2 on Page 1, as Well as Number 7 on Page 2.** As proposed, the meaning of the "Other Parent" boxes in number 2 on page 1 is unclear, for example, whether "Other Parent" refers to a same sex partner, stepparent, putative parent, or some other individual. As presently drafted, this promises to confuse petitioners. Further, these boxes do not serve a clear purpose. Accordingly, we recommend deletion of these boxes. ***Recommendation***: Delete the "Other Parent" boxes in number 2 on page 1, as well as number 7 on page 2.	The committee recommends retaining an option for a third parent, identified as "other legal parent." Under California law, a child may have more than two parents. (See Fam. Code, § 7601(c), (d).) Furthermore, those parents may all be the same sex; some may not identify as a specific sex. The committee intends the format of items 2 and 7 to allow the identification of the parents no matter their number or identified sex.
Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney	**Clarify the "Other Parent" Boxes in Number 2 on Page 1, as Well as Number 7 on Page 2.** As proposed, the meaning of the "Other Parent" boxes in number 2 on page 1 is unclear, for example, whether "Other Parent" refers to a same sex partner, stepparent, putative parent, or some other individual. As presently drafted, this might confuse petitioners. [We recommend that the council reword the text to say:] "Other legal parent, as defined by State law *(specify)*" ***Recommendation:*** Reword the "Other Parent" boxes in number 2 on page 1, as well as number 7 on page 2 to say "Other legal parent, as defined by State law *(specify)*"	See the committee's response to the ILRC's comment, above.
State Bar of California Office of Legal Services Standing Committee on the Delivery of Legal Services Maria Livingston, Chair	FL-[356], No. 8, and JV-[356], No. 7, should reflect one another with the following choices for mother, father, or both parents rather than petitioner, respondent, or other parent. This makes it confusing and it would be clearer for immigration purposes if the choices reflect the INA SIJ definition.	See the committee's response to the ILRC's comment, above.

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Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form JV-356—Request for Special Immigrant Juvenile Predicate Findings—Juvenile		
Commentator	**Comment**	**Committee Response**
Insert space to indicate other bases for juvenile court jurisdiction		
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer	**Add an "Other" box to the options in number 3 on page 1.** We are concerned that the boxes for section [] 300 and [] 602 do not cover all of the potential sections under which a youth may be subject to the court's jurisdiction and eligible for SIJS findings. For example, youth who are subject to the court's transition jurisdiction under Section 450 of the Welfare & Institutions Code as nonminor dependents also meet the eligibility requirements for Special Immigrant Juvenile Status, but this form is not set up to accommodate their situation. Additionally, dual-jurisdiction youth may also be eligible for SIJS, but the proposed Form does not appear to contemplate their inclusion. Accordingly, we suggest that an "other" box be added to number 3 on page 1. ***Recommendation***: Make the following changes to Number 3 (deletions in ~~strikethrough~~; additions underlined): The court found that the child was described by section [] 300 [] 602 [] other (specify):___ and assumed jurisdiction over the child on…	The committee agrees to add a third box to item 3 to indicate other possible bases for the juvenile court's assumption of jurisdiction.
Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney	**Add an "Other" box to the options in number 3 on page 1.** We are concerned that the boxes for section [] 300 and [] 602 do not cover all of the potential sections under which a youth may be subject to the court's jurisdiction and eligible for SIJS findings. For example, youth who are subject to the court's transition jurisdiction under Section 450 of the Welfare & Institutions Code as nonminor dependents also meet the eligibility requirements for Special Immigrant Juvenile Status, but this form is not set up to accommodate their	See the committee's response to the ILRC's comment, above.

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Form JV-356—Request for Special Immigrant Juvenile Predicate Findings—Juvenile		
Commentator	**Comment**	**Committee Response**
	situation. Additionally, dual-jurisdiction youth under Welfare and Institutions Code 725 may also be eligible for SIJS, but the proposed Form does not appear to contemplate their inclusion. Accordingly, we suggest that an "other" box be added to number 3 on page 1. ***Recommendation***: Make the following changes to Number 3 (deletions in ~~strikethrough~~; additions underlined): The court found that the child was described by section [] 300 [] 602 [] other *(specify):* ___ and assumed jurisdiction over the child on…	
Eliminate requirement that the underlying juvenile court findings or orders be attached to request		
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer	**Delete the Requirement in Number 3 That the Petitioner Must Attach a Copy of the Court's Jurisdictional Findings.** Given that juvenile records are confidential under California law, it would be very onerous to require the petitioner to attach a copy of the court's jurisdictional findings. If required, in many cases the child or his or her immigration attorney would have to petition the court for access to a copy of the court's jurisdictional findings through the JV-570 petitioning process (since the immigration attorney would not otherwise have access to the documents, and the child's appointed state court attorney may not be comfortable filing the SIJS request). This process can often take a long time, and it would delay the filing of the SIJS request with the court. This is of particular concern if the child is close to aging out of court jurisdiction. This requirement seems particularly burdensome and unnecessary when the court already has access to this document in its own files.	The committee agrees to delete the direction to attach a copy of the jurisdictional findings from item 3. Although the requesting party is advised to give the court as much information as possible to promote the fair and efficient determination of its request, the date of the jurisdictional findings is sufficient to enable the court to locate the relevant documents in its file. The committee takes no position on whether the child's immigration attorney might be permitted access to a child's juvenile court records without a court order under section 827(a)(1).

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Form JV-356—Request for Special Immigrant Juvenile Predicate Findings—Juvenile		
Commentator	**Comment**	**Committee Response**
	Recommendation: Delete the requirement in number 3 that the petitioner must attach a copy of the court's jurisdictional findings. **If Numbers 4 & 5 Are Included in the Form, Delete the Requirements in Numbers 4 & 5 That the Petitioner Must Attach a Copy of the Underlying Juvenile Court Orders.** Given that juvenile records are confidential under California law, it would be very onerous to require the petitioner to attach a copy of the underlying juvenile court orders. If required, the child or his or her immigration attorney would have to petition the court for access to a copy of the underlying juvenile court orders through the JV-570 petitioning process. This seems particularly burdensome and unnecessary when the court already has access to these orders in its own files. ***Recommendation***: Delete the requirements in numbers 4 and 5 that the petitioner must attach a copy of the underlying juvenile court order(s).	The committee agrees to delete the direction to attach copies of the applicable orders from items 4 and 5. Although the requesting party is advised to give the court as much information as possible to promote the fair and efficient determination of its request, the date of the jurisdictional findings is sufficient to enable the court to locate the relevant documents in its file. The committee takes no position on whether the child's immigration attorney might be permitted access to a child's juvenile court records without a court order under section 827(a)(1).
Legal Advocates for Children and Youth Neha Marathe, Senior Attorney	LACY supports ILRC's comments to the proposed Form JV-[356]. Every effort must be made to protect the statutorily mandated confidentiality of juveniles, as required by Welfare and Institutions Code section 827 and Code of Civil Procedure section 155. Requiring minors to attach the juvenile court's jurisdictional findings and/or order would violate provisions of these sections and is unnecessary because the court has access to its own files. Welfare & Institutions Code section 827 requires the filing of a petition to release these records, which could delay and ultimately deter the SIJS findings.	See the committee's response to the ILRC's comment, above.
Legal Services for Children	**Delete the Requirement in Number 3 That the Petitioner**	See the committee's response to the ILRC's comment,

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Form JV-356—Request for Special Immigrant Juvenile Predicate Findings—Juvenile		
Commentator	**Comment**	**Committee Response**
San Francisco Hayley Upshaw, Senior Staff Attorney	**Must Attach a Copy of the Court's Jurisdictional Findings.** Given that juvenile records are confidential under California law, it would be very onerous to require the petitioner to attach a copy of the court's jurisdictional findings. In dependency matters, the court-appointed counsel for the minor may be uncomfortable or unable to represent the child in the immigration petition before USCIS, and the child may instead be represented by outside immigration counsel, who would have to petition the court for access to a copy of the court's jurisdictional findings through the JV-570 petitioning process. This process can often take a long time, and it would delay the filing of the SIJS request with the court. This is of particular concern if the child is close to aging out of court jurisdiction. This requirement seems particularly burdensome and unnecessary when the Court already has access to this document in its own files. ***Recommendation***: Delete the requirement in number 3 that the petitioner must attach a copy of the court's jurisdictional findings. **If Numbers 4 & 5 Are Included in the Form, Delete the Requirements in Numbers 4 & 5 That the Petitioner Must Attach a Copy of the Underlying Juvenile Court Orders.** Given that juvenile records are confidential under California law, it would be very onerous to require the petitioner to attach a copy of the underlying juvenile court orders. If required, the child or his or her immigration attorney would have to petition the court for access to a copy of the underlying juvenile court orders through the JV-570 petitioning process. This seems particularly burdensome and	above.

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Form JV-356—Request for Special Immigrant Juvenile Predicate Findings—Juvenile		
Commentator	**Comment**	**Committee Response**
	unnecessary when the court already has access to these orders in its own files. ***Recommendation***: If items 4 and 5 are included in the JV-[356], delete the requirements that the petitioner must attach a copy of the underlying juvenile court order(s).	
State Bar of California Executive Committee of the Family Law Section (FLEXCOM) Saul Bercovitch, Legislative Counsel	Should the form maintain, in any fashion, paragraphs 4 and 5, FLEXCOM recommends deleting the requirements that Petitioner attach certain documents to the JV-[356] form. This same request applies to the requirement in paragraph 3 that Petitioner attach a copy of the jurisdictional findings. It is rare in a juvenile case that a party is required to attach specific orders to requests for relief. As noted above, the court has easy access to these findings and orders. Further, immigration attorneys that might assist a minor in preparing the JV-[356] will not have access to the requested documents.	See the committee's response to the ILRC's comment, above.
Delete or revise items 4 and 5 because they are underinclusive		
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer	**Delete Numbers 4 & 5, Which Ask for Information Already Available to the Juvenile Court, and Which do Not Accommodate the Situations of All Youth, in Particular, Nonminor Dependents.** We are concerned that the boxes set forth in numbers 4 and 5 do not cover the universe of all possible factual scenarios that children who are eligible for SIJS may fit into. For example, these provisions do not seem to accommodate nonminor dependents, nor would they work for orphans who are dependent upon the court, or 602 wards who are ordered home on probation. Further, the information requested in numbers 4 and 5 is all available to the court in its own files, and therefore much easier for the court to access than an outside attorney or pro se petitioner. Accordingly, we suggest that these boxes be eliminated.	The committee recommends retaining items 4 and 5. These items are intended to solicit information relevant to establishing a basis for the requested findings. Item 4 asks the requesting party to identify the court order that supplies the basis for the first SIJ finding. By using the language required for that finding, the committee intends to cover all possible legal bases for it. Item 5 asks the requesting party to specify the legal bases for the first part of the second finding, i.e., that reunification with one or both parents is not legally viable. A court order removing custody of the child from a parent, denying or terminating reunification services, appointing a guardian, and terminating parental rights may be a sufficient basis for determining that reunification is not legally viable. These items remind the requesting party to identify the

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Form JV-356—Request for Special Immigrant Juvenile Predicate Findings—Juvenile		
Commentator	**Comment**	**Committee Response**
	Recommendation: Delete Numbers 4 and 5 on page 1. **If Number 5 is Included in the Form, Add a Box to Number 5 to Cover the Situation Where a Child Has Been Ordered Home on Probation With One Parent, and Add an "Other" Box to Accommodate Nonminor Dependents.** If Number 5 is included in Form JV-[356], we strongly suggest the addition of a box to cover the situation where a child has been ordered home on probation with one parent. As was the case in the *In re Israel O.* decision, where a child has been ordered home on probation with one parent, he or she also satisfies the requirement of having been "committed to, or placed under the custody of," a state agency or department or other court-appointed individual or entity. Accordingly, a box should be added to the list of selections in number 5 which accommodates this factual scenario. Further, we suggest the addition of an "other" box to number 5 to allow for the inclusion of nonminor dependents and other nontraditional situations. ***Recommendation***: Make the following changes to Number 5 (deletions in ~~strikethrough~~; additions <u>underlined</u>): 5. The court (check all that apply): [] ordered the child removed from the custody of (name(s) of parent(s)):… … <u>[] ordered the child home on probation with one parent: [] mother [] father [] other (specify):</u>	specific judicial actions it is relying on and direct the court to the relevant findings and orders. The committee does not recommend adding either suggested box to item 5, which is intended to indicate grounds for finding that reunification with one or both parents is not legally viable. While the juvenile court retains jurisdiction, an order placing the child with one parent, whether on probation or not, has no bearing on whether the child may be reunified with another parent. With respect to a nonminor dependent, the form already solicits sufficient information in items 3—that the court took jurisdiction when the youth was a child and currently has jurisdiction—and 5—that the nonminor dependent was removed from parental custody and may not currently reunify—to provide sufficient legal basis for a finding that reunification is not viable.
Legal Advocates for Children and	[P]roposed form JV-[356] (numbers 4 & 5 on page 1) does	See the committee's response to the ILRC's comment,

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Form JV-356—Request for Special Immigrant Juvenile Predicate Findings—Juvenile		
Commentator	**Comment**	**Committee Response**
Youth Neha Marathe, Senior Attorney	not reflect the scope of juveniles eligible for SIJS, including nonminor dependents (Welf. & Inst. Code § 450), dual-status youth (Welf. & Inst. Code §241.1) or wards ordered home on probation with one parent (Welf. & Inst. Code § 602).	above.
Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney	**Delete Numbers 4 & 5, Which Ask for Information Already Available to the Juvenile Court, and Which do Not Accommodate the Situations of All Youth, in Particular, Nonminor Dependents.** We are concerned that the boxes set forth in numbers 4 and 5 do not cover the universe of all possible factual scenarios that children who are eligible for SIJS may fit into. For example, these provisions do not seem to accommodate nonminor dependents, nor would they work for orphans who are dependent upon the court, or 602 wards who are ordered home on probation. Further, the information requested in numbers 4 and 5 is all available to the court in its own files, and therefore much easier for the court to access than an outside attorney or pro se petitioner. Accordingly, we suggest that these boxes be eliminated. ***Recommendation***: Delete Numbers 4 and 5 on page 1.	See the committee's response to the ILRC's comment, above.
	If Number 5 is Included in the Form, Add a Box to Number 5 to Cover the Situation Where a Child Has Been Ordered Home on Probation With One Parent, and Add an "Other" Box to Accommodate Nonminor Dependents. If Number 5 is not removed from Form JV-[356], we strongly suggest the addition of a box to cover the situation where a child has been ordered home on probation with one parent. As was the case in the *In re Israel O.* decision, where a child has been ordered home on probation with one parent, he or she also satisfies the requirement of having been	See the committee's response to the ILRC's comment, above.

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Form JV-356—Request for Special Immigrant Juvenile Predicate Findings—Juvenile		
Commentator	**Comment**	**Committee Response**
	"committed to, or placed under the custody of," a state agency or department or other court-appointed individual or entity. Accordingly, a box should be added to the list of selections in number 5 which accommodates this factual scenario. Further, we suggest the addition of an "other" box to number 5 to allow for the inclusion of nonminor dependents and other nontraditional situations. ***Recommendation***: Make the following changes to Number 5 (deletions in ~~strikethrough~~; additions underlined): 5. The court (check all that apply): [] ordered the child removed from the custody of (name(s) of parent(s)):… … [] ordered the child home on probation with one parent: [] mother [] father [] other (specify):	
State Bar of California Executive Committee of the Family Law Section (FLEXCOM) Saul Bercovitch, Legislative Counsel	FLEXCOM recommends the deletion of proposed paragraphs 4 and 5 of the JV-[356]. Petitioners can include the requested information when citing facts in support of the findings requested in paragraphs 6 and 7. Additionally, paragraphs 4 and 5 call for information the court will readily have at its disposal or can easily ask the Petitioner to verify orally at a hearing. Lastly, these paragraphs call for certain items of information that are not relevant to the SIJS findings. For example, a Petitioner seeking the findings does not need to establish termination of parental rights. Nor would a petitioner in juvenile court request such findings after the finalization of an adoption, due to the termination of the court's jurisdiction.	See the committee's response to the ILRC's comment, above. In addition, the committee agrees to delete the solicitation of a reference to final adoption orders.

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Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form JV-356—Request for Special Immigrant Juvenile Predicate Findings—Juvenile		
Commentator	**Comment**	**Committee Response**
Add an item to indicate that supporting documents may be and are attached		
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer	**Add a Box for "Other Documents Attached," Such That the Petitioner Can Note if There Are Additional Documents Attached to the Request.** Same comment as [submitted with respect to form FL-[356], above at page 44]. ***Recommendation***: Add a box that states "Additional Documents Attached (*specify*):" to allow petitioners to write in, for example, declaration of child, declaration of proposed guardian, Memorandum of Points and Authorities in Support of Petition for Special Immigrant Juvenile Predicate Findings, etc.	The committee agrees with the suggestion and has added item 9 to the form to allow the requesting party to indicate that supporting materials, such as declarations or memorandums of points and authorities, are attached.
Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney	**Add a Box for "Other Documents Attached," Such That the Petitioner Can Note if There Are Additional Documents Attached to the Request.** Same comment as [submitted with respect to form FL-[356], above at page 44]. ***Recommendation***: Add a box that states "Additional Documents Attached (*specify*):" to allow petitioners to write in, for example, declaration of child, declaration of proposed guardian, Memorandum of Points and Authorities in Support of Petition for Special Immigrant Juvenile Predicate Findings, etc.	See the committee's response to the ILRC's comment, above.
State Bar of California Executive Committee of the Family Law Section (FLEXCOM) Saul Bercovitch, Legislative Counsel	FLEXCOM believes that forms JV-[356] and FL-[356] should have a box indicating that additional forms can be attached. For example, a supporting declaration from the minor may be necessary in order to provide the facts necessary to support the predicate findings. Adding some type of indicator that such documents are acceptable should help avoid confusion among individuals petitioning the court.	See the committee's response to the ILRC's comment, above.

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Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form JV-356—Request for Special Immigrant Juvenile Predicate Findings—Juvenile		
Commentator	**Comment**	**Committee Response**
Revise item 7's presentation of a "similar basis under California law"		
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer	**Revise Number 7 on Page 2, Which Requests That the Petitioner List the Similar Basis Under California Law.** Same comment as [submitted with respect to item 8 on form FL-356], above. ***Recommendation***: Revise Number 7 to read (deletions in ~~strikethrough~~; additions underlined): Reunification of the child… [] Abuse or a similar basis under California law [] Neglect or a similar basis under California law [] Abandonment or a similar basis under California law ~~[] A similar basis under California law (specify):~~	The committee does not recommend combining the "similar basis" language with the three bases specified in federal law. Eliminating the "similar basis" as a separate, 4th basis and combining it with the other bases could unnecessarily restrict the types of basis for nonviability of reunification that a party might assert or a court might deem sufficiently similar to make the finding. The committee does recommend using simpler language and has revised the form accordingly.
Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney	**Revise Number 7 on Page 2, Which Requests That the Petitioner List the Similar Basis Under California Law.** Same comment as [submitted with respect to item 8 on form FL-356,] above. ***Recommendation***: Revise Number 7 to read (deletions in ~~strikethrough~~; additions underlined): Reunification of the child… [] Abuse or a similar basis under California law [] Neglect or a similar basis under California law [] Abandonment or a similar basis under California law ~~[] A similar basis under California law *(specify):*~~	See the committee's response to the ILRC's comment, above.
Miscellaneous comments on form JV-356		

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Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form JV-356—Request for Special Immigrant Juvenile Predicate Findings—Juvenile		
Commentator	**Comment**	**Committee Response**
Orange County Bar Association Ashleigh Aitken, President	In response to specific requests for comment: A JV form for petitioning the Court for SIJ findings would be beneficial. The existing procedural rules are adequate.	The committee agrees that a JV form for requesting SIJ findings from the juvenile court would be useful and have proposed form JV-356 to serve this function.
State Bar of California Executive Committee of the Family Law Section (FLEXCOM) Saul Bercovitch, Legislative Counsel	The proposed JV-[356] provides juvenile courts with a Judicial Council form through which a petitioner may request the predicate findings for seeking SIJS relief. FLEXCOM applauds the Judicial Council for seeking to apply structure to the application process. However, FLEXCOM believes the form can be slimmed down in a way that balances the need for the court to have necessary information and the petitioner's ability to expeditiously seek the appropriate findings.	The committee has revised the form to eliminate any identified excess and clarify the process for requesting SIJ findings in juvenile court.
State Bar of California Office of Legal Services Standing Committee on the Delivery of Legal Services Maria Livingston, Chair	FL-[356], No. 9, and JV-[356], No. 8, suggested edit: "It is not in the best interest of the child to be returned to the child's or parent's previous country of nationality or country of last habitual residence." JV-[356], No. 7: There is not enough space to write/type a name here.	The committee agrees and has incorporated the suggested language into both forms. The committee agrees and has added space to item 7.
Superior Court of Orange County Family Law and Juvenile Court Operations Managers	Item #4, last selection item, add more space to section allotted to write names and relationship of the individuals with whom the child was placed.	The committee recommends striking that part of the item that requests the requesting party to specify the relationship of the custodian to the child. The relationship is not a necessary element of the SIJ findings. The deletion of this element will leave more space to write the custodians' names.

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Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form FL-357/GC-224/JV-357—Special Immigrant Juvenile Findings		
Commentator	**Comment**	**Committee Response**
Do not identify the individual or entity that has custody of the child		
Bet Tzedek Legal Services Erikson Albrecht, Kinship Attorney	**Remove the portion of Item 3b. of the proposed form that calls for the identification of the individual or entity appointed by the court and their relationship to the child.** As designed, the proposed form requires the submission of the identity of the individual or entity appointed by the court and their relationship to the child. This information is not required by federal law, nor is it necessary for United States Citizenship and Immigration Services officials to determine the child's eligibility for SIJS or otherwise adjudicate the child's application. Accordingly, we suggest deleting the portion of Item 3b. of the proposed form that calls for the identification the individual or entity appointed by the court and their relationship to the child.	The committees agree that there is no need to specify the relationship of the custodian to the child and recommends deleting that item from the form. However, the committees do not recommend removing the space for the custodian's name. Inclusion of the custodian's name plays an essential role in supporting a federal application for SIJ status by establishing a connection between the SIJ findings form and the underlying state court custody order, whether the underlying order originate in family, juvenile, or probate court.
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer	**Delete the Field in 3.b on Page 1 that Requests the Name of the Individual or Entity Appointed By the Court.** Practitioners commonly do not disclose the name of the child's legal guardian or foster parent to immigration authorities, as this would have a chilling effect on the willingness of such guardians or foster parents to support the child in his or her application for Special Immigrant Juvenile Status. Further, this information is not necessary to demonstrate the child's eligibility for SIJS, especially in light of the fact that the order will also include the relationship of the individual to the child. ***Recommendation***: Delete the field in 3.b on page 1 that requests the name of the individual or entity appointed by the court. If it remains, then delete "foster care" from the parenthetical since it could be a "confidential" delinquency placement.	See the committees' response to Bet Tzedek's comment, above.

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Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form FL-357/GC-224/JV-357—Special Immigrant Juvenile Findings		
Commentator	**Comment**	**Committee Response**
Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney	**Delete the Field in 3.b on Page 1 that Requests the Name of the Individual or Entity Appointed By the Court.** At Legal Services for Children, we do not generally disclose the name of the child's legal guardian or foster parent to immigration authorities, as this could have a chilling effect on the willingness of such guardians or foster parents to support the child in his or her application for Special Immigrant Juvenile Status. Further, this information is not necessary to demonstrate the child's eligibility for SIJS, especially in light of the fact that the order will also include the relationship of the individual to the child. ***Recommendation***: Delete the field in 3.b on page 1 that requests the name of the individual or entity appointed by the court. If it remains, then delete "foster care" from the parenthetical since it could be a "confidential" delinquency placement.	See the committees' response to Bet Tzedek's comment, above.
Revise item 4's presentation of "a similar basis under California law"		
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer	**Revise Number 4 on Page 1, Which Requests That the Petitioner List the Similar Basis Under California Law** With respect to the similar basis under state law, we submit the same comment as [submitted with respect to item 8 on form FL-356,] above. ***Recommendation***: Revise Number 4 to read (deletions in ~~strikethrough~~; additions underlined): Reunification of the child with his or her (*check all that apply*): [] mother [] father ~~[] other parent~~ is not viable because of parental [] abuse or a similar basis under California law [] neglect or a similar basis under California law [] abandonment or a similar basis under California law ~~or [] a similar basis~~	With respect to identifying a similar basis under state law, the committees do not recommend the suggested change. In the absence of legislative or appellate guidance, the committees have no grounds to identify other legal bases similar to abuse, neglect, or abandonment. The committees also do not recommend combining the "similar basis" language with the three bases specified in federal law. Eliminating the "similar basis" as a separate, 4th basis and combining it with the other bases could unnecessarily restrict the types of basis for nonviability of reunification that a party might assert or a court might deem sufficiently similar to make the

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Form FL-357/GC-224/JV-357—Special Immigrant Juvenile Findings		
Commentator	**Comment**	**Committee Response**
	~~under California law (specify):~~ as established on…	finding. The committees do recommend using simpler language on the request forms and have revised those forms accordingly.
Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney	**Revise Number 4 on Page 1, Which Requests That the Petitioner List the Similar Basis Under California Law** With respect to the similar basis under state law, we submit the same comment as [submitted with respect to item 8 on form FL-356,] above. ***Recommendation***: Revise Number 4 to read (deletions in ~~strikethrough~~; additions underlined): Reunification of the child with his or her (*check all that apply*): [] mother [] father ~~[] other parent~~ is not viable because of parental [] abuse or a similar basis under California law [] neglect or a similar basis under California law [] abandonment or a similar basis under California law ~~or [] a similar basis under California law (specify):~~ as established on…	See the committee's response to the ILRC's comment, above.
Delete or clarify references to "other parent" in item 4		
Immigrant Legal Resource Center Rachel K. Prandini, Unaccompanied Minor Law Fellow/Attorney San Diego Volunteer Lawyer Program, Inc. Amy Fitzpatrick, Esq., Chief Executive Officer	With respect to the "other parent" box, we submit the same comment as [submitted with respect to item 2 on form JV-356], above. In addition, we believe that the existence of the "other parent" box on this order (that will be submitted to U.S. Citizenship & Immigration Services (USCIS)) promises to confuse the agency, as USCIS may not understand this field or why it is used. As a result, the existence of this field may jeopardize the success of children's applications for Special Immigrant Juvenile Status with the federal government. ***Recommendation***: Revise Number 4 to read (deletions in ~~strikethrough~~; additions underlined):	The committees recommend retaining an option for a third parent identified as "other legal parent." Under California law, a child may have more than two parents. (See Fam. Code, § 7601(c), (d).) Furthermore, those parents may all be the same sex; some may not identify as a specific sex. The committee intends the format of item 5 to allow the identification of the parents no matter their number or identified sex.

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Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form FL-357/GC-224/JV-357—Special Immigrant Juvenile Findings		
Commentator	**Comment**	**Committee Response**
	Reunification of the child with his or her (*check all that apply*): [] mother [] father ~~[] other parent~~ is not viable because of parental [] abuse or a similar basis under California law [] neglect or a similar basis under California law [] abandonment or a similar basis under California law ~~or [] a similar basis under California law (specify):~~ as established on…	
Legal Services for Children San Francisco Hayley Upshaw, Senior Staff Attorney	With respect to the "other parent" box, we submit the same comment as [submitted with respect to item 2 on form JV-356], above. ***Recommendation***: Revise Number 4 to read (deletions in ~~strikethrough~~; additions underlined): Reunification of the child with his or her (*check all that apply*): [] mother [] father ~~[] other parent~~ is not viable because of parental [] abuse or a similar basis under California law [] neglect or a similar basis under California law [] abandonment or a similar basis under California law ~~or [] a similar basis under California law (specify):~~ as established on…	
Add space for the court to use to deny a request for SIJ findings and give reasons		
Superior Court of Orange County Family Law and Juvenile Court Operations Managers	Add a deny option along with a denial reasons section.	The committees do not recommend adding the suggested item. Because the primary purpose of the form is to document the SIJ findings for submission to the United States Citizenship and Immigration Services (USCIS) and the form will not be submitted to USCIS if the court declines to make even one of the findings, the addition of space for a denial or explanation is not warranted. If the court denies a request for one or more of the findings, reasons articulated on the form in the space under each finding or in the minute order will suffice to provide a basis for the requesting party to seek a writ.
TCPJAC/CEAC Joint Rules	The JRS recommends that form FL-357 include a space for the	See the committees' response to Orange County

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Form FL-357/GC-224/JV-357—Special Immigrant Juvenile Findings		
Commentator	**Comment**	**Committee Response**
Subcommittee (JRS)	court to explain a reason for the denial of relief.	Superior Court's comment, above.
Miscellaneous Comments on Form FL-357/GC-224/JV-357		
State Bar of California Executive Committee of the Family Law Section (FLEXCOM) Saul Bercovitch, Legislative Counsel	FLEXCOM believes it would be beneficial for the order to include a place where the court can indicate the youth's date of birth.	The committees agree and have revised the form to include space for the child's date of birth. Although the child bears the burden of establishing his or her age independently as part of the federal SIJ status application, the inclusion of the child's date of birth on the findings may help to verify the child's identity.
State Bar of California Office of Legal Services Standing Committee on the Delivery of Legal Services Maria Livingston, Chair	FL-357/GC-224/JV-357, Special Immigrant Juvenile Predicate Findings, facilitates the SIJS process by standardizing the format for the court's predicate findings in family law, probate and juvenile court. The form would be most helpful for use by self-represented litigants in family law proceedings. Without the availability of this "form" proposed order, self-represented litigants would be tasked with crafting pleadings comprising a proposed order. The proposed Form also facilitates the duty of the court to provide in writing, and not simply on the record, its findings. Use of the form ensures the court's order is sufficient to meet SIJS requirements by containing the following: 1) that the court has jurisdiction under state law to make judicial determinations about custody and care of minors; 2) whether the minor is found to be a dependent of the court, legally committed to a state agency or department, or placed in the custody of an individual or entity; 3) that reunification with one or either parent of the child is not viable due abuse, abandonment, or neglect; and 4) that it is not in the minor's best interest to be returned to his or her country of origin, or place of last habitual residence.	The committees intend the form to be used by self-represented parties and those represented by counsel, as well as trial courts charged with determining requests for SIJ findings. Use of the form is intended to document the state court findings and the factual basis therefor in a form that will be acceptable and comprehensible to a USCIS adjudication officer.

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Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings (amend Cal. Rules of Court, rule 7.1020; adopt forms FL-356, GC-220, JV-356, and FL-357/GC-224/JV-357; revoke forms GC-224 and JV-224)

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

Form FL-357/GC-224/JV-357—Special Immigrant Juvenile Findings		
Commentator	**Comment**	**Committee Response**
Superior Court of Orange County Family Law and Juvenile Court Operations Managers	Recommend adding fields to capture information about the hearing, such as hearing date, judicial officer, hearing date/time, department, and appearances.	The committees agree and have added item 2 to the form to capture the suggested information.

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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: October 27, 2015

Title
Family Law: New Form and Revised Forms for Stepparent and Additional-Parent Adoptions

Rules, Forms, Standards, or Statutes Affected
Approve form ADOPT-205; revise forms ADOPT-050-INFO, ADOPT-200, ADOPT-210, and ADOPT-215

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, 2016

Date of Report
August 21, 2015

Contact
Kyanna Williams, 415-865-7911
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Executive Summary

Assembly Bill 2344, the Modern Family Act (Stats. 2014, ch. 636), expedites adoptions for nonbiological parents. Senate Bill 274 (Stats. 2013, ch. 564) amended the Family Code to provide that a child may have a parent-child relationship with more than two parents. The Family and Juvenile Law Advisory Committee recommends the Judicial Council approve creation of one new adoption form and revise four existing adoption forms. The revisions and the new form are required to implement these new California laws.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2016:

1. Approve *Declaration Confirming Parentage in Stepparent Adoption* (form ADOPT-205) as a new optional form; and

2. Revise *How to Adopt a Child in California* (form ADOPT-050-INFO), *Adoption Request* (form ADOPT-200), *Adoption Agreement* (form ADOPT-210), and *Adoption Order* (form ADOPT-215) to help implement Assembly Bill 2344 and Senate Bill 274.

The proposed new and amended forms are attached at pages 12 – 25.

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, 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, 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.

The council adopted the information sheet, *How to Adopt a Child in California* (form ADOPT-050) in 1999 to provide basic information on the adoption process. ADOPT-050 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.

Declaration Confirming Parentage in Stepparent Adoption (form ADOPT-205) is a new, optional form that the committee recommends the Judicial Council approve. Accordingly, there has been no prior council action on this form.

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Rationale for Recommendation

The committee recommends the creation of one new adoption form and revisions to four existing adoption forms to implement these new laws. These changes will clarify the process for stepparent and additional-parent adoptions. Minor changes would also be made throughout the forms to improve their overall clarity and usability.

- The changes will benefit families undergoing stepparent and additional-parent adoptions by making Judicial Council adoption forms consistent with the new laws and more applicable to their adoption proceedings while making it easier for those families to provide the information the court requires.
- All families using these adoption forms will benefit from changes that improve the forms' clarity and usability.

Declaration Confirming Parentage in Stepparent Adoption (form ADOPT-205)

New Family Code section 9000.5 requires litigants in stepparent adoptions where one of the spouses or partners gave birth to the child during the marriage or domestic partnership to provide the following information:

1) A copy of the parties' marriage certificate, registered domestic partner certificate, or civil union from another jurisdiction;
2) A copy of the child's birth certificate; and
3) Declarations by the parent who gave birth and the spouse or partner who is adopting explaining the circumstances of the child's conception in detail sufficient to identify whether there may be other persons with a claim to parentage of the child who are required to be provided notice of, or who must consent to, the adoption.

(Fam. Code, § 9000.5(c)(1)–(3).)

The proposed new *Declaration Confirming Parentage in Stepparent Adoption* (form ADOPT-205) would make it easier for the stepparent seeking adoption to provide all of this required information, which in turn would make it easier for courts to process these cases. This optional form would be attached to the Adoption Request (form ADOPT-200) in stepparent adoption cases involving a spouse or partner who gave birth to the child during the union.

How to Adopt a Child in California (form ADOPT-050-INFO)

ADOPT-050 is an existing Judicial Council instructional form that provides an overview of the adoption process and Judicial Council forms needed for this process. (One of the proposed revisions adds "-INFO" to the form number to readily identify it as an informational form.) Page 1 of this form addresses stepparent/domestic partner adoptions. Under this proposal, form ADOPT-050 would be revised to include the proposed *Declaration Confirming Parentage in Stepparent Adoption* (ADOPT-205) in the list of forms to be completed in stepparent/domestic partner adoptions.

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Language would be added near the top of page 1 advising court users that adoption may not be necessary for some families and encouraging families to seek legal advice before beginning any adoption. Court users would also be encouraged to visit the California Courts Online Self-Help Center adoption page (*www.courts.ca.gov/selfhelp-adoption.htm*) to get copies of forms, look for organizations that provide legal help with adoptions, and learn how to complete the adoption process on their own if they cannot afford an attorney.

Family Code section 9000.5 establishes that stepparent adoptions involving a spouse or partner who gave birth to the child during the union are exempt from certain requirements generally applicable to adoptions, including the requirement that a home visit or home study be performed and that the prospective adoptive parent appear before the court, unless otherwise ordered by the court for good cause. Under this proposal, page 1 would include language to help families determine whether they qualify for the streamlined adoption proceedings for stepparent adoptions to confirm parentage established under Family Code section 9000.5 or whether they must go through the longer process for stepparent adoptions that do not fall under that code section.

Page 2 of form ADOPT-050 provides an overview of the process and Judicial Council forms needed for independent, agency, or international adoptions. Language would be added near the top of page 2 to clarify that in accordance with Family Code section 8617(b), enacted by SB 274, if the existing parents and adopting parents agree, in independent adoptions, the rights of existing parent(s) do not have to terminate. This language should alert court users of their ability to add additional parents as provided under Family Code section 8617(b).

Adoption Request **(form ADOPT-200)**

ADOPT-200 is the existing mandatory Judicial Council form used by the adopting parent to provide information, including identifying details about the child, the adopting parent's relationship to the child, and the type of adoption taking place. Under this proposal, item 3 on form ADOPT-200 would be amended to conform to the prospective adoptive parent provisions of Family Code section 8617(b) by allowing the prospective adoptive parent to indicate that they are seeking an independent adoption involving "Additional Parent(s)." Item 3 would also be amended to allow the adopting parents, in stepparent adoptions to confirm parentage, to indicate that they were in a union with the parent who gave birth to the child at the time the child was born.

Item 11 provides details regarding independent adoptions. The committee proposes adding a new item 11(d) that allows users to indicate that they are petitioning for an independent adoption involving additional parent(s), that all persons with existing parental rights agree to the adoption and will retain their existing rights, and that an agreement waiving termination of parental rights, signed by both the existing parent(s) and the adopting parent(s) is attached.

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Item 12 provides details regarding stepparent adoptions. A new item 12(d) would be added that provides litigants the opportunity to indicate that they are seeking a stepparent adoption to confirm their parentage, that at the time the child was born they were married to or in a state-registered domestic partnership with the parent who gave birth, and that they remain in that union. Item 12(d) would also provide litigants the opportunity to indicate that they have attached either form ADOPT-205 or an equivalent declaration describing the circumstances of the child's conception.

Item 13 provides details regarding the manner in which the child was conceived. Item 13 currently states, "There is no presumed or biological father because the child was conceived by artificial insemination using semen provided to a medical doctor or a sperm bank. (Fam. Code, § 7613.)". This proposal would reword item 13 to state that the child was conceived by assisted reproduction in compliance with Family Code section 7613. This revision should improve clarity and make item 13 applicable to additional methods of assisted reproduction.

Each of the changes proposed above should aid in processing stepparent or additional parent adoptions and result in a decreased need for court assistance and case management.

Adoption Agreement **(form ADOPT-210)**

ADOPT-210 is the existing mandatory Judicial Council form used for the adopting and legal parents and the child (if over 12 years old) to indicate their consent to the adoption. Although adoptions typically include a hearing, new Family Code section 9000.5 establishes that in stepparent adoptions involving a spouse or partner who gave birth to the child during the union, no hearing is required unless otherwise ordered by the court for good cause. This proposal adds language to conform form ADOPT-210 to the requirements of section 9000.5. This proposal also adds general signing instructions to page 1 to help clarify some of the differences in how court users may sign this form.

Although the parties may sign form ADOPT-210 outside of a court hearing, section 9003 of the Family Code requires that the signing be performed in front of a witness or notary. This proposal would add witnessing instructions, space to include identifying information about the witness, and space for the witness to date and sign the form in accordance with Family Code section 9003.

Adoption Order **(form ADOPT-215)**

ADOPT-215 is the existing mandatory order form that the judge signs if the adoption is approved. As discussed above, under new Family Code section 9000.5, stepparent adoptions are exempt from hearings unless otherwise ordered by the court for good cause. This proposal creates a revised item 4 on ADOPT-215 by combining the adoption hearing information referenced under items 4 and 5 on the existing form. The proposal adds language to the bottom of revised item 4 indicating that the adopting parent is waiving the hearing pursuant to Family Code section 9000.5.

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A new item 12 provides space for the judge to indicate that the matter concerns an independent adoption involving an additional parent(s), that all persons with existing parental rights agreed to the adoption and will retain their existing rights, and that an agreement waiving termination of parental rights, signed by both the existing parent(s) and the adopting parent(s) was filed with the court. The remaining items are renumbered accordingly.

Comments, Alternatives Considered, and Policy Implications

Comments

This proposal circulated for comment as part of the spring 2015 invitation-to-comment cycle, from April 17 to June 17, 2015, 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, social workers, probation officers, CASA programs, and other juvenile and family law professionals. The proposal was also sent to the National Center for Lesbian Rights. Seven individuals or organizations provided comment; two agreed with the proposal, and five agreed if modified. A chart with the full text of the comments received and the committee's responses is attached at pages 26 – 44.

How to Adopt a Child in California (form ADOPT-050-INFO)

Four commentators made specific comments about form ADOPT-050. Two commentators suggested minor changes to clarify the instructions on ADOPT-050, most of which the committee agreed with and incorporated. The committee also incorporated several small formatting changes throughout the form that the committee felt improved clarity and readability.

One commentator suggested adding the following statement to the top of page 1"If you are adopting multiple children with the same legal/biological parent(s), complete one form for all children. Otherwise, complete a form for each child." The committee does not recommend accepting this suggestion. Judicial Council adoption forms are formatted in a way that anticipates that separate forms will be used for the adoption of each child. Although there might be some efficiency to allowing families to adopt multiple children through the same set of adoption forms when those children share the same legal or biological parents, amending Judicial Council adoption forms to provide for that option would make the forms more complicated and require extensive changes to numerous adoption forms. Such a change is also outside of the scope of this proposal.

One commentator suggested clarifying, under item 1 on page 1, that families seeking stepparent adoptions may submit either ADOPT-205 or an equivalent declaration. The committee agreed with this change and incorporated it.

In the invitation to comment the committee asked whether adding the word "INFO" would further clarify for court users that this is an informational form. All four commentators agreed that the word "INFO" should be added, so that the form be renamed *How to Adopt a Child in California* (form ADOPT-050-INFO). The committee incorporated this change.

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Adoption Request (form ADOPT-200)

Three commentators made specific comments about form ADOPT-200. Referencing additional parent adoptions, one commentator suggested adding language under item 11 indicating that, "…the parents consent to the adoption but will be keeping their parental rights." The committee agreed with this suggestion and incorporated changes similar to those suggested under a new item 11(d).

Paragraph 12(d) provides court users, who are undergoing a stepparent adoption to confirm parentage, with an opportunity to indicate that they have attached a declaration describing the circumstances of the child's conception. All three commentators thought that paragraph 12(d) should be revised to clarify the specific declaration the court user was attaching. The committee agreed and revised paragraph 12(d) in a way that addressed each suggestion.

One commentator noted that Family Code section 7613 is expected to be revised soon and suggested rewording item 13 so that it reads, "The child was conceived by assisted reproduction in compliance with Family Code section 7613." The committee incorporated this change.

Declaration Confirming Parentage in Stepparent Adoption (form ADOPT-205)

Five commentators made specific comments about proposed form ADOPT-205, which is an optional declaration form to assist court users in explaining circumstances related to the child's conception. Three commentators suggested minor changes to improve the readability and clarity of item 2, which addresses the relationship between the birth parent and the adopting parent. One commentator suggested that items 2(a) and 2(b) be revised to indicate that the parents remain in the union. Another commentator suggested that in item 2 the parent seeking to confirm parentage be referred to as the "adopting parent" as opposed to the "stepparent." The committee agreed with and incorporated all of these suggestions.

Item 5 addresses the method of conception that the family used. In the invitation to comment the committee drafted item 5 in a way that the committee anticipated would provide for all potential methods of conception. One commentator suggested expanding item 5(b) to include information about the origin of any donated ova. Another commentator questioned the applicability of item 5(c)(2), which addressed circumstances where the child was not conceived through assisted reproduction and the biological mother consents to the adoption and termination of her parental rights. A third commentator thought that 5(c) would confuse self-represented litigants and suggested extensive revisions to streamline and simplify item 5 as a whole. The committee agreed with the latter suggestion and deleted 5(a)–(c), opting instead for a singular item 5 that prompts the court user to describe, in his or her own words, the manner of the child's conception. By incorporating this change the committee also addressed the former concern about the applicability of item 5(c)(2) and made it easier for the court user to explain the origin of any donated sperm or ova.

ADOPT-205 instructs court users to attach it to the *Adoption Request* (form ADOPT-200). One commentator suggested that, since ADOPT-205 serves as an attachment, it should be formatted

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similarly to other Judicial Council attachment forms. After reviewing several Judicial Council attachment forms, the committee incorporated this suggestion by reorganizing the top of the form and removing the file-stamp section.

Adoption Agreement (form ADOPT-210)

Two commentators made specific comments about form ADOPT-210, which provides the court with information about the adopting parent(s), the child to be adopted, and provides space for necessary persons to sign indicating their consent to the adoption.

Family Code section 8603 provides that a person who is married or in a domestic partnership may adopt, so long as the other spouse or domestic partner consents. The consenting spouse or domestic partner can provide consent without establishing any parental rights or responsibilities toward the child. Item 4(a) provides for the signature of the adopting spouse while item 4(b) provides for the signature of the consenting spouse. One commentator suggested adding language to item 4(b) to clarify that the consenting spouse is not a party to the adoption. The committee agreed with this suggestion and incorporated it.

Although adoptions typically include a hearing, new Family Code section 9000.5 establishes that in stepparent adoptions involving a spouse or partner who gave birth to the child during the union, no hearing is required unless otherwise ordered by the court for good cause. Under Family Code section 9000.5, these families are allowed to sign ADOPT-210 outside of a court hearing, but Family Code section 9003 requires that the signing be performed in front of a witness or notary. To comply with both statutes, in the invitation to comment the committee proposed adding witnessing and notary instructions specifically for those stepparent adoptions to confirm parentage where no hearing is required.

Referencing the witnessing and notarization instructions under item 8, one commentator wrote, "Family Code section 8613.5 also allows a personal appearance to be waived. Our court has a person pre-sign the ADOPT-210 in front of a notary in that situation. The new language on the form should allow for that." Also referencing item 8, the other commentator wrote, "[The] language should be modified to clarify that if the form is signed outside of a hearing it needs to be in front of a notary. Also it should clarify that this can be done for Family Code section 9000.5 adoptions to confirm parentage or in cases where authorized by the court under Family Code section 8613. …"

Family Code sections 8613 and 8613.5 are different in that they do not actually provide for waiver of the hearing. Rather, both code sections allow the court, where it has found personal appearance by the prospective adoptive parent to be impossible or impracticable, to waive the prospective adopting parent's in-person appearance and instead allow that party's counsel to appear on his or her behalf. Both code sections explain that a power of attorney giving counsel permission to appear in this manner must be filed with court and then go on to outline various witnessing and notarization options.

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The committee agrees that some prospective adoptive parents may benefit from having sections 8613 and 8613.5 power of attorney and witnessing options incorporated into ADOPT-210 but finds that the problems associated with incorporating these changes outweigh the potential benefits. Extensive changes to ADOPT-210 would be necessary in order to effectively incorporate the power of attorney and witnessing options outlined under those statutes. The committee does not recommend accepting either of the above suggestions as doing so would be outside the scope of this proposal, is not required to comply with recent statutory changes, and would complicate ADOPT-210 and make it more confusing for self-represented court users. In addition, prospective adoptive parents seeking appearance by counsel in lieu of personal appearance by definition have an attorney to make that appearance. That attorney can request waiver of the adoptive parent's appearance and draft and attach the required power of attorney.

The committee agreed with and incorporated one commentator's suggestion to slightly reorder items 8(a) and 8(b). Item 8(a) now explains the witnessing and notarization options in stepparent adoptions to confirm parentage while item 8(b) provides space for the judge's signature in cases that involve an adoption hearing.

Adoption Order **(form ADOPT-215)**

Two commentators made specific comments about form ADOPT-215, which provides identifying information about the adopting parent(s), the child, hearing details, and an order signed by the judge to finalize the adoption. One commentator suggested adding language to the order specific to additional parent adoptions. While there is no legal requirement that the adoption order always identify the underlying type of adoption, the committee accepted this recommendation as it may be useful for the court to make specific findings related to requirements unique to additional parent adoptions. The proposal now includes a new paragraph 12 with space for the judge to indicate that it is an independent adoption, that all persons with existing parental rights agree to the adoption and will maintain their existing parental rights, and that an agreement to this effect was filed with the court.

One commentator wrote, "The Adoption Order does not currently state the child's pre-adoption identifying information on the same form as the order to change this information. This makes the process of applying for passports and the like very difficult as there is nowhere that has a judge's signature that appropriately links the child as named before the adoption to the child as named after the adoption. This was present in older versions of the forms and needs to be re-inserted." The committee considered this suggestion but decided not to recommend incorporating it as the Family Code prohibits the inclusion of the child's name before adoption in the adoption order except in some relative adoptions petitioned under Family Code section 8714.5. Item 7 (formerly numbered as item 8), which was included in 2001 to conform to the law, provides space to include the child's name before adoption for those cases petitioned under Family Code section 8714.5.

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Alternatives

The committee considered proposing a new set of forms for stepparent adoptions that specifically conformed to the procedures set forth in new Family Code section 9000.5. This would have included new versions of *How to Adopt a Child in California* (form ADOPT-050); *Adoption Request* (form ADOPT-200); *Adoption Agreement* (form ADOPT-210); and *Adoption Order* (form ADOPT-215). The committee determined, however, that creation of a separate set of stepparent adoption forms would be somewhat duplicative and could cause confusion for stepparent litigants whose adoptions are not addressed by Family Code section 9000.5. The committee also determined that courts may benefit from having fewer types of adoption forms to process. The committee opted for maintaining a more unified set of adoption forms and determined that clarification of the processes could be met through modification of existing forms.

With respect to the proposed new *Declaration Confirming Parentage in Stepparent Adoption* (form ADOPT-205), the committee determined that no existing declaration forms can be reasonably modified to address parentage as required by Family Code section 9000.5. In addition, adding the proposed declaration language to existing adoption forms would make those forms lengthier and less understandable to litigants. The committee determined that, in order to achieve the goal of clarifying stepparent adoptions under Family Code section 9000.5, it is necessary to develop a new declaration form that specifically addresses cases involving a spouse or partner who gave birth to the child during the union.

The committee also considered alternatives such as education, training, guidelines, or best practices but determined that such alternatives do not address the primary goal of making Judicial Council adoption forms more applicable to stepparent and additional-parent adoption proceedings.

Policy implications

The proposed changes benefit families undergoing stepparent and additional-parent adoptions by making Judicial Council adoption forms consistent with new law and more applicable to their adoption proceedings while making it easier for those families to provide the information the court requires. In addition, all families using these adoption forms will benefit from the minor changes that improve the clarity and usability of the forms.

Implementation Requirements, Costs, 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 creating a new form and revising four existing forms. These costs are outweighed by the efficiency benefits of making it easier for litigants to provide the information that the court needs for these cases in a concise and structured manner. This should aid in processing these adoption cases and result in a decreased need for court assistance and case management.

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Attachments and Links

1. Forms ADOPT-050-INFO, ADOPT-200, ADOPT-205, ADOPT-210, and ADOPT-215, at pages 12 – 25
2. Chart of comments, at pages 26 – 44
3. Assembly Bill 2344, available at *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB2344&search_keywords=*
4. Senate Bill 274, available at *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB274&search_keywords=*

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ADOPT-050-INFO How to Adopt a Child in California

General Information on Adopions

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 cannot afford 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 form includes instructions for:

- Stepparent/domestic partner adoptions *(page 1)*
- Adoption of an Indian *(Native American)* child *(page 2)*
- Independent, agency, and international adoptions *(page 2)*
- Open adoptions *(page 2)*

Stepparent/Domestic Partner Adoptions

Answer these questions to get started.

- Was the adopting parent in a union with the birth parent at the time the child was born? *Check one* ☐ Yes ☐ No
  A "union" means a:
  - *Marriage;*
  - *California registered domestic partnership; or*
  - *Registered domestic partnership or civil union from out of state that is legally equivalent to a marriage.*
- Is the adopting parent still in a union with the birth parent? *Check one* ☐ Yes ☐ No
  (See the above explanation of a "union")

If you answered "No" to **either** question, complete steps 1-4 below for a *Stepparent/Domestic Partner Adoption.*

If you answered "YES" to **both** question, 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 have Indian ancestry.
☐ ICWA-020	*Parental Notification of Indian Status*	This proves that the child's parents have been asked about Indian ancestry.
☐ 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.

(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.

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Your name: _____ **Case Number:**

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, Agency, or International Adoptions

If this is an independent, agency, or international adoption, fill out and file the forms listed in steps 1-4 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.

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 have Indian ancestry.
☐ ICWA-020	*Parental Notification of Indian Status*	This proves that the child's parents have been asked about Indian ancestry.

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)*

"Open" Adoption

If you want your child to have contact with his or her birth family, request an "open" adoption. Form ADOPT-310 describes the type of contact the birth family will have with your child. In addition to the forms listed in 1 on pages 1 and 2, fill out and bring to court Form ADOPT-310.

Adopting an Indian Child

In addition to the forms listed in (1) on pages 1 and 2, fill out and bring to court:

☐ Form ADOPT-220 *Adoption of Indian Child*

☐ Form ADOPT-225 *Parent of Indian Child Agrees to End Parental Rights*

If you are adopting through a tribal customary adoption:

☐ Attach a copy of the tribal customary adoption order to *Adoption Request,* ADOPT-200

☐ Attach a copy of the tribal customary adoption order to the *Adoption Order,* ADOPT-215

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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 Your name(s) *(adopting parent(s)):*

a. _____

b. _____

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 I/We filed this *Adoption Request* in this court because it is in the county *(check all that apply):*

- ☐ Where the adopting parent(s) reside;
- ☐ Where the child was born or resides at the time of filing;
- ☐ Where an office of the agency that placed the child for adoption is located;
- ☐ Where an office of the department or public adoption agency that is investigating the petition is located;
- ☐ Where a placing birth parent or parents resided when the adoptive placement agreement, consent, or relinquishment was signed;
- ☐ Where a placing birth parent or parents resided when the petition was filed;
- ☐ Where the child was freed for adoption.

(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(s) reside(s). See Fam. Code, § 8714.)*

3 Type of adoption *(check one):*

- ☐ Agency *(name):* _____
  - ☐ Relative ☐ Nonrelative
- ☐ Joinder will be filed. ☐ Joinder is being filed at same time as this *Adoption Request*.
- ☐ Tribal customary adoption *(attach tribal customary adoption order)*
- ☐ Independent
  - ☐ Relative ☐ Nonrelative ☐ Additional Parent(s)
- ☐ Intercountry *(name of agency):*

  _____
  - ☐ This adoption may be subject to the Hague Adoption Convention *(form ADOPT-216 must be filed with this request).*

(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.

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Your name: _____ **Case Number:**

☐ Stepparent

☐ Stepparent adoption to confirm parentage. *(Select this option if you were married to or in a state-registered domestic partnership with the birth parent at the time the child was born **and** you remain in that union.)*

4 Information about the child:

a. The child's new name will be: _____

b. ☐ Boy ☐ Girl

c. Date of birth: _____ Age: ____

d. Child's address *(if different from yours):*
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 your physical care: _____

5 Child's name before adoption *(Fill out ONLY if this is an independent, stepparent, or tribal customary adoption):*

_____

6 Does the child have a legal guardian? ☐ Yes ☐ No
(If yes, attach a copy of the Letters of Guardianship and fill out below):

a. Date guardianship ordered: _____
b. County: _____
c. Case number: _____

7 Is the child a dependent of the court? ☐ Yes ☐ No
(*If yes, fill out below):*

Juvenile case number: _____
County: _____

8 Child may have Indian ancestry: ☐ Yes ☐ No

a. Whether you answered "Yes" or "No," you must fill out and attach *Indian Child Inquiry Attachment* (form ICWA-010(A)) and *Parental Notification of Indian Status* (form ICWA-020) or other proof that ICWA inquiry has been completed in accordance with rule 5.481(a).

b. If you answered "Yes," you must also fill out and attach *Adoption of Indian Child* (form ADOPT-220) if, after notice, it is determined that ICWA does apply to the child.

9 Names of birth parents, if known:

a. Mother: _____ b. Father: _____

10 **If this is an agency adoption:**

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.
☐ Yes ☐ No

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):*

_____

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c. 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. ☐ Yes ☐ No

d. This is an adoption conducted under the requirements of the Hague Adoption Convention and the child will be moving or has already moved with the adopting parent(s) to another Hague Convention member country at the conclusion of this adoption. ☐ Yes ☐ No If yes, child will be moving or has moved to *(name of country):* _____ and adopting parent(s): ☐ seek(s) a California adoption ☐ will be petitioning for a Hague Adoption Certificate ☐ will be seeking a Hague Custody Declaration.

11 **If this is an independent adoption:**

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.) ☐ Yes ☐ No

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. ☐ Yes ☐ No

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 **If this is a stepparent adoption:**

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 parents were married on **or** The domestic partnership was registered 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 and we remain in that union. see attached ☐ Form ADOPT-205 or ☐ Declaration describing the circumstances of the child's conception

13 ☐ The child was conceived by assisted reproduction in compliance with Family Code section 7613.

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 is not necessary because *(complete all sections that apply to your adoption):***

a. ☐ The consent of the ☐ birth parent ☐ presumed father 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.

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(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. ☐ 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.)

c. ☐ 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:

Name: _____ Relationship to child: _____ on *(date):* _____
Name: _____ Relationship to child: _____ on *(date):* _____
Name: _____ Relationship to child: _____ on *(date):* _____
(Attach a copy of the order.)

d. ☐ 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: _____

e. ☐ 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: _____

f. ☐ 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 were checked, adopting parent must also check item 15(d) and file an Application for Freedom from Parental Custody. *See Fam. Code, § 7822(a).)*

g. ☐ The consent of the presumed father is not required because he did not become a presumed father before the mother's relinquishment or consent became irrevocable or the mother's parental rights were terminated. (Fam. Code, § 8604(a).)

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h. ☐ 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.

17 ☐ 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, he or she 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).

DRAFT

Your name: _____

Case Number:

Declaration Confirming Parentage in Stepparent Adoption

☐ 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 with the parent who gave birth to the child at the time the child was born. You may instead attach a declaration in another format containing substantially the same information. The birth parent and the adopting parent must complete separate declarations.

1 I *(write your name)* _____ declare as follows:

2 Relationship between the birth parent and the adopting parent seeking to confirm parentage *(check one):*

a. ☐ I am the parent who gave birth to the child to be adopted. 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 of adopting parent seeking to confirm parentage)*

_____ and we remain in that union.

b. ☐ I am the adopting parent seeking to confirm parentage. I married or entered into a state-registered domestic partnership with the parent who gave birth *(name of parent who gave birth to the child to be adopted)* _____ _____ 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)* _____. A copy of our child's birth certificate is attached.

5 ☐ Our child was conceived through assisted reproduction in compliance with Family Code section 7613 as described below (*Describe how your child was conceived and whether you used a known or unknown donor. A letter from your sperm bank or a written donor agreement verifying conception by assisted reproduction should be attached. If you used a known donor without a sperm bank or written donor agreement, you should seek legal advice before submitting this form):*

DRAFT

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 a parent to the child, and whether these persons consent to the adoption:*

DRAFT

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 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) Your name(s) *(adopting parent(s)):*

a. _____

b. _____

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) 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 4(b) maybe 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 during the union, usually no hearing is required and you may sign this form in front of a proper witness. See paragraph 8(a) 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, read and sign below.*

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 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*

DRAFT

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 involving a spouse or partner who gave birth to the child during the union, 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):* _____

Witness signature: _____

Date: _____

b. ☐ This form was signed at a hearing in front of a judicial officer. *(The judge will date and sign the form below.)*

DRAFT

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 Your name *(adopting parent(s)):*

a. _____

b. _____

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 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 stepparent who was married or in a state-registered domestic partnership with the parent who gave birth 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.

DRAFT

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 independent adoption involving an additional parent(s). ☐ 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* (ADOPT-200) ☐ *Adoption of Indian Child* (ADOPT-220)
☐ *Adoption Order* (ADOPT-215) ☐ *Contact After Adoption Agreement* (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

DRAFT

SPR15-19

Family Law: New Forms and Revisions to Forms for Stepparent and Additional-Parent Adoptions

(Approve form ADOPT-205; revise forms ADOPT-050-INFO, ADOPT-200, ADOPT-210, and ADOPT-215)

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

	Commentator	Position	Comment	Committee Response
1.	National Center for Lesbian Rights (NCLR)	AM	The National Center of Lesbian Rights (NCLR) thanks the Committee for its prompt action to incorporate AB 2344 into the necessary Family Law Judicial Council forms. We are grateful for the thoughtful consideration this Committee has given to the needs of parents seeking to confirm their parentage through an adoption, including same-sex and transgender parents.	No response required.
			NCLR strongly supports these proposed changes. Currently, parents doing confirmatory adoptions under Family Code Section 9000.5 are, for the most part, unable to complete their adoptions if they are pro se. The forms do not currently contain options that would allow a parent to adopt under Section 9000.5 without drafting additional pleadings and making alterations to the forms. The following changes are particularly helpful for pro se litigants: the explanation of this type of adoption on ADOPT-50, additional boxes and explanations on ADOPT-200, changes to ADOPT-210 explaining who may witness the litigants' signatures, and the form declaration provided in proposed ADOPT-205.	No response required.
			We suggest a minor change to the form declaration in ADOPT-205. Section 2 describes the parent who is adopting as a "stepparent" in subsections (a) and (b). Although the stepparent adoption process is being used, a parent doing a confirmatory adoption under Section 9000.5 is not a stepparent, but rather a parent who is	The committee agrees with the recommendation and has incorporated it.

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

	Commentator	Position	Comment	Committee Response
			already legally recognized under California law who is confirming their parentage to ensure that they will be recognized in other states. It would be more respectful and true to the reality of these families to refer to this parent as "the adopting parent" in section 2, as is used elsewhere in the form.	
2.	Orange County Bar Association	A	Agree with proposed changes	No response required.
3.	Orange County Superior Court - Family Law and Juvenile Court Operations Managers	AM	**Does the proposal appropriate address the stated purpose?** Yes, it addresses the stated purpose. **Do the proposed forms and information sheet make it sufficiently clear that, for some families, adoption may not be legally necessary for the recognition of parentage under California Law?** **ADOPT-050:** Page one, 4th paragraph, we recommend striking through last sentence. It is redundant to the information contained in the 2nd paragraph. Page one, right above item #1, we recommend adding, "If you are adopting multiple children with the same legal/biological parent(s), complete one form for all children. Otherwise, complete a form for each child."	No response required. The committee agrees. The admonitition to seek legal advice will be stated once as prominently as possible. The committee does not recommend accepting this suggestion. Judicial Council adoption forms are formatted in a way that anticipates that separate forms will be used for the adoption of each child. Although there might be some efficiency to allowing families to adopt multiple children through the same set of adoption forms

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	Commentator	Position	Comment	Committee Response
				when those children share the same legal or biological parents, amending Judicial Council adoption forms to provide for that option would make the forms more complicated and require extensive changes to numerous adoption forms. Such a change is also outside of the scope of this proposal.
			Page one, item #1, recommend adding column to identify required forms. If form is not required, recommending adding "*If applicable*."	The committee does not recommend accepting this suggestion. The first four forms listed under item 1 are required to be completed in all stepparent/domestic partner adoptions. The fifth form listed under item 1, ADOPT-205 (or an equivalent declaration) is required for all stepparent adoptions to confirm parentage. Creating an additional column would require too much additional space, making the form more difficult to read or causing the form to extend to an additional page.
			Page two, item #4, camera should be designated as *optional*. Please note this correction is also needed on item #3 (in following section)	The committee agrees with the recommendation and has incorporated it.
			Page two, paragraph after item #4, we recommend adding, "This process may be used to add additional parents. When you add additional parents, existing parents can either waive or keep their parental rights."	The committee agrees, in part, with this suggestion. The committee has incorporated new language that explains that the rights of existing parents usually terminate with adoptions, but that with an independent adoption, if the existing and adopting parents agree, the rights of the existing

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	Commentator	Position	Comment	Committee Response
				parent(s) do not have to be terminated.
			Page two, we recommend renumbering the second section to clearly separate sections – perhaps 1a, b, c and 2 a, b, c.	The committee does not recommend accepting this suggestion as renumbering in this manner may make the form appear more confusing. The committee agrees that improved title formatting could better distinguish between instructions for Stepparent/Domestic Partner Adoptions and instruction for Independent, Agency, or International Adoptions. The committee has incorporated slightly altered title formatting for those sections in a way that better distinguishes them.
			Page two, item #5 – recommend substituting "Indian" with "Native American" or perhaps adding that reference in parenthesis.	The committee add the term "Native American" in parenthesis in the general instructions that are now updated on page one of ADOPT-050. This provides adequate clarity for court users without introducing significant inconsistency with how the term "Indian" is used in other Judicial Council adoption forms, including ICWA-010 and 020.
			ADOPT-200: Page one, top of the form we recommend, "If you are adopting multiple children with the same legal/biological parent(s), complete one form for all children. Otherwise, complete a form for each child." If recommendation is adopted, recommend adding a selection box to item #4, to reflect "See attachment for additional children."	The committee does not recommend accepting this suggestion. Judicial Council adoption forms are formatted in a way that anticipates that separate forms will be used for the adoption of each child. Although there might be some efficiency to allowing families to adopt multiple children through the same set of adoption forms when those children share the same legal or biological parents, amending Judicial Council adoption forms to provide for that option would

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	Commentator	Position	Comment	Committee Response
				make the forms more complicated and require extensive changes to numerous adoption forms. Such a change is outside of the scope of this proposal.
			Page one, item #3 (last box), we recommend removing 2nd box under stepparent adoption as this is covered under item 12(D) on page three.	The committee does not recommend accepting this suggestion as the identified items serve different purposes. The selection under item 3 signals to the court, in a clear way, what type of adoption the court user is petitioning for. Item 12(d) notes the requirement that a mandatory declaration explaining the circumstances of conception must be attached in stepparent adoptions involving additional parents.
			Page three, item #12(D) we recommend adding, "You may use the Declaration Confirming Parentage in Stepparent Adoption (AD-205) form for this purpose."	The committee agrees with this suggestion. The committee revised item 12(d) in a way that incorporates this suggestion and other commentator suggestions regarding item 12(d). Item 12(d) now specifies whether the circumstances of conception are described on optional form ADOPT-205 or in another format of the court-user's choosing.
			ADOPT-205: Remove file stamps and change to 'attachment to", similar to the FL311'	The committee agrees with this suggestion and incorporated changes similar to those suggested while maintaining styling and formatting similar to that used in other Judicial Council adoption forms.
			Page two, item 5(b), recommend rewording to, "*Our child was conceived using a known*	The committee agrees, in part, with this recommendation. The committee also agrees with

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	Commentator	Position	Comment	Committee Response
			donor(s) but the [] sperm [] ova was not provided to a licensed physician, surgeon, or sperm bank prior to conception. The known donor(s) name(s)…"	another commentator's suggestion of simplifying item 5 by deleting items 5(a)-5(c) and opting instead for a singular item 5 that prompts the court user to describe, in his or her own words, the manner of the child's conception. The committee believes that the revised item 5 addresses this suggestion.
			For FC section 9000.5 purposes, does the proposed new *Declaration Confirming Parentage in Stepparent Adoption* (form ADOPT-205) adequately cover potential circumstances of conception?	
			Yes, we believe this covers all potential circumstances of conception.	No response required.
			How to Adopt a Child in California is currently numbered form ADOPT-050. The advisory committee would like to know if adding the word "INFO" would further clarify for court users that this is an information form. If the form were renamed it would be titled, *How to Adopt a Child in California (ADOPT-050-INFO).*	
			Recommend adding "INFO" to be consistent with other judicial council informational forms.	The committee agrees and will retitle the form "ADOPT-050 INFO".
			Would this proposal cause any unintended effect to the overall clarify or usability of the existing ADOPT forms and information sheet?	

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	Commentator	Position	Comment	Committee Response
			We do not anticipate any unintended consequences. **Would the proposal provide cost savings?** We do not expect a cost savings with this proposal. This proposal may reduce the need to refund investigation fees when they are deemed not needed. **What would the implementation requirements be courts? For example, training staff, revising processes, and procedures, changing docket codes in CMS or modifying a CMS?** We anticipate minimal impact to procedures, training, and our CMS. **Would 2 months from JC approval of this proposal until its effective date provide sufficient time for implementation?** Two months is sufficient time to implement new proposal and forms.	No response required. No response required. No response required. No response required.
4.	State Bar's Standing Committee on the Delivery of Legal Services (SCDLS)	AM	**Specific Comments** **Q: Does the proposal appropriately address the stated purpose?** Response: Yes.	No response required.

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SPR15-19

Family Law: New Forms and Revisions to Forms for Stepparent and Additional-Parent Adoptions

(Approve form ADOPT-205; revise forms ADOPT-050-INFO, ADOPT-200, ADOPT-210, and ADOPT-215)

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

	Commentator	Position	Comment	Committee Response
			Q: Do the proposed forms and information sheet make it sufficiently clear that, for some families, adoption may not be legally necessary for recognition of parentage under California law? Response: Yes. **Q: For Family Code section 9000.5 purposes, does the proposed new Declaration Confirming Parentage in Stepparent Adoption (form ADOPT-205) adequately cover potential circumstances of conception?** Response: Yes. **Q: How to Adopt a Child in California is currently numbered "form ADOPT-050". The advisory committee would like to know if adding the word "INFO" would further clarify for court users that this is an informational form. If the form were renamed it would be titled, How to Adopt a Child in California (form ADOPT-050-INFO).** Response: SCDLS agrees with retitling the form. **Additional Specific Comments:** **Page 2 of form ADOPT-050 provides an overview of the process and Judicial Council**	No response required. No response required. The committee agrees and will retitle the form "ADOPT-050 INFO".

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	Commentator	Position	Comment	Committee Response
			forms needed for independent, agency, or international adoptions. The following language would be added near the top of page 2 to clarify that in accordance with Family Code section 8617(b), enacted by SB 274, this process may also be used to add additional parents: "You can also use this process to add any additional parent(s) without terminating the rights of the existing parent(s)." This language should clarify the process for litigants and reduce their need for court assistance.	
			SCDLS Comment: Because this process is so new, people will not understand that both of the original two parents are giving up rights to the third parent. It would be helpful to include information about where to get legal help, similar to the information on page of FL-107-INFO under the subheading, "Where can I get help?" or the information on page 1 of FL-110 that reads, "For legal advice, contact a lawyer immediately. Get help finding a lawyer at the California Courts Online Self-Help Center (www.courts.ca.gov/selfhelp), at the California Legal Services website (www.lawhelpca.org), or by contacting your local county bar association."	At the top of page 1 of ADOPT 050, there are general instructions which applies to all adoptions, and that includes links to information on accessing legal help. The committee does not recommend repeating those links on page 2 of ADOPT 050 as doing so would make page 2 overly crowded or cause the committee to add an additional page to the form.
			ADOPT-205: From page 2 of the narrative, this form is optional. Will there be any indication to litigants that it is? It appears from the proposed revised	The committee does not recommend making the suggested change. ADOPT-205 includes a description explaining that it is an optional form

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	Commentator	Position	Comment	Committee Response
			ADOPT-050 that this form is included after the ICWA-020 and mandatory as forms people will need to fill out as it says in number 1, "Fill out court forms." Reading the description lets the litigant know it's optional and only for step-parent adoptions. SCDLS proposes some indication at the beginning of the description, in italics and underlined (e.g., *For Stepparent Adoptions Only*) **ADOPT-215:** The Adoption Order does not currently state the child's pre-adoption identifying information on the same form as the order to change this information. This makes the process of applying for passports and the like very difficult as there is nowhere that has a judge's signature that appropriately links the child as named before the adoption to the child as named after the adoption. This was present in older versions of the forms and needs to be re-inserted.	to be used for stepparent adoptions to confirm parentage. The bottom left-hand corner of ADOPT-205 also indicates that it is an optional form. The committee will revise the instructions at the top of ADOPT-050 to better clarify that instructions on stepparent/domestic partner adoptions begin on page 1 and that page 2 includes instructions on independent, agency, and international adoptions as well as adoptions of an Indian child. The committee does not recommend making the suggested change. The Family Code prohibits the inclusion of the child's name before adoption in the adoption order except in some relative adoptions petitioned under Family Code section 8714.5. Existing item 8, which was added to ADOPT-2015 during the Spring 2003 comment cycle, provides space to include the child's name before adoption in those relative adoptions in which the adopting relative or the child, if 12 years of age or older, has requested its inclusion under section 8714.5(g).
5.	Superior Court of Los Angeles County	A	Agree with proposed changes	No response required.
6.	Superior Court of San Diego County by Michael Roddy, Executive Officer	AM	**ADOPT-050**: Item 3 (on page 1) should say "In most adoptions" since there is now an exception. The process on page 2 does not include the "Take	The committee agrees with the suggestions and has incorporated them.

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	Commentator	Position	Comment	Committee Response
			your forms to court" step. The ADOPT-230 should probably be listed in Item 1 as well. We believe this should be an INFO form.	The committee agrees with this suggestion and, in accordance with Family Code 8617, has included language in a new item 11(d) for parties to an independent adoption to indicate that all persons with existing parental rights agree to this adoption and will maintain their existing parental rights and that an agreement to this effect, signed by both the existing parent(s) and the adopting parent(s) is attached.
			ADOPT-200: We believe more might be required for the new "additional parents" adoptions, like a new line in 11 stating that the parents consent to the adoption but will be keeping their parental rights.	The committee agrees with this suggestion regarding paragraph 12(d) and has incorporated it.
			Include name of form and form number in 12d.	The committee agrees with the suggestions and has incorporated them.
			ADOPT-205: The form should say "Attach to Adoption Request", not Order. The place for the date in 3 does not seem right. It is recommended that it be put into the first sentence: "We were married/registered as domestic partners on (date) _____, before our child was born."	The committee agrees with the suggestions and has incorporated them.
			Would there ever be a circumstance where 5c2 would be used?	Paragraph 5 will be reorganized to eliminate subsections (b) and (c) in order to allow parties to explain, in their own words, the specific circumstances of conception.

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	Commentator	Position	Comment	Committee Response
			ADOPT-210: Family Code section 8613.5 also allows a personal appearance to be waived. Our court has a person pre-sign the ADOPT-210 in front of a notary in that situation. The new language on the form should allow for that.	The committee does not recommend incorporating this suggestion. Family Code 8613.5 and 8613.5 allow, in some circumstances when personal appearance is impossible or impracticable, a judicial officer to waive the prospective adoptive parent(s)'s personal appearance and allow counsel to appear on the adoptive parent's behalf provided that the court receive a written power of attorney giving the attorney permission to do so. The power of attorney may be incorporated into the adoption petition. The committee's analysis is that, to properly incorporate Family Code 8613 and 8613.5 waiver provisions, ADOPT 210 would need to include power of attorney provisions. The committee does not recommend adding these waiver provisions, as doing so would make the form longer, more complicated, and potentially confusing for self-represented litigants. Family Code sections 8613 and 8613.5 require that an attorney make an appearance at the hearing. That attorney can request waiver of the adoptive parent's appearance and draft and attach the required power of attorney.
			ADOPT-215: There is nothing addressing the "additional parents" adoptions. This should be added.	The Committee agrees with the recommendation and has incorporated a new paragraph 12 in ADOPT-215 with the following language and check boxes for the court to complete: "___This is an independent adoption involving an additional parent(s). ___ All persons with existing parental rights agreed to this adoption and will

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	Commentator	Position	Comment	Committee Response
				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."
7.	The Executive Committee of the Family Law Section of the State Bar of California (FLEXCOM) San Francisco	AM	**ADOPT-050:** FLEXCOM agrees that the addition of Form ADOPT-050 would be helpful – especially for self-represented litigants. FLEXCOM further agrees that adding "INFO" to the form name would assist. However, FLEXCOM advises changing the wording of the second highlighted paragraph to read: "The California Legislature developed special procedures for stepparent adoptions used to confirm parentage. If you and the parent who gave birth were married or in a state registered domestic partnership (including a domestic partnership or civil union from out-of-state that is legally equivalent to a marriage) at the time the child was born, and remain married or registered, you will only complete steps 1-2 listed below, unless the court orders otherwise. Before signing beginning this process, seek legal advice to determine whether adoption would benefit your family." FLEXCOM further recommends adding the following wording in the column immediately below "ADOPT-205" in Paragraph 1 of Form ADOPT-050: "Or an Equivalent Declaration" in	The committee will retitle the form "ADOPT-050 INFO". The committee revised the instructions at the top of page one of ADOPT-050 to improve readability and clarity for self-represented litigants. Incorporating some of the suggested language, the new instructions help the court user determine whether a stepparent/domestic partner adoption or a stepparent adoption to confirm parentage under Family Code section 9000.5 is applicable to their family. The committee agrees with the recommendation and has incorporated it.

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	Commentator	Position	Comment	Committee Response
			light of the fact that Form ADOPT-050 205 is optional, yet a declaration with that information is mandatory. **ADOPT-200:** FLEXCOM agrees with the proposed revisions to Form ADOPT-200 with some modifications: The first highlighted box under "Stepparent" in Paragraph 3 of the form include the added wording: "Confirming parentage of a stepparent who was married to or in 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 who gave birth at the time the child was born or was married to or in 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 who became a sole legal parent through adoption or surrogacy at the time of the adoption and are still married or in a registered domestic partnership." FLEXCOM further recommends modifying Paragraph 12(d) on page 3 of 5 to remove the last sentence [i.e. "A declaration describing the circumstances of the child's conception is attached."] and instead: "□ SEE ADOPT 205 ATTACHED □ SEE DECLARATION ATTACHED" In light of the expected revision of Family Code	Family Code section 9000.5 addresses stepparent adoptions where one of the spouses or partners gave birth to the child during the marriage or domestic partnership. The Committee does not recommend adding language related to adoptions where one of the spouses became the sole legal parent through surrogacy or a prior adoption, as such adoptions are not addressed by Family Code section 9000.5. The committee revised this paragraph to improve overall readability and incorporated some of the remaining language proposed. The committee agrees with the recommendation and has substantially incorporated it. The committee agrees with the recommendation

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	Commentator	Position	Comment	Committee Response
			Section 7613, FLEXCOM also recommends modifying Paragraph 13 on page 3 of 5 to read as follows: "The child was conceived by assisted reproduction in compliance with Family Code Section 7613".	and has incorporated it.
			ADOPT-205:	
			Top of page 1 italicized section – language should be added for clarity and to mirror the suggested language in the info sheet as follows: *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 (including a **registered** domestic partnership or civil union from out-of-state **that is legally equivalent to a marriage**) with the parent who gave birth to the child at the time the child was **born, and you remain married to that person.** You may instead attach a declaration in another format containing substantially the same information. The birth parent and the adopting parent must complete separate declarations.*	The committee determined that incorporating the suggested language into the instructions at the top of ADOPT-205 would make those instructions too lengthy and confusing for the court user. The committee, however, substantially incorporated the suggested wording, as appropriate, into the actual declaration.
			Page 1, section 2a - should include language that they remain married or in a state registered domestic partnership (including a domestic partnership or civil union from out-of-state that is legally equivalent to a marriage)	The committee agrees with the recommendation and has incorporated it.
			Page 1, section 2b should include language that they remain married.	The committee agrees with the recommendation and has incorporated it.
			Page 1, section 5a – language should be	The committee agrees with the recommendation

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	Commentator	Position	Comment	Committee Response
			modified as follows: Our child was conceived through assisted reproduction in compliance with Family Code 7613 as described below. *(Describe how your child was conceived and whether you used a known or unknown donor. A sperm bank letter or written donor agreement must be attached. If you used a known donor without a sperm bank or written donor agreement, consult legal counsel before submitting this form):*	and has incorporated it with minor modifications.
			Page 1, sections 5b and 5c - should be deleted as it can be confusing for SRLs and it can all be explained in 5a.	The committee agrees with the recommendation and has incorporated it.
			FLEXCOM proposes revising Paragraph 5 as follows: "Our child was conceived through assisted reproduction in compliance with Family Code Section 7613 as described below:"	The committee agrees with the recommendation and has incorporated it.
			In the parenthetical comment that follows, we advise deleting the sentence "If you used a known donor, list donor's name" and adding a sentence "A letter from your sperm bank or written donor agreement verifying conception by assisted reproduction should be attached." And then delete a., b., and c. By trying to break out the specifics of the conception, the form becomes more complicated and then creates additional issues with the statute – especially in light of expected revisions to Family Code Section 7613. This revision will simplify the form and this item.	The committee agrees with the recommendation and has incorporated it.

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SPR15-19
Family Law: New Forms and Revisions to Forms for Stepparent and Additional-Parent Adoptions
(Approve form ADOPT-205; revise forms ADOPT-050-INFO, ADOPT-200, ADOPT-210, and ADOPT-215)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			ADOPT-210: To be consistent, FLEXCOM recommends modifying the highlighted paragraph under Paragraph 2 of page 1 of 3 as follows: "If this is a stepparent adoption involving a spouse or registered partner who gave birth to the child during the marriage or state registered domestic partnership (including a domestic partnership or civil union from out-of-state legally equivalent to a marriage), …."	The committee determined that incorporating the suggested language would make the instructions too lengthy and confusing for the court user.
			In addition, FLEXCOM recommends revising paragraph 4b. to read: "I am married to, or the registered domestic partner of, the adopting parent listed in 1, and I am not a party to this adoption. I agree to his/her adoption of the child."	Family Code section 8603 provides that a person who is married or in a domestic partnership may adopt, so long as the other spouse or domestic partner consents. The committee agrees with this suggestion and has incorporated it.
			Also, at the bottom of page 2 of the draft Adoption Agreement [ADOPT-210], the footer says Adoption Request rather than Adoption Agreement. This should be corrected.	The committee agrees with the recommendation and has incorporated it.
			Page 3, section 8b – language should be modified to clarify that if the form is signed outside of a hearing it needs to be in front of a notary. Also it should clarify that this can be done for Family Code section 9000.5 adoptions to confirm parentage or in cases where authorized by the court under Family Code section 8613. The language should read as follows: "This form was signed outside of a	The committee does not recommend accepting this suggestion. In stepparent adoptions, Family Code 9000.5 allows the adopting parent to waive a court hearing unless a hearing is otherwise ordered for good cause. Family Code 9003 provides for notarization as well as other witnessing options for the adoption agreement in stepparent adoptions.

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	Commentator	Position	Comment	Committee Response
			hearing in the presence of a notary public. (Select this option only for a stepparent adoption under Family Code section 9000.5 where the court did not order a hearing for good cause, or when approved by the court under Family Code section 8613)."	Family Code 8613 allows a judicial officer to waive the prospective adoptive parent(s)'s personal appearance and allow counsel to appear on the adoptive parent's behalf in some circumstances when personal appearance is impossible or impracticable. The court must receive a written power of attorney giving the attorney permission to do so. Family Code 8613 allows, in some circumstances, notarization or other witnessing of that power of attorney. This other witnessing can be provided by specific military and other government personnel who are authorized to take acknowledgments under Civil Code Sections 1183 and 1183.5. Currently, item 8 of ADOPT 210 only addresses the notarization and witnessing options for stepparent adoptions where the hearing is waived, which was within the scope of this current comment cycle and required by recent legislative changes. The committee does not recommend expanding item 8 to include witnessing options for other types of adoptions where the hearing is still required, but the prospective adoptive parent's personal appearance can be made by counsel. To do so would make ADOPT 210 lengthier, potentially more confusing for self-represented litigants, and would be outside the scope of this proposal. In addition prospective adoptive parents seeking appearance by counsel in lieu of personal appearance by definition have an attorney to make that appearance. That attorney can request waiver of the adoptive parent's appearance and draft and

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	Commentator	Position	Comment	Committee Response
				attach the required power of attorney.
			This section 8b should be moved up before the judge's signature line. The remaining 8b(1), 8b(2) and 8b(3) should be deleted.	The committee agrees with the recommendation and has accepted it.
			Page 3, bottom of page – should read Adoption Agreement not Adoption Request.	The committee agrees with the recommendation and has accepted it.

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JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 27, 2015

Title
Juvenile Delinquency: Documenting Wobbler Determination

Rules, Forms, Standards, or Statutes Affected
Revise form JV-665

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, 2016

Date of Report
July 29, 2015

Contact
Audrey Fancy, 415-865-7706
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Executive Summary

The Family and Juvenile Law Advisory Committee recommends revising form JV-665, *Disposition—Juvenile Delinquency*, to clarify documentation of a wobbler (felony or misdemeanor public offense) determination and to make other nonsubstantive changes to improve the accuracy of the form.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2016, revise form JV-665, *Disposition—Juvenile Delinquency*, to clarify documentation of a wobbler (felony or misdemeanor public offense) determination.

A copy of the proposed revised form is attached at pages 5–6.

Previous Council Action

Form JV-665 was adopted, effective January 1, 2006, as part of a comprehensive packet to provide a standard cover page and attachments for court orders and findings in juvenile

delinquency proceedings.[1] The form was then revised, effective January 1, 2007, to correct grammatical and legal inaccuracies, to delete the option of releasing the child to a parent or guardian pending placement in a group home, and to add a new dispositional option for placement in a ranch or camp.

Most recently, effective January 1, 2012, the form was revised as part of a second comprehensive proposal that resulted in the creation of 8 new Judicial Council forms and the revision of 15 other forms for juvenile delinquency proceedings. Some of those revisions were in response to legal changes; others responded to suggestions to the Family and Juvenile Law Advisory Committee from the courts and their justice partners to make the forms easier to use and more comprehensive, as well as to serve the needs of courts that use electronic versions of the forms. As part of that revision, form JV-665 and all but one of the delinquency court orders forms were revised to be optional rather than mandatory to relieve any financial burdens on local courts. In addition, the length of this form was significantly reduced by moving the findings and orders related to children in placement to the newly created form JV-667; and the form was modified to reduce repetitive entry of allegation information, allow for a disposition under Welfare and Institutions Code section 725(a), and allow for more than one next hearing date to be set.

Rationale for Recommendation

Form JV-665 is an optional disposition form that states required findings and orders in delinquency cases. At item 3, the form provides space to designate an offense as a felony or misdemeanor as required by Welfare and Institutions Code section 702.[2] Item 3 currently reads: "The court previously sustained the following counts. Any charges which may be considered a misdemeanor or a felony for which the court has not previously specified the level of offense are now determined to be as follows."

In the case *In re Manzy W.* (1997) 14 Cal.4th 1199, 1204 [60 Cal.Rptr.2d 889, 930 P.2d 1255], the California Supreme Court concluded that section 702 is unambiguous and "requires an explicit declaration by the juvenile court whether an offense would be a felony or misdemeanor in the case of an adult." *Manzy* further noted that "the record in a given case may show that the juvenile court, despite its failure to comply with the statute, was aware of, and exercised its discretion to determine the felony or misdemeanor nature of a wobbler." (*Id.* at p. 1209.) The current language at item 3 was drafted to comply with *Manzy W.* A recent unpublished case, however, noted that the language on the form is unclear with regard to the court's determining

[1] That proposal implemented the recommendations of the Probation Services Task Force Final Report as directed by the Judicial Council at its August 29, 2003, meeting. Specifically, staff was directed to "work with probation departments and the Chief Probation Officers of California to develop statewide standards for enhanced probation services." That proposal was developed by a working group of court and probation representatives including judges (appellate and trial court), court clerks, a chief probation officer, probation managers, and probation line staff.

[2] Welf. & Inst. Code, § 702: "If the minor is found to have committed an offense which would in the case of an adult be punishable alternatively as a felony or a misdemeanor, the court shall declare the offense to be a misdemeanor or felony."

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whether an offense is a felony or a misdemeanor and in a footnote suggested that the Judicial Council consider modifying the form.[3] See *In re S.J.* (H040997), footnote 6:

> We take judicial notice of the existence and contents of the Judicial Council's form order entitled JURISDICTION HEARING—JUVENILE DELIQUENCY (JV-644 [Rev. Jan. 1, 2012]). (See Evid. Code, §§ 452, subd. (c), 459.) The form provides space for a court to list allegations that have been admitted and found true after the child's admission or no contest plea. By checking the appropriate box, the court may declare each listed statutory violation to be a misdemeanor or a felony or it may indicate the status of the statutory violation will be specified at disposition. It contains additional preprinted language with respect to those allegations: "The court has considered whether the above offense(s) should be felonies or misdemeanors." A juvenile court adopts this language by checking the adjacent box.
>
> The Judicial Council may wish to consider revising Judicial Council form JV-665 to provide for the identification or separately listing of each statutory violation that "would in the case of an adult be punishable alternatively as a felony or a misdemeanor" (§ 702) and to clearly reflect that the court is exercising its discretion pursuant to section 702 and explicitly declaring the status of each such offense. The rebuttable presumption that official duty is regularly performed (see Evid. Code, §§ 660, 664) would answer any concern that a clerk filled out the form and the judge signed it unthinkingly without exercising discretion. (See *People v. Visciotti* (1992) 2 Cal.4th 1, 49 ["In the absence of any indication to the contrary we presume, as we must, that a judicial duty is regularly performed. [Citations.]"].)

The committee considered this suggestion and determined that the language on form JV-665 is unclear and should be revised consistent with form JV-664, *Jurisdiction Hearing—Juvenile Delinquency*. The committee recommends changing the order of the columns in item 3 and providing more specificity of enhancements in the final column. In addition, the committee also recommends technical changes to form JV-665 to improve the parallelism of subpoints in item 11 and to update cross-references to other forms listed as attachments after the judicial officer's signature line at the bottom of page 2. The current cross-references list out-of-date form names.

Comments, Alternatives Considered, and Policy Implications

This proposal circulated for comment as part of the spring 2015 invitation to comment cycle, from April 17 to June 17, 2015, 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, social workers, probation officers, and other juvenile law professionals. Four organizations provided comment. Two agreed with the

[3] California Rules of Court, rule 8.1115(a), states that an unpublished opinion "must not be cited or relied on by a court or a party in any other action." This case is cited here to provide background information for this form change.

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proposal and two agreed if modified; no commentators disagreed with the proposal. A chart with the full text of the comments received and the committee's responses is attached at pages 7–8.

One of the commentators suggested alternative wording for item 3: "We recommend the language from Manzy W.: 'As to the following sustained wobbler offense, the court is aware of and exercises its discretion to determine the offense to be a felony or misdemeanor.'" Because the text introduces a list of all sustained counts, some, if not all of which may not be wobblers, and since the term *wobbler* is not a legal term, the committee proposes: "The court previously sustained the following counts. As to any offense that could be considered a misdemeanor or a felony, the court is aware of and exercises its discretion to determine the offense as follows."

Two commentators provided comment on item 11. During the comment period the committee did not solicit comment on item 11. However, the recommended changes appear to improve the clarity of that item and are appropriate to make at this time under rule 10.22 (d)(2) because the change is a "correction or a minor substantive change that is unlikely to create controversy." The committee recommends revising item 11 to more clearly specify the custody and probation status of the youth.

The committee considered whether amending the form as suggested by the court in *In re S.J.* was necessary and concluded that amending the language as suggested would provide helpful clarity.

Implementation Requirements, Costs, and Operational Impacts

Implementation will require some changes in court procedures and training, as well as reproduction costs. Implementation should also result in greater clarity with regard to wobbler determinations, resulting in fewer remands and associated costs.

Attachments and Links

1. Form JV-665, at pages 5–6
2. Chart of comments, at pages 7–8

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CHILD'S NAME:	CASE NUMBER:

DISPOSITION—JUVENILE DELINQUENCY

☐ The court has read and considered the social study prepared by the probation officer and any other relevant evidence.

☐ The child has been detained and is at risk of entering foster care. The probation officer believes that child will be able to return home, and the social study includes a case plan as described in Welfare and Institutions Code section 636.

☐ The probation officer has recommended initial or continuing placement in foster care, and the social study includes a case plan as described in Welfare and Institutions Code section 706.6.

THE COURT FINDS AND ORDERS

1. ☐ Notice has been given as required by law.
2. ☐ The court takes judicial notice of all prior findings, orders, and judgments in this proceeding.
3. ☐ The court previously sustained the following counts. As to any offense that could be considered a misdemeanor or a felony, the court is aware of and exercises its discretion to determine the offense as follows:

Count number	Statutory violation	Misdemeanor	Felony		Enhancement *(specify)*
		☐	☐	☐	
		☐	☐	☐	
		☐	☐	☐	
		☐	☐	☐	
		☐	☐	☐	
		☐	☐	☐	

4. ☐ The child resides in *(specify):* County.
5. ☐ *The case is transferred to (specify):* County for disposition. *Juvenile Court Transfer Orders (form JV-550)* will be completed and transmitted.
6. ☐ For the reasons stated on the record, the petition is dismissed ☐ in the interests of justice ☐ because the child does not need treatment or rehabilitation.
7. ☐ The child is placed on probation for up to six months under Welfare and Institutions Code section 725(a) under conditions described in an attachment to this form.
8. ☐ Deferred entry of judgment is ☐ granted ☐ denied.
9. ☐ The child is ☐ declared ☐ continued as a ward of the court.
10. ☐ The recommended findings and orders contained in the probation report dated at pages are adopted ☐ as modified by the court as its own, a copy of which is attached and incorporated herein.
11. ☐ The child is declared a ward and placed on probation
    a. ☐ under the supervision of the probation officer ☐ without probation supervision
    b. in the custody of
       (1) ☐ parent *(name):* ☐ mother ☐ father
       (2) ☐ parent *(name):* ☐ mother ☐ father
       (3) ☐ legal guardian *(name):*
       (4) ☐ probation for out-of-home placement or confined commitment. Form JV-667, *Custodial or Out of Home Placement Disposition Attachment* is completed and attached.
    c. ☐ under terms and conditions described on the attached form.
12. ☐ The child and legal parent are to pay a restitution fine ☐ of $ ☐ as specified on the attached form.
13. ☐ The child, with his or her parent, is to pay restitution
    ☐ as described on the attached restitution order.
    ☐ to each victim *(name each):*
       a. c.
       b. d.
       ☐ in the amount of $ ☐ in the amount and manner determined by the probation office, with the opportunity for review by the court if disputed by the child or the parents.

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Form Approved for Optional Use
Judicial Council of California
JV-665 [Rev. January 1, 2016]

Welfare and Institutions Code, §§ 702, 706.6, 725, 727, 727.2;
Cal. Rules of Court, rules 5.785, 5.790, 5.795
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

14. ☐ The child, with his or her parents, is to pay a fine in the amount of $, plus a penalty assessment in the amount of $, for a total of $

15. ☐ Terms regarding vehicles. The child must
    a. ☐ participate in and successfully complete *(specify):*
    b. ☐ only drive to and from school, work, and/or counselling programs.
    c. ☐ surrender license to ☐ court ☐ probation officer.

16. ☐ The child's driver's license is
    ☐ suspended.
    ☐ revoked.
    ☐ delayed
    ☐ for a period of months years.
    ☐ until the child attains 18 years of age.

17. ☐ Court will notify the Department of Motor Vehicles of the judgment. The DMV has independent authority to suspend, revoke, or delay driving privileges.

18. ☐ The child is ordered to register under Penal Code section 290.

19. ☐ The child is ordered to submit to DNA collection under Penal Code section 296.

20. ☐ Other *(specify):*

21. ☐ **The next hearing will be:**

Date:	Time:	Dept:
Date:	Time:	Dept:

22. ☐ The child is ordered to return to court on the above date and time.

23. ☐ The child is advised of his or her right to appeal.

24. ☐ The child is advised that his or her appointed attorney has a continuing obligation to represent the child on this case, until counsel is relieved by the court under California Rules of Court, rule 5.663.

25. ☐ All prior orders not in conflict, including any terms and conditions of probation, remain in full force and effect.

Date:

JUDICIAL OFFICER

The following attachments are incorporated by reference as findings and orders:

☐ *Custodial and Out Of Home Placement Disposition Attachment* (JV-667)
☐ *Terms and Conditions* (JV-624)
☐ *Juvenile Court Transfer Orders* (JV-550)
☐ *Notice of Hearing and Temporary Restraining Order—Juvenile* (JV-250)
☐ *Commitment to the California Department of Corrections and Rehabilitation, Division of Juvenile Facilities* (JV-732)
☐ *Order for Victim Restitution* (CR-110/JV-790)
☐ *Order Regarding Application for Psychotropic Medication* (JV-223)
☐ *Order Designating Educational Rights Holder* (JV-535)
☐ *Parentage—Findings and Judgment* (JV-501)

Additional attachments:

☐ Indian Child Welfare Act
    ☐ *Order for Repayment of Cost of Legal Services* (JV-135)
    ☐ Responses from tribes or BIA
☐ Victim Identification Form
☐ Probation officer's case plan approved by the court
    ☐ As submitted
    ☐ As amended and stated on the record
☐ Other (specify):

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SPR15-22
Juvenile Delinquency: Documenting Wobbler Determination (revise form JV-665)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	California Judges Association By Hon. Joan P. Weber	A	The Family and Juvenile Advisory Committee proposes revising optional form JV 665 to do three things. 1) In response to In re S.J. H040997 footnote 6, where the court raised concerns about the clarity of #3, which addresses the obligation of the court pursuant to W&I 702 to make a determination as to whether each charge is a felony or a misdemeanor, this new form rearranges the sequence of court number, statutory violation, misdemeanor or felony, and enhancements (if any). 2) improves the parallelism of subpoints in item 11, and 3) updates the cross references at the end of the form which are currently outdated. We considered whether amending the form was necessary and concluded that doing so provided helpful clarity. California Judges Association supports these changes.	No response required.
2.	Orange County Bar Association By Ashleigh Aitken, President	A	No specific comment.	No response required.
3.	Superior Court of California, County of Los Angeles	AM	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? Yes. With regard to the JV-665 form, page 1,item #3: Instead of: “The court has considered whether	The committee agrees to revise the wording to more closely track the language of Manzy but

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	Commentator	Position	Comment	Committee Response
			the offenses below should be considered a misdemeanor or a felony…" We recommend the language from Manzy W.: "As to the following sustained wobbler offense, the court is aware of and exercises its discretion to determine the offense to be a felony or misdemeanor:" Item #11: We suggest the following: 11. The child is declared a ward and placed on probation □ Under the supervision of the probation officer □ Without probation supervision The child is to reside in the custody of: Choices as proposed [parent, legal guardian.] □ Probation for out-of-home placement.	decided to use alternative wording since the term "wobbler," while commonly used is not a legal term, and to avoid confusion when the charged offenses are not wobblers. The committee proposes the following: "The court previously sustained the following counts. As to any offense that could be considered a misdemeanor or a felony, the court is aware of and exercises its discretion to determine the offense as follows:" The committee did not circulate changes to item 11 but this minor substantive change appears to be a prudent change to improve the clarity of this form.
4.	Superior Court of California, County of San Diego By Michael Roddy	AM	**Items 11 d, e, and f**: We recommend that the following words be deleted "in the custody".	The committee did not circulate changes to item 11 but due to the two comments on this item the committee has decided to modify item 11 consistent with the suggestion from Los Angeles below.

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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 October 27, 2015

Title
Juvenile Law: Detention

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 5.502, 5.760, and 5.790; revise forms JV-642 and JV-667

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, 2016

Date of Report
August 5, 2015

Contact
Nicole Giacinti, 415-865-7598
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Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending three California Rules of Court and revising two forms to conform to legislative amendments to sections 635 and 737 of the Welfare and Institutions Code. The legislative amendments clarify that the basis for detaining a child must not be his or her status as a dependent of the court or the child welfare department's inability to provide a placement for the child, and add requirements to the 15-day reviews that occur when a child or nonminor dependent is detained pending execution of a placement order. The amendments and revisions ensure that the rules and forms are consistent with the amended law. They also make technical corrections and clarifications, including clarifying that home supervision does not qualify as a detention for the purposes of federal foster care funding.

Recommendation

The committee recommends that the Judicial Council, effective January 1, 2016, amend three of the California Rules of Court and revise two Judicial Council forms, as follows:

1. Amend rule 5.502(11) and 5.760(c) to clarify that children placed on home supervision are not detained for the purposes of federal foster care funding under title IV-e. Amend rule 5.760(l) to delete the word "detention." These amendments will resolve confusion regarding the foster care funding eligibility of a child placed on home supervision.

2. Further amend rule 5.760(c) to conform to the new statutory requirement that the court's decision to detain a dependent child of the court in juvenile hall must not be based on the child's status as a dependent of the court or the inability of the child welfare department to provide a placement for the child.

3. Amend rule 5.760(c) to conform to the new statutory requirement that establishes that when no grounds for detention exist, the court must order dependents of the court released to the child welfare department, and that agency will ensure that the child's current caregiver take custody of the child or it will take custody of the child and place the child in a licensed or approved home.

4. Amend rule 5.760(e) to remove the requirement that the findings and orders document be signed, as California law does not require a signature for a valid court order.

5. Amend rule 5.790 to conform to new statutory requirements regarding the 15-day reviews that the court must conduct when a child is detained pending implementation of a dispositional order. To limit additional changes to the rule necessitated by future modifications to section 737, the committee proposes eliminating the specific requirements and using a cross-reference to the recently amended section 737.

The committee recommends the following revisions to Judicial Council forms:

1. On *Initial Appearance Hearing—Juvenile Delinquency* (form JV-642), insert a new item 26 to allow the court to state that the child is a dependent of the court under section 300, is ordered released from custody, and is ordered into the care of child welfare services to ensure that the either the child's current caregiver takes physical custody of the child or child welfare services takes physical custody and places the child in an approved placement.

2. On *Custodial and Out-of-Home Placement Disposition Attachment* (form JV-667), remove references to detaining children on home supervision. Add to two items the finding, "Continuance in the home is contrary to the child's welfare," which is required at any court hearing where the court is authorizing the removal of the child from the home and is critical to ensure federal foster care funding.[1]

[1] See 42 U.S.C. § 672(a)(1)–(2); 45 C.F.R. § 1356.21(c).

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The text of the amended rules is attached at pages 6–8. A copy of the revised forms is attached at pages 9–13.

Previous Council Action

The Judicial Council adopted:

- Rule 5.502 as rule 1401, effective January 1, 1990. The rule has been amended 14 times since then, most recently in 2014 to conform to statutory amendments that required adding or clarifying definitions related to education, Indian children, and nonminors.

- Rule 5.760 as rule 1475, effective January 1, 1998. The rule has been amended four times since then, most recently in 2007.

- Rule 5.790 as rule 1493, effective January 1, 1991. The rule has been amended eight times since then, most recently in 2007.

All juvenile court rules were renumbered and placed in title 5, effective January 1, 2007.

Initial Appearance Hearing—Juvenile Delinquency (form JV-642) was adopted for mandatory use, effective January 1, 2006. It was made optional effective January 1, 2012, and last revised effective July 1, 2013.

Custodial And Out-of-Home Placement Disposition Attachment (form JV-667) was approved for optional use, effective January 1, 2012.

Rationale for Recommendation

Assembly Bill 388 amended section 635 of the Welfare and Institutions Code to clarify that a child who has been declared a dependent of the court is not to be detained because of the child's status as a dependent or because the child welfare services department has failed to locate a placement for the child. Assembly Bill 2607 amended section 737 of the Welfare and Institutions Code to incorporate additional required elements into the 15-day reviews that must be held while a child or nonminor dependent awaits placement under a dispositional order. The committee proposes limited amendments and technical corrections to the affected rules and forms.

Rule 5.502 and 5.760(c)

Although rule 5.502 is not directly affected by AB 388 and AB 2607, the current definition of *detained* in rule 5.502(11) and the phrasing in rule 5.760(c) have caused confusion regarding the eligibility for federal foster care funding of children on home supervision. Section 628.1 of the Welfare and Institutions Code states that if the child meets the criteria for detention but the probation officer does not believe that 24-hour secure detention is necessary, the probation officer must "release such minor to his or her parent, guardian, or responsible relative on home supervision." Eligibility for federal foster care payments is based on, among other things,

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placement of the child in a foster family home or child-care institution and a judicial determination that it is contrary to the child's welfare to stay in the home from which he or she was removed. A child who returns to the home from which he was removed is ineligible to receive foster care payments because his return home signals that it is not contrary to his welfare to remain in the care of his parent or guardian and because he has not been ordered into out-of-home placement in a foster family home or child-care institution. Because the child is not detained for the purposes of federal foster care funding under title IV-e, the committee proposes making the recommended amendments to eliminate confusion regarding the title IV-e eligibility of a child placed on home supervision.

Rule 5.760(c)

The amendments to sections 635 and 636 enacted by AB 388 are aimed at ensuring that children who are dependents of the court and detained in juvenile hall, are not detained because of delays in identifying a placement. Rule 5.760(c) states the grounds on which a child may be detained but does not currently contain language clarifying that neither a child's status as a dependent of the court, nor the child welfare services department's inability to find a placement, is grounds for detention. Failure to include the new requirement in rule 5.760(c) would be inconsistent with the statutory change. The committee therefore recommends amending the rule to include the new requirement.

Rule 5.790

The 15-day review requirement is stated in rule 5.790 but the rule neither contains nor references the review requirements delineated in amended section 737. Rather than stating the specific requirements, the committee proposes cross-referencing recently amended section 737 so that any future modifications to section 737 will not necessitate changes to the rule.

Comments, Alternatives Considered, and Policy Implications

This proposal circulated for comment as part of the spring 2015 invitation to comment cycle, from April 17 to June 17, 2015, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate court presiding justices and administrators; trial court presiding judges, executive officers, judges, court administrators, and clerks; attorneys; family law facilitators and self-help center staff; social workers; probation officers; CASA program volunteers; and other juvenile and family law professionals.

The committee received six comments. One commentator agreed with the proposal and five agreed if modified. No commentators disagreed with the proposal. Most of the commentators suggested minor or technical changes, such as more closely tracking the statutory language. The committee agreed with all of them without debate. A chart with the full text of the comments received and the committee's responses is attached at pages 14–23.

One suggestion generated the most committee discussion.

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Comment considered: Removing home supervision from the definition of detention
One commentator did not agree that home supervision should be removed from the definition of detention in rule 5.502 because it may be a form of detention. The committee recommends leaving the reference to home supervision in the definition of detention in rule 5.502(11) and adding this sentence: "A child released or placed on home supervision is not detained for the purposes of federal foster care funding." The addition of this sentence to rule 5.502(11) clarifies that although home detention may be considered a restriction of liberty, it is not a detention for the purposes of title IV-E foster care funding.

The proposed revision to rule 5.760(*l*) is also slightly modified to draw a distinction between release and home supervision.

Alternatives considered
The committee considered making only the changes necessary to implement AB 388 and AB 2607 but determined that amending rules 5.502(11) and 5.760(c) and revising forms JV-642 and JV-667 would clarify the differences between detention for federal foster care funding purposes and home supervision. For those children placed on home supervision, a judicial decision that it would not be contrary to their welfare for them to return home has been made; thus, they are ineligible for foster care funding under title IV-e. Although they may be detained in the sense that their liberty has been restricted, children placed on home supervision are not detained for the purposes of title IV-e; consequently, detention orders must be made when a child is removed from the home after being placed on home supervision. The revisions to rules 5.502(11) and 5.760)(c) and forms JV-642 and JV-667 are intended to eliminate any confusion about this distinction.

Implementation Requirements, Costs, and Operational Impacts

In implementing the revised forms, courts would incur standard reproduction costs and retraining of affected staff.

Attachments and Links

1. Cal. Rules of Court, rules 5.502, 5.760, and 5.790, at pages 6–8
2. Forms JV-642 and JV-667, at pages 9–13
3. Chart of comments, at pages 14–23
4. Assembly Bill 388
   http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB388&search_keywords
5. Assembly Bill 2607
   http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB2607&search_keywords

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Rules 5.502, 5.760, and 5.790 of the California Rules of Court would be amended, effective January 1, 2016, to read:

Rule 5.502. Definitions and use of terms

Definitions (§§ 202(e), 303, 319, 361, 361.5(a)(3), 450, 628.1, 636, 726, 727.3(c)(2), 727.4(d), 4512(j), 4701.6(b), 11400(v), 11400(y), 16501(f)(16); 20 U.S.C. § 1415; 25 U.S.C. § 1903(2))

As used in these rules, unless the context or subject matter otherwise requires:

(1)–(10) * * *

(11) "Detained" means any removal of the child from the person or persons legally entitled to the child's physical custody, or any release of the child on home supervision under section 628.1 or 636. A child released or placed on home supervision is not detained for the purposes of federal foster care funding.

(12)–(45) * * *

Rule 5.760. Detention hearing; report; grounds; determinations; findings; orders; factors to consider for detention; restraining orders

(a)–(b) * * *

(c) Grounds for detention (§§ 625.3, 635, 636)

(1) The child must be released unless the court finds that continuance in the home of the parent or legal guardian is contrary to the child's welfare, and one or more of the following grounds for detention exist:

~~(1)~~(A) The child has violated an order of the court;

~~(2)~~(B) The child has escaped from a commitment of the court;

~~(3)~~(C) The child is likely to flee the jurisdiction of the court;

~~(4)~~(D) It is a matter of immediate and urgent necessity for the protection of the child; or

~~(5)~~(E) It is reasonably necessary for the protection of the person or property of another.

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(2) If the child is a dependent of the court under section 300, the court's decision to detain must not be based on the child's status as a dependent of the court or the child welfare services department's inability to provide a placement for the child.

~~The court may order the child detained in juvenile hall or in a suitable place designated by the court., or on home supervision under the conditions stated in sections 628.1 and 636.~~

(3) The court may order the child placed on home supervision under the conditions stated in sections 628.1 and 636, or detained in juvenile hall or in a suitable place designated by the court.

(4) If the court orders the release of a child who is a dependent of the court under section 300, the court must order the child welfare services department either to ensure that the child's current caregiver takes physical custody of the child or to take physical custody of the child and place the child in a licensed or approved placement.

(d) Required determinations before detention

Before detaining the child, the court must determine whether continuance in the home of the parent or legal guardian is contrary to the child's welfare and whether there are available services that would prevent the need for further detention. The court must make these determinations on a case-by-case basis and must state the evidence relied on in reaching its decision.

(1) If the court determines that the child can be returned to the home of the parent or legal guardian through the provision of services, the court must release the child to the parent or guardian and order that the probation department provide the required services.

(2) If the child cannot be returned to the home of the parent or legal guardian, the court must state the facts on which the detention is based.

(e) Required findings to support detention (§ 636)

If the court orders the child detained, the court must make the following findings on the record and in the written~~, signed~~ order~~s~~. The court must reference the probation officer's report or other evidence relied on to make its determinations:

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(1) Continuance in the home of the parent or guardian is contrary to the child's welfare;

(2) Temporary placement and care is the responsibility of the probation officer pending disposition or further order of the court; and

(3) Reasonable efforts have been made to prevent or eliminate the need for removal of the child, or reasonable efforts were not made.

(f)–(k) * * *

(*l*) Restraining orders

As a condition of release or ~~detention on~~ home supervision, the court may issue restraining orders as stated in rule 5.630 or orders restraining the child from any or all of the following:

(1)–(3) * * *

Rule 5.790. Orders of the court

(a)–(i) * * *

(j) Fifteen-day reviews (§ 737)

If the child or nonminor is detained pending the implementation of a dispositional order, the court must review the case at least every 15 days as long as the child is detained. The review must meet all the requirements in section 737. ~~The court must inquire about the action taken by the probation officer to carry out the court's order, the reasons for the delay, and the effects of the delay on the child.~~

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JV-642

CHILD'S NAME:	CASE NUMBER:

INITIAL APPEARANCE HEARING—JUVENILE DELINQUENCY

☐ Out-of-Custody Appearance ☐ In-Custody Appearance and Detention

THE COURT MAKES THE FOLLOWING FINDINGS AND ORDERS:

1. ☐ Notice has been given as required by law.
2. ☐ The child's date of birth is *(specify)*:
3. ☐ The child is to remain out of custody pending the next hearing.
4. ☐ The child was taken into custody at: ☐ a.m. ☐ p.m. on *(specify date):*
5. ☐ The petition or notice of probation violation was filed at: ☐ a.m. ☐ p.m. on *(specify date):*
6. ☐ Counsel is appointed for the child as follows:
   Counsel is to represent the child until relieved by the court in accordance with California Rules of Court, rule 5.663.
7. ☐ The information on the face of the petition was ☐ confirmed ☐ corrected as follows:
8. a. ☐ The court inquired of ☐ the mother ☐ others *(names and relationships):*

   as to the identities and addresses of all presumed or alleged fathers.

   b. ☐ The court finds *(name):* to be the ☐ legal ☐ biological ☐ presumed ☐ alleged father.
9. The ☐ mother ☐ father ☐ legal guardian ☐ other *(specify):*
   were provided with a *Parental Notification of Indian Status* (form ICWA-020) and ordered to complete the form and submit it to the court before leaving the courthouse today.
10. a. ☐ The child ☐ is ☐ may be an Indian child, and the county agency must provide, as required by law, notice of the proceeding and of the tribe's right to intervene. Proof of such notice must be filed with the court.
    b. ☐ There is reason to believe that the child may be of Indian ancestry, and the county agency must provide notice of the proceedings to the Bureau of Indian Affairs as required by law. Proof of such notice must be filed with this court.
11. ☐ The court advised the child and parent or legal guardian of *(check all that apply)*
    a. ☐ the contents of the petition.
    b. ☐ the nature and possible consequences of juvenile court proceedings.
    c. ☐ the purpose and scope of the initial hearing.
    d. ☐ the hearing rights described in rule:
    e. ☐ the reason the child was taken into custody.
    f. ☐ the parent or legal guardian's financial obligation and right to be represented by counsel.
    g. ☐ other:
12. ☐ Reading of the petition and advice of rights were waived by ☐ the child ☐ the child's counsel.
13. ☐ The prosecutor has requested that a hearing be set to determine whether the child is a fit and proper subject under Welfare and Institutions Code section 707(a) or (c).
14. ☐ The child ☐ through counsel
    a. ☐ denied the allegations of the petition dated:
    b. ☐ asked the court to take no action on the petition at this time.
15. ☐ For the reasons stated on the record, the petition is dismissed ☐ in the interests of justice ☐ because the child does not need treatment or rehabilitation.
16. ☐ After inquiry, the court finds that the child understands the nature of the allegations and the direct consequences of admitting or pleading no contest to the allegations of the petition, and understands and waives the hearing rights, which were explained *(check all that apply):*
    a. ☐ The right to have a hearing.

Form Approved for Optional Use
Judicial Council of California
JV-642 [Rev. January 1, 2016]

Welfare and Institutions Code, §§ 633, 635, 636, 700;
Cal. Rules of Court, rules 5.754, 5.758, 5.760, 5.778
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

16. b. ☐ The right to cross-examine and confront witnesses.
c. ☐ The right to subpoena witnesses and present a defense.
d. ☐ The right to remain silent.

17. ☐ The child ☐ through counsel
a. ☐ admitted the petition ☐ as filed ☐ as amended on *(date):*
b. ☐ pleaded no contest to the petition ☐ as filed ☐ as amended *on (date):*
c. ☐ The child's counsel consents to the admission or plea of no contest.
d. ☐ The admission or plea of no contest is freely and voluntarily made.
e. ☐ There is a factual basis for the admission or plea of no contest.
f. ☐ The court finds that the child was under 14 years old at the time of the offense but the child knew the wrongfulness of his or her conduct at the time the offense was committed.

18. a. ☐ The following allegations are admitted and found to be true:

Count number	Statutory violation	Misdemeanor	Felony	To be specified at disposition	Enhancement *(if applicable)*
		☐	☐	☐	
		☐	☐	☐	
		☐	☐	☐	
		☐	☐	☐	
		☐	☐	☐	

b. ☐ As to any offense that could be considered a misdemeanor or felony, the court is aware of and exercises its discretion to determine the offense, as stated in 18a.
c. ☐ The following allegations are dismissed:

Count number	Statutory violation

19. ☐ The child is described by section ☐ 601 ☐ 602 of the Welfare and Institutions Code.
20. ☐ The maximum confinement time is:
21. ☐ The child's residence is in: County.
22. ☐ The matter is transferred to: County for disposition and further proceedings.
Juvenile Court Transfer Orders (form JV-550) will be completed and transmitted immediately.
23. ☐ The child waives his or her right under *People v. Arbuckle* to have the disposition heard by this judicial officer.

CHILD IN CUSTODY

24. ☐ The court has considered the detention report prepared by probation
☐ and the following documents *(specify):*
☐ and the testimony of *(name):*
☐ and the examination by the court of *(name):*
☐ and takes judicial notice of the entire court file.

25. ☐ The child is released from custody ☐ to the home of *(name, address, and relationship to child):*
☐ on home supervision ☐ on electronic monitoring
☐ the terms of which are stated in the attached *Terms and Conditions* (form JV-624).

26. ☐ The child is a dependent of the court under section 300 and is ordered released from custody. The child welfare services department must either ensure that the child's current caregiver take physical custody of the child or take physical custody of the child and place the child in a licensed or approved placement.

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CHILD'S NAME:	CASE NUMBER:

27. ☐ A prima facie showing has been made that the child's disposition is by section 601 or 602.

28. ☐ Based on the facts stated on the record, the child is detained in secure custody on the following grounds *(check all that apply):*

   a. ☐ The child has violated an order of the court.

   b. ☐ The child has escaped from a court commitment.

   c. ☐ The child is likely to flee the jurisdiction of the court.

   d. ☐ It is a matter of immediate and urgent necessity for the protection of the child.

   e. ☐ It is reasonably necessary for the protection of the person or property of another.

29. ☐ Based on the facts stated on the record, continuance in the child's home is contrary to the child's welfare.

30. ☐ Based on the facts stated on the record, there are no available services that would prevent the need for further detention.

31. ☐ Temporary placement and care is the responsibility of the probation department.

32. ☐ Reasonable efforts to prevent or eliminate the need for detention of the child ☐ have ☐ have not been made.

33. ☐ Probation is ordered to provide services that will assist with reunification of the child and the family.

34. ☐ Probation is granted the authority to authorize medical, surgical, or dental care under Welfare and Institutions Code section 739.

35. ☐ The child and the parent or legal guardian have been advised that if the child cannot be returned home within the statutory timelines, a proceeding may be scheduled to determine an alternative permanent home, including an adoptive home after parental rights are terminated.

36. ☐ The ☐ mother ☐ father ☐ legal guardian are ordered to supply the names and contact information of adult relatives to probation so probation can notify them of the removal and of their options to be included in the child's life.

37. ☐ The probation officer must file a case plan within 60 days.

38. ☐ Probation is authorized to release the minor ☐ at its discretion ☐ under the following circumstances:

39. ☐ The court accepts transfer from the County of:

40. ☐ Other orders:

41. ☐ Child ☐ Counsel waives time for *(check all that apply)*
   ☐ jurisdiction hearing ☐ disposition hearing ☐ other:

42. ☐ **The next hearings will be**

Date:	Time:	Dept:	Type of hearing:
Date:	Time:	Dept:	Type of hearing:

43. ☐ The child

   a. ☐ is ordered to return to court on the above date and time.

   b. ☐ remains detained.

44. All prior orders not in conflict, including any terms and conditions of probation, remain in full force and effect.

45. ☐ All appointed counsel are relieved.

Date:

☐ JUDGE ☐ JUDGE PRO TEMPORE ☐ COMMISSIONER ☐ REFEREE

Countersignature for detention orders (*if necessary*):

Date:

JUDICIAL OFFICER

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CHILD'S NAME:	CASE NUMBER:

CUSTODIAL AND OUT-OF-HOME PLACEMENT DISPOSITION ATTACHMENT

THE COURT FINDS AND ORDERS

1. ☐ The maximum time the child may be confined
   a. ☐ in secure custody for the offenses sustained in the petition before the court is *(specify):*
   b. ☐ in the petition before the court, with the terms of all previously sustained petitions known to the court aggregated, is (specify):

2. ☐ The child is committed to (*specify):* days months in juvenile hall
   a. ☐ and is remanded forthwith. Continuance in the home is contrary to the child's welfare.
   b. ☐ and is to report to *(name):* by ☐ a.m. ☐ p.m. on *(date):*
   c. ☐ with credit for *(specify):* days served.

3. ☐ The welfare of the child requires that physical custody be removed from the parent or guardian. *(Check only if applicable):*
   a. ☐ The child's parent or guardian has failed or neglected to provide, or is incapable of providing, proper maintenance, training, and education for the child.
   b. ☐ The child has been on probation in the custody of the parent or guardian and has failed to reform.
   c. Continuance in the home is contrary to the child's welfare.

4. ☐ Probation is granted the authority to authorize medical, surgical, or dental care under Welfare and Institutions Code section 739.

5. ☐ Reasonable efforts to prevent or eliminate the need for removal
   a. ☐ have been made.
   b. ☐ have not been made.

6. a. ☐ The probation officer will ensure provision of reunification services, and the following are ordered to participate in the reunification services specified in the case plan:
   ☐ Mother ☐ Biological father ☐ Legal guardian ☐ Presumed father
   ☐ Alleged father ☐ Indian custodian ☐ Other *(specify):*

   b. ☐ Reunification services do not need to be provided to *(name):* because the court finds by clear and convincing evidence that *(check one)*
      (1) ☐ reunification services were previously terminated for that parent or not offered under section 300 et seq. of the Welfare and Institutions Code.
      (2) ☐ that parent has been convicted of ☐ murder of another child of the parent ☐ voluntary manslaughter of another child of the parent ☐ aiding, abetting, attempting, conspiring, or soliciting to commit murder or manslaughter of another child of the parent ☐ felony assault resulting in serious bodily injury to the child or another child of the parent.
      (3) ☐ the parental rights of that parent regarding a sibling of the child have been terminated involuntarily.

   c. ☐ The child is ☐ ordered to ☐ continued in the care, custody, and control of the probation officer for placement in a suitable relative's home or in a foster or group home.

   d. ☐ The following are ordered to meet with the probation officer on a monthly basis:
   ☐ Mother ☐ Biological father ☐ Legal guardian ☐ Presumed father
   ☐ Alleged father ☐ Indian custodian ☐ Other *(specify):*

   e. ☐ The child is ordered to obey all reasonable directives of placement staff and probation. The child is not to leave placement without the permission of probation or placement staff.

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Form Approved for Optional Use
Judicial Council of California
JV-667 [Rev. January 1, 2016]

Welfare and Institutions Code, §§ 702, 706.6, 725, 727, 727.2;
Cal. Rules of Court, rules 5.785, 5.790, 5.795
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

6. f. ☐ The child is to be placed out of state at the following *(name and address):*

(1) ☐ In-state facilities are unavailable or inadequate to meet the needs of the child.

(2) ☐ The state Department of Social Services or its designee has performed initial and continuing inspection of the facility and has certified that it meets all California licensure standards, or has granted a waiver based on a finding that there is no adverse impact to health and safety.

(3) ☐ The requirements of section 7911.1 of the Family Code are met.

g. ☐ Pending placement, the child is detained in juvenile hall. If being housed in another county, please specify county:

h. ☐ The child is placed on home supervision in the home of

(a) ☐ parent *(name):* ☐ mother ☐ father

(b) ☐ parent *(name):* ☐ mother ☐ father

(c) ☐ legal guardian *(name):*

(d) ☐ other *(name and address):*

☐ and is subject to electronic monitoring.

i. ☐ The parent or legal guardian must cooperate in the completion and signing of necessary documents to qualify the child for any medical or financial benefits to which the child may be entitled.

j. ☐ The county is authorized to pay for care, maintenance, clothing, and incidentals at the approved rate.

k. ☐ The likely date by which the child may be returned to and safely maintained in the home or another permanent plan selected is *(specify date):*

l. ☐ The right of the parent or guardian to make educational decisions for the child is specifically limited. *Order Designating Educational Rights Holder* (form JV-535) will be completed and transmitted.

7. ☐ The child has been ordered into a placement described by title IV-E of the Social Security Act.

a. ☐ The date the child entered foster care is: , which is 60 days after the day the child was removed from his or her home.

b. ☐ An exception applies to the standard calculation of the date the child entered foster care because

(1) ☐ the child has been detained for more than 60 days. Therefore, the date the child entered foster care is today's date of: .

(2) ☐ the child has been in a ranch, camp, or other institution for more than 60 days and is now being ordered into an eligible placement. The date the child enters foster care will be the date he or she is moved into the eligible placement facility, which is anticipated to be: .

(3) ☐ at the time the wardship petition was filed, the child was a dependent of the juvenile court and in an out-of-home placement. Thus, the date entered foster care is unchanged from the date the child entered foster care in dependency court. That date is: .

8. ☐ The child is committed to the care, custody, and control of the probation office for placement in the county juvenile ranch, camp, forestry camp, or:

a. ☐ for: months days.

b. ☐ until the requirements of the program have been satisfactorily completed.

c. ☐ If being housed in another county, please specify:

9. ☐ The child is committed to the Department of Corrections and Rehabilitation, Division of Juvenile Justice, and *Commitment to the California Department of Corrections and Rehabilitation, Division of Juvenile Facilities* (form JV-732) will be completed and transmitted.

Date:

JUDICIAL OFFICER

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SPR15-24

Juvenile Law: Detention (amend Cal. Rules of Court, rules 5.502, 5.760, and 5.790; amend forms JV-642 and JV-667)

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

	Commentator	Position	Comment	Committee Response
1.	California Judges Association Hon. Joan P. Weber	AM	We support the proposal, however, there is serious disagreement about whether home supervision is a form of detention. Because of that we recommend that the rule not address that issue but leave it to the legislature, or possibly the courts, to resolve.	The committee acknowledges that the initial proposal's discussion of home supervision caused confusion. The committee's intent is to clarify that children placed on home supervision are not detained for the purposes of federal foster funding under title IV-E. To do this, the committee recommends keeping the current definition of "detained" in Rule 5.502 and adding the following sentence: "A child released or placed on home supervision is not detained for the purposes of federal foster care funding." The committee also recommends revising Rule 5.760(l)to remove the word "detention." Rule 5.760(l) would read "As a condition of release or home supervision, the court may issue…." The proposed revisions acknowledge that placing a child on home supervision may represent a form of restricted liberty but not one that qualifies as a detention for the purposes of federal foster care funding under title IV-E. Home supervision is not a title IV-e detention because returning the child to his/her parents establishes it is *not* contrary to the child's welfare to return home.
2.	Los Angeles Superior Court	AM	1. Does the proposal appropriately address the stated purpose? Yes.	1. As the recommendation is to leave home supervision within the definition of "detention" it is not necessary to add the language related to setting hearings.

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	Commentator	Position	Comment	Committee Response
			We concur with the removal of home supervision from the definition of "detained," however, it must be emphasized that a minor on home supervision is considered to be detained for purposes of setting hearings. The quoted language below from WIC 628.1 should be added to CRC 5.752(f). See last paragraph of WIC 628.1: "A minor on home supervision shall be entitled to the same legal protections as a minor in secure detention, including a detention hearing." 2. Should rule 5.760 be amended to state that a court's decision to detain a child must not be based on a finding that continuance in the child's current placement is contrary to the child's welfare? This finding is not authorized by statute or rule. No. 3. It is suggest that CRC 5.760(e) not include the proposed language: "The inability of the child welfare services department to provide a placement for the child cannot be the basis for any of the above grounds."	2. The addition of the phrase "of the parent or legal guardian" to Rule 5.760(c)(1) clarifies that the contrary to the welfare finding discussed in title IV-e applies only to removal of a child form his parent or guardian. 3. The revised language will track the statutory language.

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	Commentator	Position	Comment	Committee Response
			Instead include only the language of the statute: "If the minor is a dependent of the court subject to Section 300, the court's decision to detain shall not be based on the minor's status as a dependent of the court or the child welfare department's inability to provide a placement for the minor." The presently proposed language (inability may not be the basis for above grounds) may be interpreted to negate the third finding, "The child is likely to flee the jurisdiction of the court." While argument can be made that the child welfare department's inability to contain the minor in a placement is not an appropriate basis for detention, we think the better rule is that it is a proper basis and would not add the language that "inability … may not be the basis for above grounds." 4. In the proposed change to 5.760(l), Restraining Orders, we suggest the following wording: "As a condition of release home or release on home supervision, the court may issue restraining orders…" 5. CRC 5.790(j) should read: If the child or nonminor [deleting the word	4. The committee agrees to the gist of this amendment and recommends that Rule 5.760(l) read: "As a condition of release or home supervision, the court may…." 5. The committee will delete the word "dependent."

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	Commentator	Position	Comment	Committee Response
			"dependent"]… The revision to WIC 737 did not address nonminor dependents, but youth who are wards and age 18 or over. 6a. Revisions to JV-642: We suggest the following language for #16: "After inquiry the court finds that the child understands…" It is not always the court who inquires, sometimes the inquiry is done by the DA. 6b. We agree with the additions to #17. 6c. We suggest the following language in 18b: "As to the following sustained wobbler offense, the court is aware of and exercises its discretion to determine the offense to be a felony or misdemeanor." We disagree with the proposed changes to JV-667, #6h. This is a dispositional attachment and a minor would not be "released on home supervision" The minor would be "placed on home supervision" as a condition of probation.	6. The committee agrees that it is not always the court that conducts the inquiry and will make the suggested modification. 6b. No response required. 6c. The committee agrees that the comment enhances the clarity of the form and recommends that 18b read: "As to those sustained wobbler offense(s) enumerated above, the court exercises its discretion to determine whether the offense(s) should be misdemeanors or felonies." 7. The committee will use the phrase "placed on" rather than "released on."
3.	Orange County Bar Association Ashleigh Aitken, President	AM	We recommend modifying to address the problem of the proposed revisions directing the Juvenile Delinquency Court to make orders against a party/nonparty ("the child	The committee's proposed revision tracks the Welfare and Institutions Code section 635, which states "the court shall order the child welfare services department…to ensure…the

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	Commentator	Position	Comment	Committee Response
			welfare services department") that is not present at delinquency detention hearing, received no notice of the delinquency detention hearing, received no copy of the delinquency petition, received no copy of the Probation report, and is denied an opportunity to be heard at the delinquency detention hearing. We recommend that the child welfare services department be given notice and an opportunity to be heard.	current…caregiver takes physical custody of the minor or take physical custody of the minor…."
4.	San Diego Superior Court Mike Roddy	AM	**1. Rule 5.760(c)**: The new language at the bottom of page 5 should be deleted because it is already in (c)(2). The new (c)(4) should track the language in Welfare and Institutions Code section 635(c)(2). **2. Rule 5.760(d)**: The new language in (d)(2)(B) is already in (c)(4) and does not appear to be appropriate in (d). We recommend that the language remain "court must state the facts on which the detention is based." **3. Rule 5.760(e)**: We recommend to delete the proposed new "and order" because 1, 2, and 3 are findings. We recommend as an alternative: "court must make the following	1. To eliminate redundancy, the language in Rule 5.760(c)(1)(e) that appears at the bottom of page 5 will be deleted. Rule 5.760(c)(4) will be revised to track the statutory language. 2. Subsection (2)(B) of Rule 5.760(d) will be removed. 3. The comment enhances the clarity of the rule and will be incorporated.

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	Commentator	Position	Comment	Committee Response
			findings on the record and in the written order."	
5.	Youth Law Center Catherine McCulloch	AM	**Rule 5.760 – Detention hearing; report; grounds; determinations; findings; orders; factors to consider for detention; restraining orders – Agree if Modified** The proposed changes amend Rule 5.760 to conform to the new statutory requirement that the court's decision to detain in juvenile hall cannot be based on certain criteria. The amendment is incomplete as it does not include sufficient guidance to the court. For dependent children the court's decision to detain should not be based on the youth's current foster care placement, child welfare's inability to find a placement, or the youth's status as a dependent. There is a presumption that a child in the legal care and custody of a child welfare agency should be returned to the physical custody of the child welfare agency for placement. *In order for this rule to fully and clearly conform to the new statutory requirement we suggest the following amendments:* Rule 5.760 (c)(2) should be amended to read –If the child is a dependent of the court under section 300, the court's decision to	This comment is an accurate statement of the law but has limited substantive effect on the rule.

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	Commentator	Position	Comment	Committee Response
			detain must not be based on the child's status as a dependent of the court or the child welfare services department's inability to provide a placement for the child. In all cases when a minor is adjudged a dependent child of the court under section 300 and the court orders removal from a parent or guardian, the court orders the care, custody, control, and conduct of the child to be under the supervision of the social worker who is responsible for placing the child in an appropriate placement. Rule 5.760 (e) should be amended to add –If the child is a dependent of the court under section 300, the court's decision to detain must not be based on the child's status as a dependent of the court or the child welfare services department's inability to provide a placement for the child. In all cases when a minor is adjudged a dependent child of the court under section 300 and the court orders removal from a parent or guardian, the court orders the care, custody, control, and conduct of the child to be under the supervision of the social worker who is responsible for placing the child in an appropriate placement. **Rule 5.790 Orders of the Court – Agree if Modified**	This comment is an accurate statement of the law but has limited substantive effect on the rule. This comment goes beyond the scope of this proposal and raises issues necessitating

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	Commentator	Position	Comment	Committee Response
			The committee proposes eliminating the specific requirements and using a cross-reference to the recently amended section 737. The committee's rationale for this decision is that any future modification to section 737 will not result in the need for change to the rule. However, the rules of court are meant to instruct and aid the court in using the law. The cross-reference provides no aid or clarification for the court. *In order for this rule to fully and clearly conform to the new statutory requirement we suggest the following amendments:* Rule 5.790 (j) should be amended to add- If the minor or nonminor is detained pending the implementation of a dispositional order, the court must review the case at least every 15 days as long as the child is detained. The review must meet all the requirements in section 737. The court must inquire about the actions taken by the probation officer to carry out the court's order, the reasons for the delay, and the effects of the delay on the minor or nonminor. The court shall meaningfully evaluate all the steps that have been taken by the probation department, since the last 15 day court review, to identify and advocate for an appropriate placement for the minor or nonminor, including but not limited to:	circulation for comment.

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	Commentator	Position	Comment	Committee Response
			(1) The number of placements contacted; (2) The type of placements contacted, and whether placements with additional supports and services would be appropriate, including but not limited to: (a) Kinship with wraparound services; (b) Therapeutic foster care; (c) Foster home through an FFA; and (d) Group home (3) The appropriateness of placements contacted including whether placements with additional supports and services would be appropriate; (4) Whether or not the probation officer has modified his or her approach to finding placements if the officer has been unsuccessful with past attempts, and how the probation officer modified the approach; (5) What characteristics the probation officer uses to describe the youth to the potential placements; and (6) Whether or not the probation officer has acted on recommendations given by the youth's public defender, and what were those actions. The court will consider whether the delay was reasonable. A court shall not consider any of the following to be a reasonable delay: (1) The probation officer's inability to	

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	Commentator	Position	Comment	Committee Response
			identify an appropriate placement when the court finds that the probation officer has not made reasonable efforts to identify one; (2) A delay caused by administrative process; (3) A delay in the convening any meetings between agencies; and (4) The court may find any other delay to be unreasonable If the court finds the delay to be unreasonable the court shall order the probation officer to assess the availability of any suitable temporary placements or other alternatives to secure confinement.	
6.	Dependency Advocacy Center Hilary Kushins	A		No response required.

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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: October 27, 2015

Title
Juvenile Law: Extended Foster Care

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 5.555, 5.707, 5.812, and 5.906; revise forms JV-367, JV-464-INFO, JV-466, JV-470, and JV-472

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, 2016

Date of Report
August 3, 2015

Contact
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Executive Summary

The Family and Juvenile Law Advisory Committee proposes amending four of the California Rules of Court and revising five Judicial Council forms to (1) implement the provisions of Assembly Bill 2454 (Quirk-Silva; Stats. 2014, ch. 769) allowing specified youth to petition the court to assume jurisdiction over them as nonminor dependents, and to (2) provide further guidance on the implementation of prior legislation authorizing extended foster care to age 21. The rules and forms that currently allow youth to petition for reentry would be modified to accommodate these new petitioners. In addition, this proposal would clarify the requirements for other extended foster care processes to address concerns raised by courts as implementation has proceeded.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2016:

1. Amend rule 5.555 of the California Rules of Court on termination of jurisdiction to make specific provisions for termination of juvenile court jurisdiction over a nonminor dependent who has attained age 21;

2. Amend rules 5.707 and 5.812 to include disposition hearings in the class of hearings subject to the rule which governs hearings that are the last court hearing before a child in juvenile court attains age 18;

3. Amend rule 5.906, which sets forth the procedures for the court to follow when considering a petition for a nonminor to reenter juvenile court jurisdiction as a nonminor dependent, to include petitioners made eligible by recently enacted legislation;

4. Revise *Findings and Orders After Hearing to Consider Termination of Juvenile Court Jurisdiction Over a Nonminor* (form JV-367) to clarify that jurisdiction must be terminated at age 21 and that the attorney for the nonminor is relieved 60 days from the order;

5. Revise *How to Ask to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-464-INFO) to include information on petitioners made eligible for reentry in recent legislation;

6. Revise *Request to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-466) to allow newly eligible petitioners to petition the court to enter foster care as nonminors and correct a previous drafting error;

7. Revise *Findings and Orders Regarding Prima Facie Showing on Nonminor's Request to Reenter Foster Care* (form JV-470) to allow the court to document its findings and orders for newly eligible petitioners seeking to reenter foster care as nonminors; and

8. Revise *Findings and Orders After Hearing to Consider Nonminor's Request to Reenter Foster Care* (JV-472) to allow the court to document its findings and orders after a hearing on a petition filed by a newly eligible petitioner for reentry to foster care as a nonminor.

The proposed text of the new and amended rules is attached at pages 7–12. The proposed new and revised forms are attached at pages 13–27.

Previous Council Action

The Judicial Council was a cosponsor of AB 12, the original legislation that authorized extended foster care for young adults ages 18 to 21, which was enacted in 2010, with most of its provisions effective January 1, 2012. The council has supported each of the subsequent cleanup bills to make changes to ensure smooth and effective implementation of AB 12: AB 212 in 2011, AB 1712 in 2012, and AB 787 (Stone; Stats. 2013, ch. 487) in 2013.

The council adopted rules 5.555, 5.707, 5.812, and 5.906, and forms JV-367, JV-464-INFO, and JV-466 effective January 1, 2012, to ensure that the provisions of AB 12 could be implemented

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by the courts when the statute took effect. The council subsequently revised rules 5.555, 5.707, 5.812, and 5.906, and forms JV-367, JV-464-INFO, and JV-466, effective July 1, 2012, to implement modifications of AB 12 made by AB 212 as well as changes required in rules and forms that were adopted before circulation for public comment.

The council approved forms JV-470 and JV-472 effective January 1, 2014, to provide agencies and the courts with optional forms to use to make required reentry findings and orders.

Rationale for Recommendation

The federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (Pub.L. No. 110-351) made extensive policy and program changes to improve the outcomes for children in the foster care system, including the extension of foster care services to nonminors up to age 21 when certain education, training, or work requirements are met or are incapable of being met due to a medical condition. California chose to participate in this voluntary program and AB 12, the California Fostering Connections to Success Act, was enacted in 2010 making extensive changes to California statutes to comply with provisions of the federal act. As implementation of AB 12 has gone forward, numerous subsequent bills have been enacted to improve upon the original statutory scheme.[1]

Assembly Bill 2454 is the most recent revision to provisions that allow reentry into foster care for youth formerly in a foster care placement. It revised a recently enacted code section[2] to allow youth between the ages of 18 and 21 who were placed in guardianships or adopted out of foster care and whose guardians or adoptive parents have died or are no longer providing support to the youth to petition the court to enter foster care as nonminor dependents if they are willing to meet the eligibility criteria. This proposal would aid courts in implementing that expansion of eligibility. In addition, it would clarify some existing rules and forms to address concerns raised by courts as implementation of extended foster care has proceeded. The specific changes proposed by the committee are described below.[3]

Amend rule 5.555 to incorporate termination of jurisdiction at age 21

Rule 5.555, which governs any hearing to terminate jurisdiction over a nonminor dependent, is primarily geared toward hearings involving youth who are still eligible for reentry up to age 21. As the first AB 12 cohorts are reaching age 21, courts have noticed that the rule does not specifically address their responsibility at a hearing for a youth who has attained age 21. To address this deficiency, the proposal adds to the rule's findings and orders section language that

[1] AB 12 (Beall; Stats. 2010, ch. 559), the California Fostering Connections to Success Act, as amended by AB 212 (Beall; Stats. 2011, ch. 459); AB 1712 (Beall; Stats. 2012, ch. 846); and AB 787 (Stone; Stats. 2013, ch. 487).

[2] Welf. & Inst. Code, § 388.1.

[3] Legislation (SB 12(Beall)) is pending that could further expand the class of nonminors eligible to petition the court to participate in extended foster care. Because the changes in the bill are sufficiently distinct from the issues addressed in this proposal, the committee opted not to hold the proposal for their possible incorporation, but instead to take action on them if the legislation is enacted.

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is specific to this circumstance and would ensure that the nonminor has received the information and support that he or she is statutorily entitled to, while also making clear that his or her attorney is relieved from representation at the end of the appeal period. This rule would also be revised to remove an advisory committee comment regarding the age of eligibility for extended foster care; the comment is now obsolete because the Legislature took action to extend care to age 21.

Amend rules 5.707 and 5.812 to include a dispositional hearing for a child approaching age 18

To ensure that youth in foster care who are approaching age 18 are prepared to participate in extended foster care, the original legislation required that the last review hearing taking place before the child attains age 18 address the child's plans to either access extended foster care services or choose to exit foster care. However, the rules that implement these statutes did not include the circumstance in which the last hearing before the child attains age 18 is a dispositional hearing, rather than a status review hearing. This proposal would address that oversight by adding dispositional hearings to rules 5.707 and 5.812, which state the requirements for these hearings for dependents and delinquents, respectively.

Amend rule 5.906 to include new section 388.1 provisions

Assembly Bill 2454 revised recently enacted section 388.1 of the Welfare and Institutions Code to authorize specified nonminors whose juvenile court–established guardianships have failed (or whose guardians or adoptive parents have died) to petition the court to assume jurisdiction over them as nonminor dependents so that they may access extended foster care services. These are youth whose former guardians or adoptive parents were receiving support for their care as nonminors but no longer are. The procedures in section 388.1 closely mirror the procedures to be followed when other nonminors petition the court to reenter jurisdiction. To include this newly eligible population of petitioners, this proposal would amend rule 5.906 to include them as eligible and modify the findings and orders requirements to encompass 388.1 petitioners. This rule would also be revised to remove an advisory committee comment regarding the age of eligibility for extended foster care; the comment is now obsolete because the Legislature took action to extend care to age 21.

Revise form JV-367

This proposal, consistent with the changes to rule 5.555 described above, would also revise item 27 of *Findings and Orders After Hearing to Consider Termination of Juvenile Court Jurisdiction Over a Nonminor* (form JV-367) to clarify that jurisdiction must be terminated at age 21 and that the attorney for the nonminor is relieved 60 days from the date of the order.

Revise form JV-464-INFO, *How to Ask to Return to Juvenile Court Jurisdiction and Foster Care*

Form JV-464-INFO would be revised to include information in the section with the heading, "Do I qualify to return to juvenile court jurisdiction and foster care?" regarding nonminors who are

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eligible under section 388.1 to petition the court to assume jurisdiction over them. The proposed provisions would state the requirements for these youth in plain language.

Revise form JV-466, *Request to Return to Juvenile Court Jurisdiction and Foster Care*

Form JV-466 would also be revised to accommodate petitions from nonminors who are asking the court to assume jurisdiction under section 388.1 of the Welfare and Institutions Code. It would allow these youth to provide the court with the information required to determine whether there is a prima facie case that jurisdiction should be assumed and to make the findings and orders on the request itself. Because this form is intended to be accessible to the youth directly, it would also employ plain language. In addition, a drafting error in item nine of form JV-466 would be corrected so that the item is internally consistent.

Revise form JV-470, *Findings and Orders Regarding Prima Facie Showing on Nonminor's Request to Reenter Foster Care*

Form JV-470 would be revised to allow the court to document its findings and orders under section 388.1 when determining whether the nonminor has made a prima facie showing that he or she is eligible for the court to assume dependency jurisdiction over the nonminor. Without creating a new form, these proposed changes would provide the courts with a form to accomplish their statutory obligations under section 388.1(c)(1).

Revise form JV-472, *Findings and Orders After Hearing to Consider Nonminor's Request to Reenter Foster Care*

Form JV-472 would be revised to allow the court to document its required findings and orders after a hearing on a petition filed under section 388.1 for a nonminor to reenter foster care. The proposed additions can be made to this existing form to provide the courts with a form to accomplish their statutory obligations under paragraph (5) of subdivision (c) of section 388.1.

Comments, Alternatives Considered, and Policy Implications

Comments

This proposal circulated for comment as part of the spring 2015 invitation to comment cycle, from April 16 to June 17, 2014, 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, social workers, probation officers, and other juvenile law professionals. Nine organizations provided comment: three agreed with the proposal, five agreed with the proposal if modified, and one did not indicate a position but provided comments. A chart with the full text of the comments received and the committee's responses is attached at pages 28–30.

The committee sought specific comment on whether the proposal would allow courts to effectively implement the recently enacted legislation, and all commentators appeared to agree that it would accomplish that objective. The modifications proposed in the comments suggested minor corrections, clarifications, and stylistic changes, most of which the committee adopted.

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Alternatives Considered

The committee considered preparing new rules and forms specifically to implement AB 2454 but concluded that, because the newly eligible cases were few in numbers and the procedures were very similar, amending the existing rules and forms for reentry into foster care would be preferable. The committee also considered making only the changes necessary to implement AB 2454 but determined that the additional proposed changes would clarify existing law and enhance the ability of the courts to effectively carry out their obligations with regard to extended foster care cases.

Implementation Requirements, Costs, and Operational Impacts

This proposal will have some positive operational impact in implementing the statutory requirements of AB 2454. The proposed amended rules and revised forms are in response to requests for guidance from courts and agencies. The proposed revisions will ensure that courts can easily make the necessary orders in each of the affected cases.

Because AB 2454 expands the eligible population that may petition the court to reenter foster care as nonminors, it will result in additional hearings in the juvenile courts. This proposal will provide the courts with the tools they need to perform their statutorily required obligations as efficiently as possible. The findings and orders forms to implement AB 2454 are optional forms, so courts that prefer to use their own forms could opt not to use the revised forms proposed here.

In implementing the new and revised forms, courts would incur standard reproduction costs and retraining of affected staff.

Relevant Strategic Plan Goals and Operational Plan Objectives

Because this proposal will revise and supplement a set of rules and forms that ensure compliance with state and federal legal requirements, it supports Goal III, Modernization of Management and Administration (Goal III.A).

Attachments and Links

1. Cal. Rules of Court, rules 5.555, 5.707, 5.812, and 5.906, at pages 7–12
2. Judicial Council forms JV-367, JV-464-INFO, JV-466, JV-470, and JV-472, at pages 13–27
3. Chart of comments, at pages 28–31
4. Assembly Bill 2454 (Quirk-Silva; Stats. 2014, ch. 769)
   http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB2454&search_keywords=

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Rules 5.555, 5.707, 5.812, and 5.906 of the California Rules of Court are amended, effective January 1, 2016, 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, 452, 607.3, 16501.1(f)(16))

(a)–(c) * * *

(d) Findings and orders

In addition to complying with all other statutory and rule requirements applicable to the hearing, the following judicial findings and orders must be made and included in the written court documentation of the hearing:

(1) *Findings*

(A)–(M) * * *

(N) For a nonminor who has attained 21 years of age the court is only required to find that:

(i) Notice was given as required by law.

(ii) The nonminor was provided with the information, documents, and services required under section 391(e), and a completed *Termination of Juvenile Court Jurisdiction—Nonminor* (form JV-365) was filed with the court.

(iii) The 90-day Transition Plan is a concrete, individualized plan that specifically covers the following areas: housing, health insurance, education, local opportunities for mentoring 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.

(iv) The nonminor has attained 21 years of age and is no longer subject to the jurisdiction of the court under section 303.

(2) *Orders*

(A)–(E) * * *

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(F) For a nonminor who has attained 21 years of age and is no longer subject to the jurisdiction of the juvenile court under section 303, the court must enter an order that juvenile court jurisdiction is dismissed and that the attorney for the nonminor dependent is relieved 60 days from the date of the order.

Rule 5.707. Review or dispositional hearing requirements for child approaching majority (§§ 224.1, 366(a)(1)(F), 366.3, 366.31, 16501.1(f)(16))

(a) Reports

At the last review hearing before the child attains 18 years of age held under section 366.21, 366.22, 366.25, or 366.3, or at the dispositional hearing held under section 360 if no review hearing will be set before the child attains 18 years of age, in addition to complying with all other statutory and rule requirements applicable to the report prepared by the social worker for the hearing, the report must include a description of:

(1)–(9) * * *

(b) Transitional Independent Living Case Plan

At the last review hearing before the child attains 18 years of age held under section 366.21, 366.22, 366.25, or 366.3, or at the dispositional hearing held under section 360 if no review hearing will be set before the child attains 18 years of age, the child's Transitional Independent Living Case Plan:

(1)–(2) * * *

(c) Findings

(1) At the last review hearing before the child attains 18 years of age held under section 366.21, 366.22, 366.25, or 366.3, or at the dispositional hearing held under section 360 if no review hearing will be set before the child attains 18 years of age, in addition to complying with all other statutory and rule requirements applicable to the hearing, the court must make the following findings in the written court documentation of the hearing:

(A)–(I) * * *

(2) * * *

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(d) * * *

Rule 5.812. Additional requirements for any hearing to terminate jurisdiction over child in foster care and for status review or dispositional hearing for child approaching majority (§§ 450, 451, 727.2(i)–(j), 778)

(a) Hearings subject to this rule

The following hearings are subject to this rule:

(1) The last review hearing under section 727.2 or 727.3 before the child turns 18 years of age and a dispositional hearing under section 702 for a child under an order of foster care placement who will attain 18 years of age before a subsequent review hearing will be held. If the hearing is the last review hearing under section 727.2 or 737.3, the ~~This~~ hearing must be set at least 90 days before the child attains his or her 18th birthday and within six months of the previous hearing held under section 727.2 or 727.3.

(2)–(4) * * *

(b)–(f) * * *

Rule 5.906. Request by nonminor for the juvenile court to resume jurisdiction (§§ 224.1(b), 303, 388(e), 388.1)

(a) Purpose

This rule provides the procedures that must be followed when a nonminor wants to have juvenile court jurisdiction assumed or resumed over him or her as a nonminor dependent as defined in subdivisions (v) or (aa) of section 11400~~(v)~~.

(b) Contents of the request

(1) The request to have the juvenile court assume or resume jurisdiction must be made on the *Request to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-466).

(2)–(3) * * *

(c) Filing the request

(1) * * *

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(2) For the convenience of the nonminor, the form JV-466 and, if the nonminor wishes to keep his or her contact information confidential, the *Confidential Information—Request to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-468) may be:

(A) Filed with the juvenile court that maintained general jurisdiction or for cases petitioned under section 388.1, in the court that established the guardianship or had jurisdiction when the adoption was finalized; or

(B)–(C) * * *

(3)–(5) * * *

(d) Determination of prima facie showing

(1) Within three court days of the filing of form JV-466 with the clerk of the juvenile court of general jurisdiction, a juvenile court judicial officer must review the form JV-466 and determine whether a prima facie showing has been made that the nonminor meets all of the criteria set forth below in (d)(1)(A)–(D) and enter an order as set forth in (d)(2) or (d)(3).

(A) The nonminor was previously under juvenile court jurisdiction subject to an order for foster care placement on the date he or she attained 18 years of age, or the nonminor is eligible to seek assumption of dependency jurisdiction pursuant to the provisions of subdivision (c) of section 388.1;

(B)–(D) * * *

(2)–(3) * * *

**(e)–(g) * * *

(h) Reports

(1) The social worker, probation officer, or Indian tribal agency case worker (tribal case worker) must submit a report to the court that includes:

(A) Confirmation that the nonminor was previously under juvenile court jurisdiction subject to an order for foster care placement when he or she attained 18 years of age and that he or she has not attained 21 years of age, or is eligible to petition the court to assume jurisdiction over the nonminor pursuant to section 388.1;

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(B) * * *

(C) The social worker, probation officer, or tribal case worker's opinion as to whether continuing in a foster care placement is in the nonminor's best interests and recommendation about the assumption or resumption of juvenile court jurisdiction over the nonminor as a nonminor dependent;

(D)–(F) * * *

(2)–(3) * * *

(i) Findings and orders

The court must read and consider, and state on the record that it has read and considered, the report; the supporting documentation submitted by the social worker, probation officer, or tribal case worker; the evidence submitted by the nonminor; and any other evidence. The following judicial findings and orders must be made and included in the written court documentation of the hearing:

(1) *Findings*

(A) Whether notice was given as required by law;

(B) Whether the nonminor was previously under juvenile court jurisdiction subject to an order for foster care placement when he or she attained 18 years of age, or meets the requirements of subparagraph (5) of subdivision (c) of section 388.1;

(C)–(E) * * *

(F) Whether continuing or reentering and remaining in a foster care placement is in the nonminor's best interests;

(G)–(H) * * *

(2) *Orders*

(A) If the court finds that the nonminor has not attained 21 years of age, that the nonminor intends to satisfy at least one condition under section 11403(b), and that the nonminor and placing agency have entered into a reentry agreement, the court must:

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(i) Grant the request and enter an order assuming or resuming juvenile court jurisdiction over the nonminor as a nonminor dependent and vesting responsibility for the nonminor's placement and care with the placing agency;

(ii)–(v) * * *

(B)–(C) * * *

(3) * * *

Advisory Committee Comment

Assembly Bill 12 (Beall; Stats. 2010, ch. 559), known as the California Fostering Connections to Success Act, as amended by Assembly Bill 212 (Beall; Stats. 2011, ch. 459), implement the federal Fostering Connections to Success and Increasing Adoptions Act, Pub.L. No. 110-351, which provides funding resources to extend the support of the foster care system to children who are still in a foster care placement on their 18th birthday. Every effort was made in the development of the rules and forms to provide an efficient framework for the implementation of this important and complex legislation.

~~The extension of benefits for nonminors up to 19 years of age during the first year and for nonminors up to 20 years of age during the following year is fully provided for in Assembly Bill 12 and does not require further action by the Legislature; however, extension of those benefits to nonminors between 20 and 21 years of age is contingent upon an appropriation by the Legislature. (Welf. & Inst. Code, § 11403(k).)~~

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ATTORNEY OR PARTY WITHOUT ATTORNEY *(name, State Bar number, and address):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO. *(optional):* 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:	
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. ☐ Report of social worker dated:
   b. ☐ Report of probation officer dated:
   c. ☐ Other *(specify):*
   d. ☐ Other *(specify):*
   e. ☐ Other *(specify):*

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Form Adopted for Mandatory Use
Judicial Council of California
JV-367 [Rev. Jan. 1, 2016]

FINDINGS AND ORDERS AFTER HEARING TO CONSIDER TERMINATION OF JUVENILE COURT JURISDICTION OVER A NONMINOR

Welfare and Institutions Code, §§ 391, 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. ☐ Nonminor is not present.
   a. ☐ The nonminor expressed a wish to not appear for hearing and did not appear.
   b. ☐ The nonminor's current location is unknown and reasonable efforts were made to locate the youth.

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 meet the eligibility criteria in Welfare and Institutions Code, § 11403(b), to remain in foster care as a nonminor dependent under juvenile court jurisdiction at this time.
    b. ☐ The nonminor does satisfy 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 (b)(1)–(4) due to a medical condition.

13. ☐ The nonminor 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 ☐ is ☐ is not in the nonminor's best interest.
    a. ☐ is in the child's best interest.
    b. ☐ is not in the child's best interest as it is not necessary.

14. ☐ The nonminor 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.

15. ☐ The nonminor was informed of the options available to assist with the transition from foster care to independence.

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 the court will maintain general jurisdiction for the purpose of resuming 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 to have the court resume dependency jurisdiction or transition jurisdiction over him or her so long as he or she is within the eligible age range for status as a nonminor dependent.

19. a. ☐ The nonminor was provided with the information, documents, and services required under Welfare and Institutions Code, § 391(e), and a completed *Termination of Juvenile Court Jurisdiction—Nonminor* (form JV-365) was filed with this court.
    b. ☐ The nonminor cannot be located, reasonable efforts were made to locate him or her, and for that reason the nonminor was not provided with the information, documents, services, and form specified in item 19a.

20. ☐ For a nonminor who is subject to delinquency jurisdiction, the requirements of Welfare and Institutions Code, § 607.5, ☐ were ☐ were not met.

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NONMINOR'S NAME:	CASE NUMBER:

21. ☐ For a nonminor who is an Indian child under the Indian Child Welfare Act, he or she ☐ was ☐ was not provided with information regarding the right to continue to be considered an Indian child for the purposes of the ongoing application of the Indian Child Welfare Act as a nonminor dependent.

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 (TILP) identified the nonminor's level of functioning, emancipation goals, and specific skills he or she needs to prepare to live independently upon leaving foster care.

c. ☐ The 90-day Transition Plan is a concrete individualized plan that specifically covers the following areas: 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 meets at least one of the conditions listed in item 12(b)(1)–(5) and juvenile court

a. ☐ dependency jurisdiction ☐ transition jurisdiction over the nonminor as a nonminor dependent is ordered.

b. The nonminor's permanent plan is:

(1) ☐ Independence after a period of placement in supervised settings specified in Welfare and Institutions Code, § 11402.

(2) ☐ Other *(specify):*

c. ☐ The nonminor is an Indian child and ☐ has ☐ has not elected to have the Indian Child Welfare Act apply.

d. The matter is continued for a hearing set under Welfare and Institutions Code, § 366(g), and California Rules of Court, rule 5.903, on the date set in item 29, which is within six months of the nonminor's most recent status review hearing.

24. ☐ 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 29, which is within six months of the date of the nonminor's most recent status review hearing.

25. ☐ Reasonable efforts were made to locate the nonminor under the court's jurisdiction as a dependent, ward, or nonminor dependent, and his or her current location remains unknown. The juvenile court's 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), to resume dependency jurisdiction or to assume or resume transition jurisdiction over him or her as a nonminor dependent.

26. ☐ 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. ☐ does meet 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. ☐ does meet 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 nonminor was given an endorsed, filed copy of the *Termination of Juvenile Court Jurisdiction—Nonminor* (form JV-365), and the findings required in items 10, 16, 19a, and 22c were made. The juvenile court's 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), to resume dependency jurisdiction or to assume or resume transition jurisdiction over him or her as a nonminor dependent.

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NONMINOR'S NAME:	CASE NUMBER:

27. ☐ 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.

28. ☐ **Other findings and orders**

a. See attachment 28a.

b. Other *(specify):*

29. ☐ **Other findings and orders**

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):*

30. Number of pages attached: _____

Date:

_____
JUDICIAL OFFICER

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JV-464-INFO How to Ask to Return to Juvenile Court Jurisdiction and Foster Care

Some 18-, 19-, and 20-year-olds can reopen their court case and return to foster care. This form explains:

- The benefits of returning to foster care,
- Who qualifies to return to foster care, and
- How to ask to reopen your court case and return to a foster care placement.

What benefits can I get if I return to foster care?

If you ask the court to reopen your court case and return to foster care as a nonminor dependent, you can get money to live in supervised foster care. You may be able to live in a:

- Relative's home;
- Home of a nonrelated extended family member (a person close to your family but not related to you);
- Foster home;
- Group home if you need to because of a medical condition;
- You can also stay in a group home until your 19th birthday or until you finish high school, whichever one happens first; or
- Supervised independent living setting, such as an apartment or college dormitory.

You can also get:

- A clothing allowance,
- Case management services, and
- Independent Living Program services.

Do I qualify to return to juvenile court jurisdiction and foster care?

You qualify if you meet these requirements:

☐ **Court Jurisdiction Requirements**

- You are now 18, 19, or 20 years old;
- You were in foster care on your 18th birthday;* **OR**
- You were placed by the juvenile court in a guardianship or adoption; and
  - Your guardian(s) or adoptive parent(s) were receiving payments for your support on or after your 18th birthday; and
  - Your guardian(s) or adoptive parent(s) died on or after your 18th birthday, or they no longer support you and no longer receive payments for your support.

**Even if you were on the run, you can qualify if there was an order for you to be in foster care at the time.*

☐ **Work/School Requirements**

You must plan to do one of the following:

- Finish high school or get a high school equivalency (GED) certificate.
- Attend college or community college.
- Attend a vocational education program.
- Attend a program or do activities that will help you get a job.
- Get a job.

Exception: If you have a medical problem that makes you unable to do any of these things, you do not have to be in school, a program, or working.

☐ **Sign an Agreement to Return to Foster Care**

You and a social worker (SW) or probation officer (PO) must have signed a Voluntary Reentry Agreement that says:

- You want to return to foster care to be placed in a supervised setting.
- The SW or PO will be responsible for your placement and care.
- Together, you and the SW or PO will make a plan that helps you to learn how to live independently.
- If you ask the SW or PO to file your court papers, you will cooperate with the SW or PO.
- If your situation changes and you no longer qualify to stay in foster care, you will tell the SW or PO.

Important! Even if you are not sure you qualify, you should still apply.

When can I get help to find housing?

As soon as you sign the agreement to return to foster care, your social worker or probation officer can help you find housing and other services you may need.

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JV-464-INFO How to Ask to Return to Juvenile Court Jurisdiction and Foster Care

How do I ask the juvenile court to reopen my court case and return to foster care?

You must fill out and file the court form JV-466, *Request to Return to Juvenile Court Jurisdiction and Foster Care.* This form tells the court you want to reopen you court case and return to foster care. A SW at the child welfare department or a PO at the probation department that supervised you when you were in foster care can help you fill out the form and file it for you.

If you want to fill out the form yourself, you can find a lot of the information you need on form JV-365, *Termination of Juvenile Court Jurisdiction—Nonminor,* which the court gave you when you left foster care.

Where can I get the form I need to fill out?

The court may have already given you the form when your foster care ended. Or you can get the form at:

- Your county's courthouse or public library, or
- The California Courts website: *www.courts.ca.gov/forms.htm*.

What if I need help with the form?

If you want help to fill out the form, ask:

- A SW at the child welfare department or a PO at the probation department that supervised you when you were in foster care,
- The person who was your lawyer when you were in foster care, or
- An adult you trust.

What do I do with my completed form?

After you and the SW or PO have signed the Voluntary Reentry Agreement, you can:

- File the form yourself, or
- Ask the SW or PO to file the form for you.

Note: If you file it yourself, your court hearing will be about three weeks sooner.

Where do I file my completed form?

You can file it by mail or in person at the juvenile court clerk's office at the courthouse in the county where your court case was closed.

You can submit it by mail or in person at the juvenile court clerk's office in the county where you live. The clerk will send it to the juvenile court clerk's office at the courthouse in the county where your court case was closed.

If you file by mail because you live outside of California, you must send it to juvenile court clerk's office at the courthouse in the county where your court case was closed.

Important! Keep a copy of all papers you file at court. If you file in person, the clerk can give you free copies.

Do I have to pay to file the form?

No. It's free.

Do I have to fill out other court forms?

No, unless you want to keep your contact information private. If so, do **not** put your address and other contact information on form JV-466. Instead, put it on form JV-468, *Confidential Information—Request to Return to Juvenile Court Jurisdiction and Foster Care.*

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Who will decide if I can return to juvenile court jurisdiction and foster care?

A judge with the court in the county where your court case was closed will decide if your court case should be reopened.

The judge can decide that:

- **You do not qualify** because of your age. If this happens, you cannot file another request.
- **The information you gave to the court** shows that you do not meet one of the eligibility requirements or the court needs more information to decide your case. If this happens, the court will deny your request and send you a letter explaining why your request was denied. The court will also send you a list of lawyers who can help you with your case. You can file another request that includes the information that was missing.
- **The court has enough information** to decide your case and wants you to come to a court hearing. If this happens, you will get a notice telling you the date, time, and place of your hearing. The court will also assign a lawyer to speak for you at the hearing.

  The court will send a copy of the notice and your papers to:

  – The lawyer assigned to your case, and

  – The office that supervised you when the juvenile court's jurisdiction was dismissed. That office must make a report about your eligibility to return to foster care.

  If you ask for it on the form JV-466, the court can also send a notice to your parents or former legal guardian and the CASA office for your former CASA.

When will the hearing happen?

If you filed your court papers yourself and the court decides there is enough information to decide your case, the hearing will happen about three weeks after you filed your court papers.

If you asked a social worker or probation officer to file your court papers and the court decides there is enough information to decide your case, the hearing will happen about six weeks after you ask the social worker or probation officer to file your court papers.

What happens at the hearing?

At your hearing, the judge will review the evidence and decide your case.

If the court decides you meet the requirements, you will be allowed to return to foster care. You will also have to go back to court within 6 months to tell the court how you are doing. Your lawyer will also go with you to that hearing. If you used to be a dependent, you will be under the juvenile court's dependency jurisdiction.

If you used to be a ward, you will be under the juvenile court's transition jurisdiction.

If the court denies your request, you can file another request later if your situation changes so that you meet the requirements.

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JV-466 Request to Return to Juvenile Court Jurisdiction and Foster Care

Clerk stamps date here when form is filed.

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NOT APPROVED BY THE JUDICIAL COUNCIL

This form can be used to ask the court to reopen your case because your situation changed and you decide that you want to return to the court's jurisdiction and a foster care placement.

If you don't want other people (for example, a parent or brother or sister who was part of your case when you were a child) to know your contact information, do not write it in (1). Write that information on form JV-468, *Confidential Information—Request to Return to Juvenile Court Jurisdiction and Foster Care*. Read form JV-464-INFO, *How to Ask to Return to Juvenile Court Jurisdiction and Foster Care,* for information about filling out and filing the forms.

If you do not know the information asked for on this form, leave the space blank. Remember to get and keep copies of all court papers and other papers you sign or receive from the child welfare services agency or the probation department.

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Name:

Court fills in case number when form is filed.

Case Number:

(1) My information:

a. My address: _____

_____

b. My city, state, zip code: _____

c. My area code and telephone number: _____

d. My date of birth: _____

(2) The location of the juvenile court that had authority over me when I was 18 years old or when my guardianship or adoption was finalized:

a. City: _____

b. County: _____

(3) The name and court file number or case number of my case in juvenile court:

a. Name of my case: _____

b. Court file number or case number: _____

(4) The date the juvenile court closed my case: _____

(5) I need help to keep or find an appropriate place to live.

☐ I need a placement right now.

(6) Voluntary Reentry Agreement with child welfare services or the probation department to return to foster care:

☐ I agree to sign a Voluntary Reentry Agreement for a supervised placement.

☐ I signed a Voluntary Reentry Agreement for a supervised placement on *(date):* _____ with

☐ Child welfare services.

☐ Probation department.

DRAFT

Your name: _____ **Case Number:**

7 You must plan to meet at least one of the five conditions listed below.
Please check all that apply:

a. ☐ I plan to attend a high school or a high school equivalency certificate (GED) program.

b. ☐ I plan to attend a college, a community college, or a vocational education program.

c. ☐ I plan to attend a program or take part in activities that will help train me to be employed or will help me solve problems that prevented me from finding a job.

d. ☐ I plan to work at least 80 hours per month.

e. ☐ I cannot go to a high school, a high school equivalency certificate (GED) program, a college, a community college, or a vocational education program; take part in a program or activities to help me find a job; or work 80 hours per month because of a medical condition.

8 If you were in a guardianship on your 18th birthday or adopted from foster care, please check all that apply below. If not, skip to 9.

a. ☐ I was placed by the juvenile court in a guardianship.

b. ☐ I was adopted from foster care.

c. ☐ My guardian(s) or adoptive parent(s) were receiving payments for my support on or after my 18th birthday.

d. ☐ My guardian(s) or adoptive parent(s) died on or after my 18th birthday.

e. ☐ My guardian(s) or adoptive parent(s) are no longer supporting me.

f. ☐ My guardian(s) or adoptive parent(s) no longer receive payments for my support.

9 The judge will set a hearing about this request if the judge thinks that he or she has enough information to decide whether you have met all the requirements.

Do you want your parents or former legal guardian to be told about the hearing, if the judge sets one?

☐ NO. I do not want my parents or former legal guardian to be told about the hearing.

☐ YES. I do want my parents or former legal guardian to be told about the hearing. Their names and addresses are:

Parent's name and address: _____

_____

Parent's name and address: _____

_____

Former legal guardian's name and address: _____

_____

10 The judge will give you a free lawyer to help before and during the hearing. If you want the lawyer who represented you when you were a dependent, ward, or nonminor dependent, please write the lawyer's name and telephone number on the line below, and if that lawyer is available, the court will appoint him or her to help you before and during the hearing.

Name and telephone number of the lawyer who used to represent me and who I want to represent me again:

_____

_____

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Your name: _____ **Case Number:**

11 Did you have a Court Appointed Special Advocate (CASA)?

☐ NO. I did not have a CASA.

☐ YES. I did have a CASA.

Would you like the CASA to be told about the hearing if the judge schedules a hearing?

☐ NO. I do not want the CASA to be told about the hearing.

☐ YES. I want the CASA to be told about the hearing. The name of the person who was my CASA is:

_____

12 Did the Indian Child Welfare Act apply to you when you were under juvenile court jurisdiction as a child?

a. ☐ NO. The Indian Child Welfare Act did not apply to me.

b. ☐ YES. The Indian Child Welfare Act did apply to me.

Would you like to have the Indian Child Welfare Act apply to you as a nonminor dependent?

(1) ☐ NO. I do not want the Indian Child Welfare Act to apply to me.

(2) ☐ YES. I do want the Indian Child Welfare Act to apply to me. The name of my tribe and the name, address, and telephone number of my tribal representative is: _____

_____

_____

c. ☐ I DO NOT KNOW if the Indian Child Welfare Act applied to me.

(1) ☐ I am or may be a member of, or eligible for membership in, a federally recognized Indian tribe.
Name of tribe(s) *(name each):*
Name of band *(if applicable):*

(2) ☐ I may have Indian ancestry.
Name of tribe(s) *(name each):*
Name of band *(if applicable):*

(3) ☐ I have no Indian ancestry as far as I know.

13 Your verification:

I declare under penalty of perjury under the laws of the State of California that the information on this form, all attachments, and form JV-468, *Confidential Information—Request to Return to Juvenile Court Jurisdiction and Foster Care*, if filed, is true and correct to my knowledge. I understand that this means I am guilty of a crime if I lie on this form, any of the attachments, or any other form I file.

Date: _____

_____
Type or print your name

▶ _____
Sign your name

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14 Verification by nonminor's representative:
The nonminor is unable to provide verification due to a medical condition. I declare under penalty of perjury under the laws of the State of California that the information on this form, all attachments, and form JV-468, *Confidential Information—Request to Return to Juvenile Court Jurisdiction and Foster Care*, if filed, is true and correct to my knowledge. I understand that this means I am guilty of a crime if I lie on this form, any of the attachments, or any other form I file.

Date: _____

_____ ▶ _____

Type or print representative's name *Signature of representative*

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ATTORNEY OR PARTY WITHOUT ATTORNEY *(name, State Bar number, and address):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO. *(optional):* 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:	
NONMINOR'S NAME:	
FINDINGS AND ORDERS REGARDING PRIMA FACIE SHOWING ON NONMINOR'S REQUEST TO REENTER FOSTER CARE	CASE NUMBER:

Findings and Orders: Prima Facie Showing Made

1. The court has read and considered
   a. ☐ *Request to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-466) filed by *(name):* on *(date):*
   b. ☐ Other *(specify):*
   c. ☐ Other *(specify):*
2. ☐ The court finds that a prima facie showing has been made that
   a. ☐ the nonminor was previously under juvenile court jurisdiction subject to an order for foster care placement when he or she attained 18 years of age; or
      ☐ the nonminor was a minor under juvenile court jurisdiction at the time of the establishment of a guardianship under section 360, section 366.26, or section 728(d), or he or she was a minor or nonminor dependent when his or her adoption was finalized, and
         ☐ the nonminor's guardian or guardians, or adoptive parent or parents, as applicable, died after the nonminor attained 18 years of age but before he or she attained 21 years of age.
         ☐ the nonminor's guardian or guardians, or adoptive parent or parents, as applicable, no longer provide ongoing support to, and no longer receive payment on behalf of, the nonminor after the nonminor attained 18 years of age but before he or she attained 21 years of age, and it may be in the nonminor's best interest for the court to assume dependency jurisdiction.
   b. the nonminor is under 21 years of age.
   c. the nonminor wants assistance to maintain or secure an appropriate, supervised placement or is in need of immediate placement and agrees to a supervised placement under a voluntary reentry agreement.
   d. the nonminor intends to satisfy at least one of the conditions described in Welfare and Institutions Code section 11403(b) as follows *(check all that apply):*
      (1) ☐ Attending high school or a high school equivalency certificate (GED) program
      (2) ☐ Attending a college, community college, or vocational education program
      (3) ☐ Attending a program or participating in an activity that will promote or help remove a barrier to employment
      (4) ☐ Employed for at least 80 hours per month
      (5) ☐ Unable to attend high school, a GED program, college, community college, a vocational education program, or an employment program or activity, or to work 80 hours per month due to a medical condition
3. **The court orders the following:**
   a. The nonminor's request to return to foster care is set for hearing on *(specify date within 15 days of the date form JV-466 was filed):*
   b. An attorney is appointed to represent the nonminor solely for the hearing on the request.

Form Approved for Optional Use
Judicial Council of California
JV-470 [Rev. Jan. 1, 2016]

Welfare and Institutions Codes, § 388(e), 388.1;
Cal. Rules of Court, rule 5.906
www.courts.ca.gov

DRAFT

NONMINOR'S NAME:	CASE NUMBER:

3. c. ☐ Other orders:

Findings and Orders: Prima Facie Showing Not Made

4. The court has read and considered
   a. ☐ *Request to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-466) filed by *(name):* on *(date):*
   b. ☐ Other *(specify):*
   c. ☐ Other *(specify):*

5. ☐ The court finds that a prima facie showing has not been made. The nonminor's request to return to foster care is denied because *(check all that apply)*
   a. ☐ the nonminor was not previously under juvenile court jurisdiction subject to an order for foster care placement when he or she attained 18 years of age; or
   ☐ the nonminor is not eligible under section 388.1 for the juvenile court to assume dependency jurisdiction because *(check all that apply)*
      ☐ the guardian(s) or parent(s) were not receiving Kin-GAP or adoption assistance payments for the nonminor.
      ☐ the guardian(s) or adoptive parent(s) are providing support to the nonminor and/or are continuing to receive aid payments.
      ☐ the petition is lacking evidence of the death of the guardian(s) or adoptive parent(s).
   b. ☐ the nonminor is over 21 years of age.
   c. ☐ the nonminor does not want assistance to maintain or secure an appropriate, supervised placement or does not agree to a supervised placement under a voluntary reentry agreement.
   d. ☐ the nonminor does not intend to satisfy at least one of the conditions described in Welfare and Institutions Code section 11403(b), and stated below:
      (1) Attending high school or a high school equivalency certificate (GED) program
      (2) Attending a college, community college, or vocational education program
      (3) Attending a program or participating in an activity that will promote or help remove a barrier to employment
      (4) Being employed for at least 80 hours per month
      (5) Unable to attend high school, a GED program, college, community college, a vocational education program, or an employment program or activity or to work 80 hours per month due to a medical condition
   e. ☐ Other *(specify reason for denial):*

6. The nonminor may file a new request when the issues are resolved.

7. The court clerk must serve on the nonminor the following documents:
   a. A copy of the written order
   b. Blank copies of *Request to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-466) and *Confidential Information—Request to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-468)
   c. A copy of *How to Ask to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-464-INFO)
   d. The names and contact information of attorneys approved by the court to represent children in juvenile court proceedings and who have agreed to provide a consultation to nonminors whose requests are denied due to the failure to make a prima facie showing

Date:

JUDICIAL OFFICER

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ATTORNEY OR PARTY WITHOUT ATTORNEY *(name, State Bar number, and address):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO. *(optional):* E-MAIL ADDRESS: ATTORNEY FOR (*name*):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
NONMINOR'S NAME:	
FINDINGS AND ORDERS AFTER HEARING TO CONSIDER NONMINOR'S REQUEST TO REENTER FOSTER CARE	CASE NUMBER:

Judicial Officer:	Court Clerk:	Court Reporter:
Bailiff:	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. Others present
   a. Other *(specify):*
   b. Other *(specify):*
   c. Other *(specify):*

3. **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):*
   e. ☐ other *(specify):*

Court Grants Request

4. ☐ The court makes the findings stated below:
   a. Notice of the date, time, and location of the hearing was given as required by law.
   b. ☐ The nonminor was previously under juvenile court jurisdiction subject to an order for foster care placement when he or she attained 18 years of age, or
      ☐ The nonminor is eligible for the court to assume jurisdiction as provided in section 388.1.
   c. The nonminor is under 21 years of age.
   d. The nonminor intends to satisfy a condition or conditions under Welfare and Institutions Code section 11403(b).
   e. The condition or conditions under Welfare and Institutions Code section 11403(b) that the nonminor intends to satisfy follow *(specify all that apply):*
      (1) ☐ Attending high school or a high school equivalency certificate (GED) program

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Form Approved for Optional Use
Judicial Council of California
JV-472 [Rev. Jan. 1, 2016]

FINDINGS AND ORDERS AFTER HEARING TO CONSIDER NONMINOR'S REQUEST TO REENTER FOSTER CARE

Welfare and Institutions Code, § 388(e), 388.1;
Cal. Rules of Court, rule 5.906
www.courts.ca.gov

NONMINOR'S NAME:	CASE NUMBER:

4. e. (2) ☐ Attending a college, community college, or vocational education program
   (3) ☐ Attending a program or participating in an activity that will promote or help remove a barrier to employment
   (4) ☐ Being employed for at least 80 hours per month
   (5) ☐ Unable to do any of the activities in e(1)–(4) due to a medical condition

   f. Continuing in a foster care placement is in the nonminor's best interest.

   g. The nonminor and the placing agency have entered into a reentry agreement for placement in a supervised setting under the placement and care responsibility of the placing agency.

   h. ☐ The nonminor, who is an Indian child, chooses to have the Indian Child Welfare Act apply to him or her as a nonminor dependent.

5. ☐ The court makes the orders stated below:
   a. The court grants the request to assume or resume jurisdiction, and juvenile court jurisdiction shall resume over the nonminor as a nonminor dependent.
   b. Placement and care are vested with the placing agency.
   c. The placing agency must develop with the nonminor a new Transitional Independent Living Case Plan and file it with the court within 60 days.
   d. ☐ The social worker or probation officer must consult with the tribal representative regarding a new Transitional Independent Living Case Plan.
   e. A nonminor dependent review hearing under Welfare and Institutions Code section 366.31 and rule 5.903 of the California Rules of Court is set for *(specify a date that is within six months of the date the voluntary reentry agreement was signed):*
   f. The prior order appointing an attorney for the nonminor is continued, and that attorney is appointed until the jurisdiction of the juvenile court is terminated.

Court Denies Request

6. ☐ a. The court finds that the nonminor is under 21 years of age, but the nonminor does not intend to satisfy at least one of the conditions under Welfare and Institutions Code section 11403(b), or the nonminor and the placing agency have not entered into a reentry agreement.
   (1) The nonminor's request to return to foster care is denied. The request is denied because *(specify the reasons for denial):*
   (2) The nonminor may file a new request when the circumstances change.
   (3) The order appointing an attorney to represent the nonminor is terminated, and the attorney is relieved as of *(specify date seven calendar days after the hearing):*

   ☐ b. The court finds that the nonminor is over 21 years of age.
   (1) The request to have juvenile court jurisdiction assumed or resumed is denied; and
   (2) The order appointing an attorney to represent the nonminor is terminated, and the attorney is relieved as of *(specify date seven calendar days after the hearing):*

Findings and Orders: Service

7. The written findings and orders must be served by the juvenile court clerk on all persons who were served with notice of the hearing.
   a. Service must be by personal service or first-class mail within three court days of the issuance of the order.
   b. Proof of service must be filed.

Date:

JUDICIAL OFFICER

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SPR15-21

Juvenile Law: Extended Foster Care (amend Cal. Rules of Court, rules 5.555, 5.707, 5.812, and 5.906; Revise forms JV-367, JV-464-INFO, JV-466, JV-470, and JV-472)

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

	Commentator	Position	Comment	Committee Response
1.	California Judges Association Hon. Joan P. Weber President	A	The California Judges Association supports this amendment. Although this expands the number of nonminor dependents who will come before the court thereby increasing caseloads, it is the best interest of our dependency children to assist them to become successful. It requires a concrete ninety-day transition plan prior to the age of 21 and requires a dispositional hearing before a dependent ward turns 18 will create more focus on their transition. It adds a finding on JV 367 regarding a nonminor reaching the age of 21 and clarifies the Judicial Council forms for entry or reentry into the nonminor dependent system to comply with AB2454.	No response required.
2.	Los Angeles County Counsel's Office Dawyn Harrison Assistant County Counsel	AM	Agree with the suggested changes if amended to change the reference made in form JV-472, section 5(e) to reflect that the review hearing for a nonminor dependent is conducted pursuant to Welfare and Institutions Code section 366.31, not section 391. Rule 5.903 does not reference section 391. Section 391 is used when the juvenile court is considering whether or not to terminate jurisdiction over a nonminor dependent. Additionally the form JV-367, section 23(d) should reference section 366(g) not 366(f).	The committee has adopted these clarifying suggestions on statutory references.
3.	Orange County Bar Association Ashleigh Aitken President	AM	The proposed recommendations regarding extended foster care are a result of the enactment of AB 2454 which primarily provided for youth between the ages of 18 and 21 who were placed in guardianships, or adopted, out of foster care, and whose guardians or adoptive parents have died, or are no longer	No response required.

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	Commentator	Position	Comment	Committee Response
			providing support to the youth, to petition the court to enter foster care as nonminor dependents. The proposal also clarifies the findings to be made at a hearing to terminate jurisdiction over a nonminor dependent who has attained 21 years of age, and clarifies that the last hearing before a child turns 18 may include a dispositional hearing. The proposal entails the amendment of four Rules of Court and the revisions of four JV forms to effectuate the legislative changes. The amendments to the Rules of Court, and the revision of the JV forms appear consistent with the enacted legislation, however the JV-464-INFO form contains information that may be misconstrued by the reader. Instead of saying "you would be able to live in a . . . " the form should say, "you may be able to live in a . . ."	The committee has adopted this change to ensure that the form is not misconstrued as authorizing a particular placement.
4.	San Diego County Leesa Rosenberg	AM	That the language in the JV 464 be changed to read "on or after your 18th birthday" to align with the law and the language in the JV 466 form.	The committee has adopted this clarifying change.
5.	Santa Clara County Julie Fulmer McKellar Lead Deputy County Counsel	NI	The modification to CRC 5.555(1) adds a subdivision (N) for dismissal for nonminors turning 21, but doesn't make it clear whether those are findings needed in addition to findings (A)-(M), or whether those are the only findings needed at that hearing. Tends to make the rule less clear rather than to clarify. The addition of the dispositional hearing as a hearing where the "last review hearing before	The committee has clarified the rule provision to specify that the findings in N are the only required findings for a nonminor who has turned 21. Welfare and Institutions Code section 366.3 provides that these findings are required at any

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SPR15-21
Juvenile Law: Extended Foster Care (amend Cal. Rules of Court, rules 5.555, 5.707, 5.812, and 5.906; Revise forms JV-367, JV-464-INFO, JV-466, JV-470, and JV-472)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			turning 18" findings apply in 5.707(a) makes sense (and that was already our practice), but it doesn't resolve the longstanding confusion about whether those findings are needed at a 366.3 for a minor in a PP other than PPLA.	review hearing that is the last prior to a dependent child attaining 18 years of age, and makes no distinction based upon the permanent plan for the child. Thus the committee deems the rule, which includes all such hearings, to be consistent with the statute.
			The modification to 5.906(a) proposes "assumes or resumes" jurisdiction as an NMD under 11400(v) in an attempt to add the LG and AAP kids, but the LG and AAP kids don't meet the 11400(v) definition. They are within WIC 11400(aa).	The committee appreciates this clarification and added the additional subdivision (11400(aa)) to the rule.
			Form JV-466 asks for "The date the juvenile court closed my case or finalized my guardianship or adoption" without consideration of the fact that a guardianship might be finalized long before the case is closed.	The committee agrees that this might cause confusion and has restored that item to read simply: "the date the court closed my case."
			The JV-466 in Item 9 also erroneously says "formal legal guardians" rather than "former legal guardians."	The committee takes note of this correction and has corrected the error.
6.	State Bar of California, Family Law Section Saul Bercovitch Legislative Counsel	A	The Executive Committee of the Family Law Section of the State Bar (FLEXCOM) supports this proposal.	No response required.
7.	Superior Court of Los Angeles County (no name provided)	AM	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? · Do the revisions to forms JV-464-INFO, JV-	No response required.

DRAFT

SPR15-21
Juvenile Law: Extended Foster Care (amend Cal. Rules of Court, rules 5.555, 5.707, 5.812, and 5.906; Revise forms JV-367, JV-464-INFO, JV-466, JV-470, and JV-472)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			466, JV-470, and JV-472 allow for effective implementation of AB 2454? Yes, to both. On JV-464-INFO, under "Do I qualify to return to juvenile court jurisdiction and foster care? 2d bullet reads "You were in foster care on your 18th birthday." It should read as in the findings (JV-470), "You were previously under juvenile court jurisdiction and subject to an order for foster care placement on your 18th birthday." The third bullet, "You were supervised by a social worker or probation officer," is confusing and should be deleted. Also, the and/or bullets are confusing and hard to follow. The spacing is much clearer on the JV-470. Otherwise, the proposed changes are excellent.	Form JV-464-INFO is intended to assist nonminors in understanding the process to reenter foster care and thus is written in plain language. Because the plain language on the current form is more comprehensible to a young person the committee prefers maintaining the current language re being in foster care. The committee has adopted this suggested modification and deleted this sentence. The committee has added space after the or to make this easier to read.
8.	Superior Court of San Diego County Mike Roddy Executive Officer	AM	**JV-470, item 5a**: Should be amended to state: "the guardian(s) or adoptive parent(s) are providing support to the *non*minor…"	The committee has adopted this correction and revised the item to read nonminor.
9.	Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC) Joint Rules Working Group	A	No specific comment provided.	No response required.

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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 October 27, 2015

Title
Juvenile Law: Proceedings Before a Referee

Agenda Item Type
Action Required

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 5.538

Effective Date
January 1, 2016

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Date of Report
August 5, 2015

Contact
Audrey Fancy, 415-865-7706
audrey.fancy@jud.ca.gov

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Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending California Rules of Court, rule 5.538(b)(3), to make the rule consistent with a statutory change to Welfare and Institutions Code section 248, subdivision (b)(1). The amendment would permit a referee's findings and orders to be personally served in court on a party who is present at the hearing rather than exclusively by mail, as currently provided in the rule.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2016, amend rule 5.538(b)(3), to make the rule consistent with a statutory change to Welfare and Institutions Code section 248(b)(1).

The text of the proposed amended rule is attached at page 4.

Previous Council Action

The Judicial Council adopted rule 5.538, effective January 1990, as rule 1416. This rule was renumbered effective January 1, 2007, as part of a comprehensive reorganization of the rules of court, but no substantive changes were made.

Rationale for Recommendation

Rule 5.538(b)(3) is inconsistent with Welfare and Institutions Code section 248(b)(1) and must be amended to conform to existing law and to prevent unnecessary appellate delays.

Welfare and Institutions Code section 248(b)(1) was amended by Senate Bill 179, effective January 1, 2011, to provide that if the parent, guardian, or child is present in court at the time the referee's findings and orders are made, then the orders and rehearing rights may be personally served. Otherwise, under rule 5.538(b)(3), service must be by mail to the last known or designated address; it states: "Serve the parent and guardian, and counsel for the child, parent, and guardian, a copy of the findings and order, with a written explanation of the right to seek review of the order by a juvenile court judge. Service must be by mail to the last known address and is deemed complete at the time of mailing."

To reconcile this discrepancy, the committee proposes amending rule 5.538(b)(3) by replacing the final sentence with the following:

Serve the parent and guardian—and counsel for the child, parent, and guardian—a copy of the findings and order, with a written explanation of the right to seek review of the order by a juvenile court judge.

(A) Service is deemed complete at the time of personal, in-court service as provided in Welfare and Institutions Code section 248, subdivision (b)(1).

(B) If personal, in-court service as in (A) is not possible, service must be by mail to the last known address and is deemed complete at the time of mailing as provided in subdivision (b)(2) of that section.

Comments, Alternatives Considered, and Policy Implications

This proposal circulated for comment as part of the spring 2015 invitation to comment cycle, from April 17 to June 17, 2015, 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, social workers, probation officers, and other juvenile law professionals. Three organizations provided comment; all three agreed with the proposal. A chart with the full text of the comments received and the committee's responses is attached at page 5.

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No alternatives were considered because the rule is inconsistent with statute.

Implementation Requirements, Costs, and Operational Impacts

Implementation will require some changes in court procedures and training, but costs should be minimal given that many courts already comply with Welfare and Institutions Code section 248. In addition, once court practices are changed, this amendment should result in savings because the statutory change allows for service in court, a less costly method of service than service by mail. In addition, implementation should prevent delays in appeals from orders terminating parental rights. The legislative history of Senate Bill 179 indicates that the purpose of the amendment allowing for personal courtroom service of a referee's orders was to prevent such delays.[1]

Attachments and Links

1. Cal. Rules of Court, rule 5.538, at page 4
2. Chart of comments, at page 5
3. Attachment A: Senate Bill 179 (Stats. 2010, ch. 66), at page 6-7

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[1] Sen. Rules Com., Off. of Sen. Floor Analyses, unfinished business analysis of Sen. Bill No. 179 (2010–2011 Reg. Sess.) as amended May 20, 2010.

Rule 5.538 of the California Rules of Court would be amended, effective January 1, 2016, to read:

Rule 5.538. Conduct of proceedings held before a referee not acting as a temporary judge

(a) * * *

(b) Furnishing and serving findings and order; explanation of right to review (§ 248)

After each hearing before a referee, the referee must make findings and enter an order as provided elsewhere in these rules. In each case, the referee must cause all of the following to be done promptly:

(1) Furnish a copy of the findings and order to the presiding judge of the juvenile court.

(2) Furnish to the child (if the child is 14 or more years of age or, if younger, as requested) a copy of the findings and order, with a written explanation of the right to seek review of the order by a juvenile court judge.

(3) Serve the parent and guardian~~,~~ and counsel for the child, parent, and guardian~~,~~ a copy of the findings and order, with a written explanation of the right to seek review of the order by a juvenile court judge. ~~Service must be by mail to the last known address and is deemed complete at the time of mailing.~~

(A) Service is deemed complete at the time of personal, in-court service as provided in Welfare and Institutions Code section 248, subdivision (b)(1).

(B) If personal, in-court service as in (A) is not possible, service must be by mail to the last known address and is deemed complete at the time of mailing as provided in subdivision (b)(2) of that section.

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SPR15-23

Juvenile Law: Proceedings Before a Referee (amend Cal. Rules of Court, rule 5.538)

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

	Commentator	Position	Comment	Committee Response
1.	California Judges Association Hon. Joan P. Weber	A	The proposed amendment to rule 5.538(b)(3) would make the rule consistent with a statutory change to Welfare and Institutions Code section 248, subdivision (b)(1). The amendment would permit a referee's findings and orders to be personally served in court on a party who is present at the hearing rather than exclusively by mail, as currently provided in the rule. The proposed amendment to rule 5.538(b)(3) would make the rule consistent with a statutory change to Welfare and Institutions Code section 248, subdivision (b)(1), which went into effect over 4 years ago. The amendment would permit a referee's findings and orders to be personally served in court on a party who is present at the hearing rather than exclusively by mail, as currently provided in the rule. California Judges Association supports the amendment. In addition to bringing the rule in compliance with state law, that law reduces workload placed on court staff.	No response required.
2.	Orange County Bar Association Ashleigh Aitken, President	A	No specific comment.	No response required.
3.	Superior Court of California, County of San Diego Mike Roddy	A	No specific comment.	No response required.

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

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 27, 2015

Title
Juvenile Law: Sibling Visitation

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 5.570, 5.708, and 5.810; revise forms JV-183, JV-185, and JV-403

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, 2016

Date of Report
September 23, 2015

Contact
Kerry Doyle, 415-865-8791
kerry.doyle@jud.ca.gov

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Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending three rules and revising three forms to conform them to recent statutory changes giving dependency courts the authority to order visitation between dependent and nondependent siblings in specified circumstances.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council amend rules 5.570, 5.708, and 5.810 of the California Rules of Court, and revise forms JV-183, JV-185, and JV-403 to ensure that they conform to the recently enacted provisions of Welfare and Institutions Code sections 361.2, 366, 366.3, 388, 778, and 16002.[1] Also, the committee

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

recommends amending rule 5.708 to specify the burden of proof and standard when requesting that a child be removed from the home.

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2016:

1. Amend rule 5.570 with the new standard for granting or denying a request for sibling visitation with a nondependent sibling, to add the new grounds for granting a petition for modification of a prior court order, and to specify the burden of proof and standard when requesting that a child be removed from the home;

2. Amend rule 5.708 with new statutorily required findings;

3. Amend rule 5.810 with the new statutorily required finding to suspend sibling interaction, to clarify when a permanency hearing must be held, and to remove subdivision (f) regarding administrative reviews;

4. Further amend rules 5.708 and 5.810 to delete references to "youth;"

5. Amend rules 5.570, 5.708, and 5.810 with new references to code sections and subsections and with further clarifying changes;

6. Revise *Court Order on Form JV-180,* Request to Change Court Order (form JV-183) to include the new standard for granting a request for sibling visitation with a child who is not a dependent of the court, and to allow the court to deny a request for sibling visitation if the request is for visitation with a nondependent sibling who remains in the custody of a mutual parent who is not subject to the court's jurisdiction;

7. Further revise form JV-183 to allow a court to set a hearing for the parties to argue whether an evidentiary hearing on a section 388 petition should be granted or denied;

8. Revise *Child's Information Sheet—Request to Change Court Order* (form JV-185) to clarify, in plain language, that a child can request visitation with a sibling who lives with a mutual parent subject to the jurisdiction of the court; and

9. Revise *Sibling Attachment: Contact and Placement* (form JV-403) to include the new findings required by Senate Bill 1099 regarding siblings under the court's jurisdiction who are not placed together in the same home.

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The proposed text of the amended rules of court is attached at pages 10–19. The proposed revised forms are attached at pages 20–25.

Previous Council Action

The Judicial Council adopted rule 5.570, effective January 1, 1991, as rule 1431. It was amended five times to conform to statute and to ensure proper notice under the Indian Child Welfare Act. It was renumbered and amended effective January 1, 2007. It was amended four more times after it was renumbered to conform to statutory changes and to correct typographical errors.

The Judicial Council adopted rule 5.708, effective January 1, 2010. It was amended three times: twice effective July 1, 2010, to contain the correct cross reference to a rule that was renumbered and to ensure that tribal customary adoption is considered a permanent plan as required by statutory changes, and once, effective January 1, 2015, to clarify that subdivision (n) applies to any parent who has relinquished the child for adoption, regardless of that parent's legal status.

The Judicial Council adopted rule 5.810, effective January 1, 1991, as rule 1496. It has been amended seven times to conform to statutory changes. It was renumbered, effective January 1, 2007.

The Judicial Council approved *Court Order on Form JV-180,* Request to Change Court Order (form JV-183), effective January 1, 2009.

The Judicial Council approved *Child's Information Sheet—Request to Change Court Order* (form JV-185), effective January 1, 2006. It was revised one time to make a technical change, effective July 1, 2006.

The Judicial Council approved for optional use *Sibling Attachment: Contact and Placement* (form JV-403), effective July 1, 2010.

Rationale for Recommendation

In October 2008, Congress passed and President George W. Bush signed the Fostering Connections to Success and Increasing Adoptions Act to promote permanent families for children and youth in foster care by providing greater assistance to relative caregivers and improving incentives for adoption. Among other things, the act requires states to use "reasonable efforts" to place siblings together, unless such placement is contrary to their safety or well-being. If the siblings are not placed together, visitation between them must occur frequently, unless the visitation is contrary to their safety or well-being.[2]

[2] See 42 U.S.C. § 671(a).

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Before passage of the act, California was one of the first states to pass legislation promoting sibling visitation for foster children—as early as 1999.[3] Since then, California has enacted several additional statutes to expand legal protections for sibling relationships.

These laws have served to promote sibling relationships when both children are in the dependency system, but at least one recent unpublished case indicates that courts will not grant visitation in a case where one sibling is in the foster system and the other remains in the legal custody of the parent. Senate Bill 1099 (Steinberg; Stats. 2014, ch. 773) sought to address this situation by giving dependency courts the authority to order visitation between dependent and nondependent siblings in specified circumstances. Additionally, SB 1099 created new requirements related to sibling visitation, such as requiring more detailed information in social worker reports and probation officer case plans and requiring courts to make a renewed finding that sibling interaction is contrary to the safety or well-being of either child when renewing any suspension of sibling interaction. SB 1099 also made current and new sibling placement and visitation requirements apply to children under the jurisdiction of the delinquency court.

Amend rule 5.570 with the new standard for granting or denying a request for sibling visitation with a nondependent sibling who remains in the custody of a mutual parent. As introduced, the standard in section 388 for granting a request for visitation with a nondependent sibling was: "…a request for sibling visitation shall be granted unless it is shown by clear and convincing evidence that sibling visitation is contrary to the safety and well-being of any of the siblings." Staff of the Senate Judiciary Committee had concerns that, "[i]n practice, the clear and convincing standard is a high evidentiary burden that many parties, especially self-represented parties, may have difficulty proving."[4] That committee worked with the sponsor of the bill, the California Youth Connection, to change the standard to: "a request for sibling visitation *may* be granted unless *it is determined by the court* that sibling visitation is contrary to the safety and well-being of any of the siblings." [Emphasis added.]

Given this legislative history, the committee recommends adding this new standard to rule 5.570 (h)(1)(E) and (i)(2) but not specifying the burden of proof required, as the statute does not include the burden of proof.

Further amend rule 5.570 to add the new grounds for granting a petition for modification. SB 1099 amended section 16002 with the legislative intent to preserve and strengthen a child's sibling relationship so that when a child has been removed from his or her home and he or she has a sibling or siblings who remain in the custody of a mutual parent subject to the court's jurisdiction, the court has the authority to develop a visitation plan for the siblings, unless it has been determined that visitation is contrary to the safety or well-being of any sibling.

[3] See Assem. Bill 740; Stats. 1999, ch. 805.

[4] Sen. Comm. on Jud. Analysis of SB 1099 (2013–2014 Reg. Sess.) April 22, 2014, p. 6.

Further amend rule 5.570 to specify the burden of proof and standard when requesting that a child be removed from the home.

In spring 2013, the committee recommended amending rule 5.570 to "[r]emove statutorily incorrect uses of a section 388 petition."[5] Because the subparagraphs removed addressed requests to remove a child from the child's home and requests to move a child to a more restrictive placement, the committee decided that section 387, which addresses these requests when made by the child welfare department, governed these requests and they thus did not belong in the rule governing section 388 petitions. It has since, however, been pointed out to Judicial Council staff that children's counsel sometimes make a request to remove the child from his or her home, and if so, that request would be governed by section 388 and rule 5.570. The committee therefore recommends that the language clarifying that a higher evidentiary standard is required to grant a request to remove a child from his or her home which was taken out of the rule effective January 1, 2014, be included in it again.

Amend rule 5.708 to require that the court make the findings required by section 16002(b).

Rule 5.708 governs the findings the court must make regarding siblings at dependency status review hearings. SB 1099 created a requirement in section 16002(b) that when sibling interaction has been suspended, in order for the suspension to continue, the court must make a renewed finding that sibling interaction is contrary to the safety or well-being of either child. The committee recommends using a cross-reference to recently amended section 16002(b). By referencing the statute, any future modification to section 16002(b) will not result in the need for changes to the rule.

Amend rule 5.810 with the finding required to suspend sibling interaction.

Rule 5.810 governs the findings the court must make at delinquency status review hearings. As stated above, SB 1099 created a requirement in section 16002(b) that when sibling interaction has been suspended, in order for the suspension to continue, the court must make a renewed finding that sibling interaction is contrary to the safety or well-being of either child. The committee recommends adding this newly required finding to the subdivisions governing each status review type: prepermanency, permanency, and postpermanency hearings.

Further amend rules 5.708 and 5.810 to delete references to "youth."

Frequently, but not consistently, these rules refer to "child or youth" rather than "child." "Youth" is not defined in the California Rules of Court. Rule 5.502 defines "child" as "a person under the age of 18 years." It further defines both "nonminors" and "nonminor dependents." These three definitions include all children and nonminors who are subject to the court's jurisdiction. The committee recommends using the words that are defined in the rule and deleting any references to the undefined "youth."

[5] Judicial Council of Cal., Adv. Comm. Invitation to Comment, *Juvenile Law: Extended Foster Care* (spring 2013), p. 4.

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Further amend rule 5.810 to clarify when a permanency hearing under rule 5.810(b) must be held.

Although a permanency hearing is required every 12 months under federal law,[6] California complies with this requirement by holding postpermanency status review hearings every six months.[7] The finding and order required by federal law to identify a permanent plan for a child are required by state law to be made at each postpermanency status review hearing, thus satisfying the federal requirement.[8]

Some courts have alternately held permanency hearings under rule 5.810(b) which governs permanency planning hearings, and rule 5.810(c) which governs postpermanency hearings. However, since the federal requirements for permanency hearings are met by holding postpermanency hearings under rule 5.810(c), the correct procedure—once a permanency hearing has been held under rule 5.810(b)—is to hold all subsequent postpermanency hearings under rule 5.810(c). The recommended amendments to this rule will clarify that this is the correct procedure.

Revise *Court Order on Form JV-180,* Request to Change Court Order (form JV-183) to include the new standard for granting a request for sibling visitation with a child who is not a dependent of the court, and to allow the court to deny a request for sibling visitation if the sibling remains in the custody of a mutual parent who is not subject to the court's jurisdiction or if sibling visitation is contrary to the safety and well-being of any of the siblings.

As discussed above, SB 1099 amended section 16002 with the legislative intent to preserve and strengthen a child's sibling relationship. Therefore, when a child has been removed from his or her home and he or she has a sibling or siblings who remain in the custody of a mutual parent subject to the court's jurisdiction, the court has the authority to develop a visitation plan for the siblings, unless it has been determined that visitation is contrary to the safety or well-being of any sibling.

Further revise form JV-183 to allow a court to set a hearing for the parties to argue whether a hearing on a section 388 petition should be granted or denied.

In *In re G.B.* (2014) 227 Cal.App.4th 1147, the First Appellate District held, inter alia, that the failure to hold a hearing on modification requests did not amount to reversible error.[9] In discussion, the appellate court stated that in checking a box on form JV-183,[10] the juvenile court

[6] See 45 C.F.R. §§ 1355.20, 1356.21(b)(2)(i); 42 U.S.C. § 675(5)(C), (F).

[7] Welf. & Inst. Code, § 366.3(a), (d).

[8] Welf. & Inst. Code, § 366.3(e)(3).

[9] The published opinion can be found at *www.courts.ca.gov/opinions/archive/A140107.PDF*.

[10] Current form JV-183, item 3, which is to be completed by the trial court, reads, "The court orders a hearing on the form JV-180 request because the best interest of the child may be promoted by the request. The hearing will take place on (*date*): . . .."

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was not deciding that a prima facie case had been made but was instead scheduling the matter for the parties to argue the issue. The appellate court further stated that setting a hearing for the parties to argue whether a prima facie case had been made was not an option on the form. In doing so, the appellate court implicitly approved the trial court's practice of setting a hearing for the purpose of giving the parties an opportunity to argue whether the section 388 petition stated a prima facie case and whether a hearing on the petition should be set.

The committee recommends revising the form to give courts the option of setting a hearing to allow argument by the parties before the court decides whether to grant or deny a hearing on the section 388 petition. The committee determined that enough jurisdictions hold these hearings to warrant the inclusion of setting them on the form. The setting of such a hearing would be optional: if courts prefer to just hold one hearing on the merits of the petition, they are free to do so.

Revise *Child's Information Sheet—Request to Change Court Order* (form JV-185) to clarify, in plain language, that a child can request visitation with a sibling who lives with a mutual parent subject to the jurisdiction of the court.

As discussed above, SB 1099 amended section 16002 with the legislative intent to preserve and strengthen a child's sibling relationship so that when a child has been removed from his or her home and he or she has a sibling or siblings who remain in the custody of a mutual parent subject to the court's jurisdiction, the court has the authority to develop a visitation plan for the siblings, unless it has been determined that visitation is contrary to the safety or well-being of any sibling.

Revise *Sibling Attachment: Contact and Placement* (form JV-403) to include the new findings required by SB 1099 regarding siblings under the court's jurisdiction who are not placed together in the same home.

SB 1099 amended sections 366 and 366.3 to require findings regarding whether the visits are supervised or unsupervised and, if supervised, why and what needs to be accomplished in order for the visits to be unsupervised; a description of the location and length of the visits; and any plan to increase visitation between the siblings. The committee recommends adding these findings to the current item 3; this revision would make the one-page form a two-page form.

Comments, Alternatives Considered, and Policy Implications

Comments

This proposal circulated for comment as part of the spring 2015 invitation to comment cycle, from April 17 to June 17, 2015, 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, social workers, probation officers, CASA programs, and other juvenile and family law professionals. Seven individuals or organizations provided comment; three agreed with the proposal, three agreed if modified, and one did not indicate a position. No commentators disagreed with the proposal. A chart with the full text of the comments received and the committee's responses is attached at pages 26–36.

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One commentator, that agreed if modified, made suggested clarifications to limit the scope of both a rule and a form. The committee has revised both to clarify that they apply to requests for visitation by nondependent siblings.

Another commentator, that agreed if modified, expressed concern that the way the rules and forms described when the court could deny a request for sibling visitation was overly broad and could foreclose the court's granting other requests for sibling visitation.[11] The committee revised the rules and forms to track the statutory language. The rule reads:

> If the request is for visitation with a sibling who is not a dependent of the court, the court may grant the request unless the court determines that the sibling remains in the custody of a mutual parent who is not subject to the court's jurisdiction or that sibling visitation is contrary to the safety and well-being of any of the siblings.

The committee concluded that the revised language would not preclude a court from ordering sibling visitation where a nondependent sibling lives with someone other than a mutual parent.

The third commentator, who agreed if modified, made suggested improvements to grammar and consistency which were incorporated into the rules and forms.

Alternatives

The committee considered not revising form JV-183 with the new standards for granting a request for sibling visitation. The committee, in its discussion of this proposal, expressed concern about the court's ability to order sibling visitation for a sibling living with a parent who is not subject to the court's jurisdiction.

While Welfare and Institutions Code sections 388 and 778, which govern the filing of petitions to request a modification of a court order, do not address the requirement that the parent be under the court's jurisdiction, section 16002(a)(2), which states the legislative intent of SB 1099, does address this requirement.

> It is also the intent of the Legislature to preserve and strengthen a child's sibling relationship so that when a child has been removed from his or her home or he or she has a sibling or siblings *who remain in the custody of a mutual parent subject to the court's jurisdiction*, the court has the authority to develop a visitation plan for the siblings, unless it has been determined that visitation is contrary to the safety or well-being of any sibling. (Emphasis added.)

[11] As circulated for public comment, the rules specified that the court "may" grant a request for visitation with a nondependent sibling "unless the court determines that the sibling is not in the custody of a mutual parent subject to the court's jurisdiction."

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Section 16002 is not in the parts of the Welfare and Institutions Code frequently used by juvenile court practitioners and bench officers, and the frequently used sections 388 and 778 do not contain this requirement. The committee therefore decided to recommend that the rules and forms be amended and revised to include this requirement to prevent confusion and to promote the legislative intent.

The committee also considered not revising form JV-183 to allow a court to set a hearing for the purpose of giving the parties an opportunity to argue whether the section 388 petition stated a prima facie case and whether a hearing on the petition should be set. The committee determined that enough jurisdictions hold these hearings to warrant the inclusion of setting them on the form. Additionally, the committee concluded that allowing for the setting of this type of hearing would increase judicial discretion over how to hear these petitions. The setting of a hearing to give parties the opportunity to argue whether a hearing on the petition should be set would be optional; if courts prefer to just hold one hearing on the merits of the petition, they would remain free to do so.

Implementation Requirements, Costs, and Operational Impacts

This proposal could result in an increase in section 388 and 778 petitions filed requesting visitation with siblings who are not dependents of the court. This increase, however, is due to recent statutory changes authorizing such requests. In implementing the revised forms, courts would incur standard reproduction costs and retraining of affected staff.

Attachments and Links

1. Proposed Cal. Rules of Court, rules 5.570, 5.708, and 5.810, at pages 10–19
2. Proposed forms JV-183, JV-185, and JV-403, at pages 20–25
3. Chart of comments, at pages 26–36
4. Senate Bill 1099, *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB1099&search_keywords*=

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Rules 5.570, 5.708, and 5.810 of the California Rules of Court are amended, effective January 1, 2016, to read:

Rule 5.570. Request to change court order (petition for modification)

(a)–(c) * * *

(d) Denial of hearing

The court may deny the petition ex parte if:

(1) The petition filed under section 388(a) or section 778(a) fails to state a change of circumstance or new evidence that may require a change of order or termination of jurisdiction or fails to show that the requested modification would promote the best interest of the child, nonminor, or nonminor dependent.

(2) The petition filed under section 388(b) fails to demonstrate that the requested modification would promote the best interest of the dependent child; ~~or~~

(3) The petition filed under section 388(b) or 778(b) requests visits with a nondependent child and demonstrates that sibling visitation is contrary to the safety and well-being of any of the siblings;

(4) The petition filed under section 388(b) or 778(b) requests visits with a nondependent sibling who remains in the custody of a mutual parent who is not subject to the court's jurisdiction; or

~~(3)~~(4) The petition filed under section 388(c) fails to state facts showing that the parent has failed to visit the child or that the parent has failed to participate regularly and make substantive progress in a court-ordered treatment plan or fails to show that the requested termination of services would promote the best interest of the child.

(e) Grounds for grant of petition (§§ 388, 778)

(1) If the petition filed under section 388(a) or section 778(a) states a change of circumstance or new evidence and it appears that the best interest of the child, nonminor, or nonminor dependent may be promoted by the proposed change of order or termination of jurisdiction, the court may grant the petition after following the procedures in (f), (g), and (h), or (i).

(2) If the petition is filed under section 388(b) and it appears that the best interest of the child, nonminor, or nonminor dependent may be promoted by the proposed recognition of a sibling relationship ~~and~~ or other requested orders,

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the court may grant the petition after following the procedures in (f), (g), and (h).

(3) If the petition is filed under section 388(b), the request is for visitation with a sibling who is not a dependent of the court and who is in the custody of a parent subject to the court's jurisdiction, and that sibling visitation is not contrary to the safety and well-being of any of the siblings, the court may grant the request after following the procedures in (f), (g), and (h).

(4) If the petition is filed under section 778(b), the request is for visitation with a sibling who is not a dependent of the court and who is in the custody of a parent subject to the court's jurisdiction, and that sibling visitation is not contrary to the safety and well being of the ward or any of the siblings, the court may grant the request after following the procedures in (f), (g), and (i).

~~(3)~~ (5) * * *

~~(4)~~ (6) * * *

~~(5)~~ (7) If the petition filed under section 388(a) is filed before an order terminating parental rights and is seeking to modify an order that reunification services ~~were not needed~~ need not be provided under section 361.5(b)(4), (5), or (6) or to modify any orders related to custody or visitation of the child for whom reunification services were not ordered under section 361.5(b)(4), (5), or (6), the court may modify the orders only if the court finds by clear and convincing evidence that the proposed change is in the best interests of the child. The court may grant the petition after following the procedures in (f), (g), and (h).

(f) Hearing on petition

If all parties stipulate to the requested modification, the court may order modification without a hearing. If there is no such stipulation and the petition has not been denied ex parte under section (d), the court must either:

(1) order that a hearing on the petition ~~for modification~~ be held within 30 calendar days after the petition is filed~~.~~; or

(2) order a hearing for the parties to argue whether an evidentiary hearing on the petition should be granted or denied. If the court then grants an evidentiary hearing on the petition, that hearing must be held within 30 calendar days after the petition is filed.

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(g) * * *

(h) Conduct of hearing (§ 388)

(1) The petitioner requesting the modification under section 388 has the burden of proof.

(A) If the request is for the removal of the child from the child's home, the petitioner must show by clear and convincing evidence that the grounds for removal in section 361(c) exist.

~~(A)~~(B)If the request is for termination of court-ordered reunification services, the petitioner must show by clear and convincing evidence that one of the conditions in section 388(c)(1)(A) or (B) exists and must show by a preponderance of the evidence that reasonable services have been offered or provided.

~~(B)~~(C)If the request is to modify an order that reunification services were not ~~needed~~ ordered under section 361.5(b)(4), (5), or (6) or to modify any orders related to custody or visitation of the child for whom reunification services were not ordered under section 361.5(b)(4), (5), or (6), the petitioner must show by clear and convincing evidence that the proposed change is in the best interests of the child.

~~(C)~~ (D)All other requests require a preponderance of the evidence to show that the child's welfare requires such a modification.

(E) If the request is for visitation with a sibling who is not a dependent of the court, the court may grant the request unless the court determines that the sibling remains in the custody of a mutual parent who is not subject to the court's jurisdiction or that sibling visitation is contrary to the safety and well-being of any of the siblings.

(2) * * *

(i) Conduct of hearing (§ 778)

(1) The petitioner requesting the modification under section 778(a) has the burden of proving by a preponderance of the evidence that the ward's welfare requires the modification. Proof may be by declaration and other documentary evidence, or by testimony, or both, at the discretion of the court.

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(2) If the request is for sibling visitation under section 778(b), the court may grant the request unless the court determines that the sibling remains in the custody of a mutual parent who is not subject to the court's jurisdiction or that sibling visitation is contrary to the safety and well-being of any of the siblings.

(j) Petitions for juvenile court to resume jurisdiction over nonminors (§§ 388(e), 388.1)

A petition filed by or on behalf of a nonminor requesting that the court resume jurisdiction over the nonminor as a nonminor dependent is not subject to this rule. Petitions filed under ~~subdivision (e) of~~ section 388(e) or section 388.1 are subject to rule 5.906.

Rule 5.708. General review hearing requirements

(a)–(b) * * *

(c) Reports (§§ 366.05, 366.1, 366.21, 366.22, 366.25, 16002)

Before the hearing, the social worker must investigate and file a report describing the services offered to the family, progress made, and, if relevant, the prognosis for return of the child to the parent or legal guardian.

(1) The report must include:

(A) Recommendations for court orders and the reasons for those recommendations;

(B) A description of the efforts made to achieve legal permanence for the child if reunification efforts fail; ~~and~~

(C) A factual discussion of each item listed in sections 366.1 and 366.21(c)~~.~~; and

(D) A factual discussion of the information required by section 16002(b).

(2)–(3) * * *

(d)–(e) * * *

(f) Educational and developmental-services needs (§§ 361, 366, 366.1, 366.3)

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The court must consider the educational and developmental-services needs of each child and nonminor or nonminor dependent ~~youth~~, including whether it is necessary to limit the rights of the parent or legal guardian to make educational or developmental-services decisions for the child ~~or youth~~. If the court limits those rights or, in the case of a nonminor or nonminor dependent ~~youth~~ who has chosen not to make educational or developmental-services decisions for him- or herself or has been deemed incompetent, finds that appointment would be in the best interests of the ~~youth~~ nonminor or nonminor dependent, the court must appoint a responsible adult as the educational rights holder as defined in rule 5.502. Any limitation on the rights of a parent or guardian to make educational or developmental-services decisions for the child ~~or youth~~ must be specified in the court order. The court must follow the procedures in rules 5.649–5.651.

(g) Case plan (§§ 16001.9, 16501.1)

The court must consider the case plan submitted for the hearing and must determine:

(1) Whether the child ~~or youth~~ was actively involved, as age- and developmentally appropriate, in the development of his or her own case plan and plan for permanent placement. If the court finds that the child ~~or youth~~ was not appropriately involved, the court must order the agency to actively involve the child ~~or youth~~ in the development of his or her own case plan and plan for permanent placement, unless the court finds that the child is unable, unavailable, or unwilling to participate.

(2)–(3) * * *

(4) For a child ~~or youth~~ 12 years of age or older in a permanent placement, whether the child was given the opportunity to review the case plan, sign it, and receive a copy. If the court finds that the child ~~or youth~~ was not given this opportunity, the court must order the agency to give the child the opportunity to review the case plan, sign it, and receive a copy.

(h)–(i) * * *

(j) Sibling findings; additional findings (§§ 366, 16002)

(1) The court must determine whether the child has other siblings under the court's jurisdiction. If so, the court must make the additional determinations required by section 366(a)(1)(D); and

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(2) The court must enter any additional findings as required by section 366 and section 16002.

(k)–(m) * * *

(n) Requirements on setting a section 366.26 hearing (§§ 366.21, 366.22, 366.25)

The court must make the following orders and determinations when setting a hearing under section 366.26:

(1) The court must terminate reunification services to the parent or legal guardian and:

(A) Order that the social worker provide a copy of the child's birth certificate to the caregiver as consistent with sections 16010.4(e)(5) and 16010.5(b)–(c); and

(B) Order that the social worker provide a child ~~or youth~~ 16 years of age or older with a copy of his or her birth certificate unless the court finds that provision of the birth certificate would be inappropriate.

(2)–(6) * * *

(o) * * *

Rule 5.810. Reviews, hearings, and permanency planning

(a) Six-month status review hearings (§§ 727.2, 11404.1)

For any ward removed from the custody of his or her parent or guardian under section 726 and placed in a home under section 727, the court must conduct a status review hearing no less frequently than once every six months from the date the ward entered foster care. The court may consider the hearing at which the initial order for placement is made as the first status review hearing.

(1)–(2) * * *

(3) *Findings and orders (§ 727.2(e))*

The court must consider the safety of the ward and make findings and orders that determine the following:

(A)–(E) * * *

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(F) In the case of a child ~~or youth~~ who is 16 years of age or older, the services needed to assist the child ~~or youth~~ in making the transition from foster care to independent living;

(G) Whether the child ~~or youth~~ was actively involved, as age- and developmentally appropriate, in the development of his or her own case plan and plan for permanent placement. If the court finds that the child ~~or youth~~ was not appropriately involved, the court must order the probation department to actively involve the child ~~or youth~~ in the development of his or her own case plan and plan for permanent placement, unless the court finds that the child ~~or youth~~ is unable, unavailable, or unwilling to participate; ~~and~~

(H) Whether each parent was actively involved in the development of the case plan and plan for permanent placement. If the court finds that any parent was not actively involved, the court must order the probation department to actively involve that parent in the development of the case plan and plan for permanent placement, unless the court finds that the parent is unable, unavailable, or unwilling to participate~~.~~; and

(I) If sibling interaction has been suspended and will continue to be suspended, that sibling interaction is contrary to the safety or well-being of either child.

(4) * * *

(b) Permanency planning hearings (§§ 727.2, 727.3, 11404.1)

A permanency planning hearing for any ward who has been removed from the custody of a parent or guardian and not returned at a previous review hearing must be held within 12 months of the date the ward entered foster care as defined in section 727.4(d)(4). ~~and periodically thereafter, but no less frequently than once every 12 months while the ward remains in placement.~~ However, when no reunification services are offered to the parents or guardians under section 727.2(b), the first permanency planning hearing must occur within 30 days of disposition.

(1) * * *

(2) *Findings and orders (§§ 727.2(e), 727.3(a))*

At each permanency planning hearing, the court must consider the safety of the ward and make findings and orders regarding the following:

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(A)–(C) * * *

(D) The permanent plan for the child ~~or youth~~, as described in (3);

(E) Whether the child ~~or youth~~ was actively involved, as age- and developmentally appropriate, in the development of his or her own case plan and plan for permanent placement. If the court finds that the child ~~or youth~~ was not appropriately involved, the court must order the probation officer to actively involve the child ~~or youth~~ in the development of his or her own case plan and plan for permanent placement, unless the court finds that the child ~~or youth~~ is unable, unavailable, or unwilling to participate; and

(F) Whether each parent was actively involved in the development of the case plan and plan for permanent placement. If the court finds that any parent was not actively involved, the court must order the probation department to actively involve that parent in the development of the case plan and plan for permanent placement, unless the court finds that the parent is unable, unavailable, or unwilling to participate~~.~~; and

(G) If sibling interaction has been suspended and will continue to be suspended, that sibling interaction is contrary to the safety or well-being of either child.

(3) *Selection of a permanent plan (§ 727.3(b))*

At the first permanency planning hearing, the court must select a permanent plan. At subsequent permanency planning hearings that must be held under section 727.2(g) and rule 5.810(c), the court must either make a finding that the current permanent plan is appropriate or select a different permanent plan, including returning the child home, if appropriate. The court must choose from one of the following permanent plans, which are, in order of priority:

(A) * * *

(B) A permanent plan of return of the child to the physical custody of the parent or guardian, after 6 additional months of reunification services. The court may not order this plan unless the court finds that there is a substantial probability that the child will be able to return home within 18 months of the date of initial removal or that reasonable services have not been provided to the parent or guardian.

(C)–(F) * * *

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(4) * * *

(c) Postpermanency status review hearings (§ 727.2)

A postpermanency status review hearing must be conducted for wards in placement ~~annually, 6 months after each permanency planning hearing~~ no less frequently than once every six months.

(1) *Consideration of reports (§ 727.2(d))*

The court must review and consider the social study report and updated case plan submitted for this hearing by the probation officer and the report submitted by any CASA volunteer, and any other reports filed with the court under section 727.2(d).

(2) *Findings and orders (§ 727.2(g))*

At each postpermanency status review hearing, the court must consider the safety of the ward and make findings and orders regarding the following:

(A) Whether the current permanent plan continues to be appropriate. If not, the court must select a different permanent plan, including returning the child home, if appropriate.; ~~The court must not order the permanent plan of returning home after 6 more months of reunification services, as described in (b)(3)(B), unless it has been 18 months or less since the date the child was removed from home;~~

(B) The continuing necessity for and appropriateness of the placement;

(C) The extent of the probation department's compliance with the case plan in making reasonable efforts to complete whatever steps are necessary to finalize the permanent plan for the child; ~~and~~

(D) Whether the child ~~or youth~~ was actively involved, as age- and developmentally appropriate, in the development of his or her own case plan and plan for permanent placement. If the court finds that the child ~~or youth~~ was not appropriately involved, the court must order the probation department to actively involve the child ~~or youth~~ in the development of his or her own case plan and plan for permanent placement, unless the court finds that the child ~~or youth~~ is unable, unavailable, or unwilling to participate.; and

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(E) If sibling interaction has been suspended and will continue to be suspended, sibling interaction is contrary to the safety or well-being of either child.

(d) Notice of hearings; service; contents (§ 727.4)

No earlier than 30 nor later than 15 calendar days before each hearing date, the probation officer must serve written notice on all persons entitled to notice under section 727.4, as well as the current caregiver, any CASA volunteer or educational rights holder, and all counsel of record. ~~A~~ *Notice of Hearing—Juvenile Delinquency Proceeding* (form JV-625) must be used.

(e) Report (§§ 706.5, 706.6, 727.2(c), 727.3(a)(1), 727.4(b), 16002)

Before each hearing described above, the probation officer must investigate and prepare a social study report that must include an updated case plan and all of the information required in sections 706.5, 706.6, 727.2, ~~and~~ 727.3, and 16002.

(1) The report must contain recommendations for court findings and orders and must document the evidentiary basis for those recommendations.

(2) At least 10 calendar days before each hearing, the ~~petitioner~~ probation officer must file the report and provide copies of the report to the ward, the parent or guardian, all attorneys of record, and any CASA volunteer.

~~**(f) Hearing by administrative panel (§§ 727.2(h), 727.4(d)(7))**~~

~~The status review hearings described in (a) and (c) may be conducted by an administrative review panel, provided:~~

~~(1) The ward, parent or guardian, and all those entitled to notice under section 727.4 may attend;~~

~~(2) Proper notice is provided;~~

~~(3) The panel has been appointed by the presiding judge of the juvenile court and includes at least one person who is not responsible for the case management of, or delivery of service to, the ward or the parent or guardian; and~~

~~(4) The panel makes findings as required by (a)(3) or (c)(2) above and submits them to the juvenile court for approval and inclusion in the court record.~~

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JV-183 Court Order on Form JV-180, *Request to Change Court Order*

Clerk stamps date here when form is filed.

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NOT APPROVED BY THE JUDICIAL COUNCIL

The court will complete this form after reviewing the Request to Change Court Order *(form JV-180) and either grant the request, deny the request, or set a hearing on the request.*

After reading and considering the *Request to Change Court Order* (form JV-180) filed by:

Name: _____

on *(date):* _____

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name.

Name of Child or Nonminor dependent:

Clerk fills in case number when form is filed.

Case Number:

The Court Finds and Orders

1 ☐ All parties and attorneys agree to the request. The request is granted

a. ☐ as requested in item 8 of form JV-180.

b. ☐ as follows *(state specific modifications):*

_____

_____

_____

_____

2 The request is denied because

a. ☐ the request is not signed.

b. ☐ the request does not state new evidence or a change of circumstances.

c. ☐ the proposed change of order, recognition of sibling relationships, or termination of jurisdiction does not promote the best interest of the child.

d. ☐ the request is for sibling visitation with a dependent of the court and the proposed change of order does not promote the best interest of the child.

e. ☐ the request is for sibling visitation with a nondependent of the court and the proposed change of order is contrary to the safety or well-being of one or more of the siblings.

f. ☐ the request is for sibling visitation with a nondependent of the court who remains in the custody of a mutual parent who is not subject to this court's jurisdiction.

g. ☐ Other *(state the specific reason):* _____

_____

_____

3 The court orders a hearing on whether the court should grant or deny an evidentiary hearing. The hearing will take place on *(date):* _____ at *(time):* _____ *(circle one)* a.m./p.m. in department _____ of the Superior Court of County located at _____

_____

_____

_____

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Name of child or nonminor dependent: _____

Case Number:

4 The court orders a hearing on the form JV-180 request because the best interest of the child may be promoted by the request. The hearing will take place on *(date):* _____
at *(time):* _____ *(circle one)* a.m./p.m. in department _____
of the Superior Court of _____ County located at _____

_____

_____

_____

Date: _____

_____
Judicial officer

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JV-185

CHILD'S NAME:	CASE NUMBER:

CHILD'S INFORMATION SHEET—
REQUEST TO CHANGE COURT ORDER
(Welf. & Inst. Code, §§ 353.1, 388)

TO THE CHILD: This information sheet tells you about your right to ask the court to change a decision the court has made about your life and the rules that must be followed when you want to ask the court to change a decision. It also explains your right to ask the court to make an order about your relationship with a brother or sister. If you are under 12 years of age, your attorney must talk with you about this information. If you are 12 years of age or older and in court at the dispositional hearing, the court must also talk with you about this information. The court must mail this information to you after a dispositional hearing.

A. I have just made a decision about your life. I will be making other decisions about your life. You have a right to ask me to change a decision I have made. You have an attorney who will help you with this.

For me to change a decision I have made, you must talk with your attorney and have your attorney ask me to change my decision.

Your attorney will have to fill out a form called *Request to Change Court Order* (form JV-180).

The form will explain to me the changes that have happened in your life and why the changes you want me to make in the court order will make things better for you.

You may get a copy of the blank form from your attorney or from the court clerk's office at the courthouse to review so you know what information needs to be on the form.

1. You must tell your attorney the following information:
   a. What has changed since I made the decision? If nothing has changed, what new information do you want to tell me?
   b. What changes to my decision do you want me to make?
   c. If I make the changes you want, will you be better off than if I do not make these changes? Tell me how the changes will make you healthier, safer, and happier.
2. After you speak with your attorney, your attorney will fill out the form.
   a. I will read the form.
   b. I may ask the other people involved with your case if they think you have given me the kind of information I must have in order to change my decision. Then I will decide if you told me anything new and if the change you want me to make is good for you.
   c. If I believe you have not told me anything new or if I believe what you want me to change is not good for you, I will not make any changes. The court clerk will send to you and all the people involved with your case a written notice of my decision not to make any changes.
   d. If I believe you did tell me something new and what you are asking me to change may be better for you, I will schedule a court date for you. The court clerk will send to you and all the people involved with your case a written notice of my decision to schedule a hearing and the date of the hearing.
   e. At that court date, everyone involved in your case will be present and allowed to speak.
   f. After everyone has spoken, I will make the final decision. I will make the changes you want only if I believe you have told me something new and what you are asking for is good for you.

B. If you have a brother or sister who lives with the parent you were removed from, you may ask me to make an order allowing visits with him or her.

If you have a brother or sister who is or might become a dependent of the court, you may ask me to make an order allowing visits, to make an order placing you in the same home, to make other orders that may be in the best interest of you and your brother or sister, and to consider your relationship with your brother or sister when making decisions about him or her.

Form Approved for Optional Use
Judicial Council of California
JV-185 [Revised Jan. 1, 2016]

CHILD'S NAME:	CASE NUMBER:

B. 1. For me to make these orders, you must tell your attorney you would like to ask me to make an order about your brother or sister.

2. Your attorney will fill out a form asking me to make the order about your brother or sister.

a. I will read the form.

b. The court clerk will send to you and all the people involved with your brother's or sister's case a written notice of my decision to schedule a hearing and the date of the hearing.

c. At that court date, everyone involved in the case will be present and allowed to speak.

d. After everyone has spoken, I will make the final decision. I will make the order about your brother or sister that you asked me to make only if I believe what you are asking for is good for you and your brother or sister.

If you have any questions, please ask your attorney. Your attorney will be able to answer your questions about court procedures and the laws I will use in making my decisions.

Date:

JUDICIAL OFFICER

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CHILD'S NAME:	CASE NUMBER:

1. **The child has siblings under the court's jurisdiction.**
   a. The nature of the relationship between the child and the child's siblings is
      (1) ☐ stated on the record.
      (2) ☐ described in the social worker's report.
      (3) ☐ other *(specify):*
   b. (1) ☐ Developing or maintaining the sibling relationship with the siblings named below is appropriate.
      (a) *(name):*
      (b) *(name):*
      (c) *(name):*
      (d) *(name):*
      (e) *(name):*
      (f) *(name):*
      (2) ☐ Developing or maintaining the sibling relationship with the siblings named below is not appropriate.
      (a) *(name):*
      (b) *(name):*
      (c) *(name):*
      (d) *(name):*
      (e) *(name):*
      (f) *(name):*
      (3) The basis for the finding in item 1b is
      (a) ☐ stated on the record.
      (b) ☐ described in the social worker's report.
      (c) ☐ other *(specify):*
   c. The impact of the sibling relationships on the child's placement and planning for legal permanence is
      (1) ☐ stated on the record.
      (2) ☐ described in the social worker's report.
      (3) ☐ other *(specify):*
2. ☐ **The child and all of the child's siblings under the court's jurisdiction are placed together in the same home.**
3. ☐ **The child and all of the child's siblings under the court's jurisdiction are not placed together in the same home.**
   a. ☐ Efforts are being made to place the child and the following siblings together.
      (1) Child's siblings:
      (a) *(name):*
      (b) *(name):*
      (c) *(name):*
      (d) *(name):*
      (e) *(name):*
      (f) *(name):*
      (2) The reasons the child and these siblings are not placed together and the efforts being made to do so are
      (a) ☐ stated on the record.
      (b) ☐ described in the social worker's report.
      (c) ☐ other *(specify):*
   b. ☐ Efforts to place the child with the following siblings are not appropriate.
      (1) Child's siblings:
      (a) *(name):*
      (b) *(name):*
      (c) *(name):*
      (2) The reasons that efforts to place the child with these siblings are not appropriate are
      (a) ☐ stated on the record.
      (b) ☐ described in the social worker's report.
      (c) ☐ other *(specify):*
   c. ☐ The frequency and nature of the visits between the child and the child's siblings who are not placed together are
      (1) ☐ stated on the record.
      (2) ☐ described in the social worker's report.
      (3) ☐ other *(specify):*

Form Approved for Optional Use
Judicial Council of California
JV-403 [Revised Jan. 1, 2016]

SIBLING ATTACHMENT: CONTACT AND PLACEMENT

Welfare and Institutions Code, §§ 366, 366.3;
Cal. Rules of Court, rules 5.708 and 5.740
www.courts.ca.gov

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CHILD'S NAME:	CASE NUMBER:

3. d. ☐ The reasons why the visits between the child and the child's siblings are supervised are
   (1) ☐ stated on the record.
   (2) ☐ described in the social worker's report.
   (3) ☐ other *(specify):*

   e. ☐ What needs to be accomplished in order for the visits to be unsupervised is
   (1) ☐ stated on the record.
   (2) ☐ described in the social worker's report.
   (3) ☐ other *(specify):*

   f. ☐ The location and length of the visits between the child and the child's siblings who are not placed together are
   (1) ☐ stated on the record.
   (2) ☐ described in the social worker's report.
   (3) ☐ other *(specify):*

   g. ☐ The plan to increase visitation between the child and the child's siblings who are not placed together is
   (1) ☐ stated on the record.
   (2) ☐ described in the social worker's report.
   (3) ☐ other *(specify):*

DRAFT

SP15-26
Juvenile Law: Sibling Visitation
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	The Executive Committee of the Family Law Section of the State Bar of California (FLEXCOM) FLEXCOM: David M. Lederman The Law Offices of David M. Lederman State Bar Legislative Counsel Saul Bercovitch The State Bar of California	AM	The Executive Committee of the Family Law Section of the State Bar (FLEXCOM) supports this proposal, with modification. FLEXCOM recommends two modifications. Proposed Rule 5.570(d)(4) calls for the court to deny a petition on its face if the request is for visitation with a sibling who is not in the custody of a mutual parent under the court's jurisdiction. This proposed change should include the word "nondependent" before "sibling" in order to clarify it has limited scope. Without the word "nondependent," this proposal could be interpreted to apply to requests for visitation between two dependent siblings that are both out of the custody of their parents. This broad interpretation would not reflect the intent of Senate Bill 1099. Proposed Item 2(d) on the revised form JV-183 should be stricken. This language would authorize the court to deny a request to order visitation for any individual with a dependent of the court. Similar to our comment concerning proposed 5.570(d)(4), this language has the potential to be interpreted in an overly broad fashion. On its face, this would apply well beyond requests for sibling visitation. The court could check this box on a visitation request concerning the dependent and anyone, family or otherwise. Whereas SPR15-26 is proposed in response to SB 1099, the proposal should be limited to issues concerning sibling visitation. In addition, the ability to deny requests for	The committee has revised the rule to include the word "nondependent" before "sibling" to clarify it has limited scope. The committee has revised subitems 2(d)-(f) to clarify that the items apply to requests for sibling visitation.

DRAFT

SP15-26
Juvenile Law: Sibling Visitation
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			visitation is encompassed in existing item 2(c) of the JV-183 form. The existing language allows the court to deny any "change in court order" if it fails to promote the best interests of the child. The language in proposed 2(d) would be duplicative.	
2.	California Judges Association President Joan P. Weber	A	Rule and Form changes to conform to SB1099 and In Re G.B. These amendments pertain to three rules and three forms. Overall these changes would conform to recent case law and statutes that have been passed to make it easier for siblings to see siblings both dependent and nondependent. CA Rule of Court 5.570 would require a new standard for granting the sibling visit. It eliminates the 'clear and convincing' language to show detriment in order prevent the sibling visits and instead says that " A request for sibling visitation may be granted unless it is determined by the court that sibling visitation is contrary to the safety and well being of any of the siblings". This language conforms to the language of SB1099 which was sponsored by the California Youth Connection. CA Rule 5.570 to be amended to clarify that a judge may consider ordering visitation for a dependent child for a nondependent child when they have a mutual parent who is subject to the	No response required.

DRAFT

SP15-26
Juvenile Law: Sibling Visitation
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			court's jurisdiction. CA Rule 5.708 would be amended to require that if a court has found that sibling visits are suspended that the court must revisit that decision at the 6 month hearing in order for that suspension to remain in place. In CA Rule 5.708 and CA Rule 5.810 the amendments eliminate the reference to youth and only use the reference to "child" because the legal definition of a child is a person under the age of 18. The rule does define nonminor and nonminor dependents. So the term "youth" is deleted. CA Rule 5.810 changes also clarify that post permanency hearings are to be held every 6 months and not every 12 months as the Federal Law mandates. Forms: JV-183 (388) will add a box to check for the court to grant a hearing to argue whether to set a hearing. This is in lieu of checking the box that denies or grants a hearing on the requested action. It was felt that enough jurisdictions are granting a hearing to argue for a hearing so it would conform to practice. JV-185 and JV-403 will be changed to conform to SB1099. We support all of the changes.	
3.	Dependency Advocacy Center Hilary Kushins	A	No comment	No response required.

DRAFT

SP15-26
Juvenile Law: Sibling Visitation
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
4.	Office of the County Counsel County of Santa Clara Julie Fulmer McKellar Lead Deputy County Counsel	NI	The amendments proposed to 5.570, subd.(h)(1)(B) questionably imposes a clear and convincing standard burden of proof for a requested placement changes from foster home to a group home. The preponderance of the evidence standard is the accepted burden of proof for section 388 petitions. (SPR15-26)	The committee has revised the rule to remove subparagraph (h)(1)(B). Requests to remove a child to a more restrictive placement would fall under the general requirement in subparagraph (h)(1)(D) requiring a preponderance of the evidence standard. The clear and convincing standard will remain in the rule for a removal from parental custody.
5.	Superior Court of California, County of San Diego Mike Roddy Executive Officer	AM	• (4) is repeated twice in subdivision (d). • Consistency issues (well being v. well-being; section 388 or section 778 v. section 388 or 778; section v. subdivision; need not be provided v. were not needed; that sibling interaction is contrary v. no "that"). • Subdivision (f): hearing to determine whether there should be a hearing? The way the rule is currently drafted, it is difficult to understand and should be rephrased to specifically reference the two types of hearings being held. • Also, with the current caseload the courts have, it seems like a waste of resources and may be more expeditious to just hold one hearing on the merits of a petition.	The committee has revised the rule with the correct numbering. The committee has revised the rules and made improvements to consistency and grammar. The committee has revised the rule to improve readability. The committee determined that enough jurisdictions hold these hearings to warrant the inclusion of setting them on the form. The setting of such a hearing would be optional—if courts prefer to just hold one hearing on the merits of the petition, they are free to do so.

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SP15-26
Juvenile Law: Sibling Visitation
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			JV-183: Why would the court order a hearing on whether to order a hearing? With the current caseload the courts have, it seems like a waste of resources and may be more expeditious to just hold one hearing on the merits of a petition. **JV-185**: Maybe set up B more like A, with numbered and lettered paragraphs. It would be better to state: "in the best interest of *you and* your brother or sister"?	The committee determined that enough jurisdictions hold these hearings to warrant the inclusion of setting them on the form. The setting of such a hearing would be optional—if courts prefer to just hold one hearing on the merits of the petition, they are free to do so. The committee revised the form so that B is set up more like A, with numbered and lettered paragraphs, to improve readability. The committee agrees with this comment and has revised the form to state "in the best interest of you and your brother or sister."
6.	Orange County Bar Association Ashleigh Aitken President	A	No comment	No response required.
7.	Youth Law Center Joy Singleton Staff Attorney	AM	**Rule 5.570(h)(2) and 5.570(i)(2):** This proposed rule would specify that the court "may" grant a petition request for visitation with a nondependent sibling "unless the court determines that the sibling is not in the custody of a mutual parent subject to the court's jurisdiction..." among other criteria. This proposed rule exceeds the scope of SB 1099 by adding a limitation on the court's authority that does not appear in that legislation. As we know from the Judicial Council's *Invitation to Comment* on these proposed rules, SB 1099 intended to address the issue of sibling	The committee revised the rule to track the statutory language and reads: If the request is for visitation with a sibling who is not a dependent of the court, the court may grant the request unless the court determines that the sibling remains in the custody of a mutual parent who is not subject to the court's jurisdiction or that sibling visitation is contrary to the safety and well-being of any of the siblings.

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	Commentator	Position	Comment	Committee Response
			visitation following an unpublished decision wherein the court found that the juvenile courts could not compel a parent subject to its jurisdiction to provide for visitation between dependent and nondependent siblings. This is a very narrow jurisdictional issue and the legislation addresses it narrowly: by stating that the court does in fact have discretion to order visits between dependent and nondependent siblings when the nondependent sibling is in the custody of a mutual parent subject to the jurisdiction of the court. Under Welfare & Institutions Code §362, "the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child…". This is a broad grant of authority, and the court can order the child welfare agency to implement any visitation plan that is reasonable for the care and maintenance of the dependent child. SB 1099 did not restrict the authority of the court to order visits; it clarified and/or expanded the court's authority to order parents subject to its jurisdiction to allow visits between dependent and nondependent children. We believe that the proposed rule is the product of confusion regarding 1) the jurisdictional authority of the juvenile court and 2) the court's discretion to make certain sibling visitation orders that do not conflict with any sibling's safety and well-being. While the court might not have the authority to order someone outside	

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	Commentator	Position	Comment	Committee Response
			of its jurisdiction (e.g., an aunt, grandparent, or a parent not subject to the jurisdiction of the court) to provide visits between dependent and nondependent siblings, the court *does* have the authority to order a visitation plan that would benefit the dependent child. In other words, the court has the power to order that the child welfare agency facilitate visits for a dependent child with his or her nondependent siblings no matter where the nondependent siblings live. Granted, the guardian or caretaker of nondependent siblings who is not subject to the jurisdiction of the court might object to the visits; however, that is a separate issue and is not within the scope of this legislation. We simply do not want the proposed rule to foreclose inadvertently the opportunity for a judge to order a visitation plan for siblings where the nondependent sibling lives with someone other than a mutual parent subject to the court's jurisdiction and the nondependent's guardian is amenable to the visitation plan. If the court was not permitted to order such a plan, then that would be contrary to the intent of the SB 1099, which is to expand and protect foster children's rights to visit with and maintain a bond with their siblings. **Suggested Amendments to Proposed Rule 5.570(h)(2) and 5.570(i)(2)**	The committee concluded that the revised language would not preclude a court from ordering sibling visitation where a nondependent sibling lives with someone other than a mutual parent subject to the court's jurisdiction. The committee revised the rule to track the statutory language and reads: If the request is for visitation with a sibling who is not a dependent of the court, the court may grant the request unless the court determines that the sibling remains in the custody of a mutual parent who is not subject to the court's jurisdiction or that sibling visitation is contrary to the safety and well-being of any of the siblings.

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	Commentator	Position	Comment	Committee Response
			We propose that 5.570(h)(2) read, "If the request is for visitation with a sibling who is not a dependent of the court, the court has the authority to order a parent subject to the jurisdiction of the court to provide visitation between the child who is not a dependent and the dependent sibling(s) and to grant the request unless the court determines that sibling visitation is contrary to the safety and well-being of any of the siblings. Nothing in this rule limits or governs the authority of the court regarding sibling visitation other than as provided in 388(b)."	The committee revised the rule to track the statutory language and reads: If the request is for visitation with a sibling who is not a dependent of the court, the court may grant the request unless the court determines that the sibling remains in the custody of a mutual parent who is not subject to the court's jurisdiction or that sibling visitation is contrary to the safety and well-being of any of the siblings.
			We propose that 5.570(h)(2) read, "If the request is for visitation is under Section 778(b), the court has the authority to order a parent subject to the jurisdiction of the court to provide visitation between the child who is not a dependent and the dependent sibling(s) and to grant the request unless the court determines that sibling visitation is contrary to the safety and well-being of any of the siblings. Nothing in this rule limits or governs the authority of the court regarding sibling visitation other than as provided in 388(b)." **Rule 5.570 (d)(3)-(4):** This proposed rule would provide that the court may deny *ex parte* a petition filed under 388(b) or 778(b) if the petition requests either 1) visits "contrary to the safety and well-being" of any of the siblings or 2) "visits with a sibling who is not in the custody of a mutual parent subject to the court's	The committee concluded that this comment is regarding rule 5.507(i)(2). The committee revised the rule to track the statutory language and reads: If the request is for visitation with a sibling who is not a dependent of the court, the court may grant the request unless the court determines that the sibling remains in the custody of a mutual parent who is not subject to the court's jurisdiction or that sibling visitation is contrary to the safety and well-being of any of the siblings.

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	Commentator	Position	Comment	Committee Response
			jurisdiction." There is no authority in SB 1099 that provides for an *ex parte* denial of a petition for sibling visitation under W&I §388, and these proposed amendments should be deleted. There is no compelling reason to permit an *ex parte* denial for a petition that requests visits with a sibling not in the custody of a parent subject to the court's jurisdiction, and there are many reasons that the court should not be permitted to issue such a denial. Similar to the reasons stated above in detail, these proposed amendments to the rule exceed the scope of the legislation and contradicts the intent of the law. Additionally, permitting a judge to deny the petition *ex parte* if the petition "demonstrates" that the visits would be contrary to the child's safety and well-being is unnecessary and potentially confusing. It is very unlikely that the petition brought by a sibling requesting visits would, on its face, demonstrate that the visits would be contrary to the child's safety or well-being. For reasons similar to those stated above, we	Amending rule 5.570 with the option for the court to deny a petition ex parte is within the Judicial Council's purview. Article 6, section 6 of the California Constitution empowers the council to "adopt rules for court administration, practice and procedure, not inconsistent with statute." Section 265 of the Welfare and Institutions Code requires the council to adopt rules governing practice and procedure in the juvenile court. Further, rule 5.501(b) (authority for and purpose of rules)[1] clarifies that "[t]hese rules implement the purposes of the juvenile court law by promoting uniformity in practice and procedure and by providing guidance to judges, referees, attorneys, probation officers, and others participating in juvenile court." See response above.

[1] Rule 1400 of the California Rules of Court can be found in Attachment B.

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	Commentator	Position	Comment	Committee Response
			ask that proposed Rule 5.570(d)(3) and (d)(4) be deleted. **Form JV-183**: Similarly, we believe that Form JV-183 should not be changed to allow the court to deny a request for visitation if the nondependent sibling is not in the custody of a mutual parent subject to the jurisdiction of the court for all of the reasons listed above. We propose that subdivisions (d-f) in Item 2 on Form JV-183 be deleted. **Rule 5.570 (f):** This proposed rule clarifies that the court has the discretion to order a hearing regarding whether the party bringing a petition under 388 has made a prima facie showing that they meet the conditions to merit an evidentiary hearing. The rule specifies that, if the court does find there is a prima facie showing that the requirements of 388 are met sufficient to require an evidentiary hearing, then the court must hold the evidentiary hearing within 30 days of the prima facie hearing. However, the rule does not make it clear that the court similarly must hold the evidentiary hearing within 30 days of finding that the petitioner made the requisite prima facie showing without a hearing but simply on the petition submitted to the court. This appears to be an oversight. Proposed Amendment: If there is no such stipulation and the petition has not been denied *ex parte* under section (d), the court must <u>either:</u> may <u>1)</u> order a hearing for the parties to argue	The committee has revised the form to track the statutory language. Item 2(f) now reads: The request is denied because the request is for sibling visitation with a nondependent of the court who remains in the custody of a mutual parent who is not subject to this court's jurisdiction. The committee has revised the rule to clarify that the evidentiary hearing must be held within 30 days of filing of the petition in either circumstance delineated in the rule.

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			whether a hearing on the petition should be granted or denied or may 2) order that a hearing on the petition for modification be held within 30 calendar days after the petition is filed.	

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JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 27, 2015

Title
Juvenile Law: Substance Abuse Treatment Facilities and Placement

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 5.674, 5.676, 5.678, and 5.708

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, 2016

Date of Report
August 7, 2015

Contact
Kerry Doyle, 415-865-8791
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Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending three rules to conform to recently enacted provisions of Welfare and Institutions Code sections 319, 366.21, 366.22, and 366.25 that change the factors a court must consider when determining whether to release or detain a child.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council effective January 1, 2016, amend:

1. Rule 5.674 to eliminate the requirement that all detention findings and orders be made on the record;

2. Rule 5.676 to require additional information in the social worker's report to the court;

3. Rule 5.678 to add a factor that the court must consider when determining whether to release or detain a child;

4. Rule 5.708 to add a factor that the court must consider when determining whether to return a child at all status review hearings.

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

Previous Council Action

Effective January 1, 1998, the Judicial Council adopted rules 5.674, 5.676, and 5.678 as rules 1444, 1445, and 1446, respectively. Rule 5.678 was amended effective January 1, 1999, to expand the definition of "relative" as required by statutory changes. All three rules were amended, effective July 1, 2002, to make technical changes and further amended and renumbered, effective January 1, 2007.

The council adopted rule 5.708, effective January 1, 2010. It was amended three times: twice, effective July 1, 2010, to contain the correct cross-reference to a rule that was renumbered and, to ensure that tribal customary adoption is considered a permanent plan as required by statutory changes; and once, effective January 1, 2015, to clarify that subdivision (n) applies to any parent who has relinquished the child for adoption, regardless of that parent's legal status.

Rationale for Recommendation

Senate Bill 977 (Liu; Stats. 2014, ch. 219) amended section 319 of the Welfare and Institutions Code[1] to specify that the fact that a parent is enrolled in a substance abuse treatment facility that allows a dependent child to reside with his or her parent is not, for that reason alone, prima facie evidence of detriment or substantial danger. Additionally, SB 977 requires the court to consider at detention, dispositional, and status review hearings whether the child can be returned to the custody of his or her parent who is enrolled in a certified substance abuse treatment facility.

Amend rule 5.674 to eliminate the requirement that all detention findings and orders must be made on the record

Although not required by recent legislation, the committee recommends amending rule 5.674 to eliminate the requirement that *all* detention findings and orders be made on the record and instead narrow those findings and orders that must be made on the record to only those required under section 319 and the two title IV-E findings and one title IV-E order that are reviewed at a federal audit:

- Continuance in the home is contrary to the child's welfare;
- Reasonable efforts were made to prevent removal; and
- Temporary placement and care are vested with the agency.

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

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Eliminating all nonstatutory requirements to make the findings and orders on the record will significantly reduce those findings and orders that must be stated on the record, thereby freeing up much-needed court time and making detention hearings shorter or more thorough and meaningful.

Requiring that the two title IV-E findings and one title IV-E order that are reviewed at a federal audit be made on the record will help ensure that federal funding is available for children placed in foster care. The above findings and order are critical to federal funding.[2] Without including them on the record, clerical errors, which occur often with the court's findings and orders, could result in erroneous or missing information in the case file. Since at a federal title IV-E audit, a transcript of the court proceedings is the only documentation other than a court order that will be accepted to verify that the required determinations have been made,[3] it is important that the transcript contain the above findings and orders to ensure that the case will not be in error at a federal audit. The committee therefore recommends that the rule require that the two title IV-E findings and the one title IV-E order reviewed at a federal audit be stated on the record.

Amend rule 5.676 to require additional information in the social worker's report to the court

To ensure that the court has the information needed to make the findings required by the recent statutory change to section 319, the committee recommends amending rule 5.676 to require that the social worker's report to the court include information and a recommendation regarding whether a child can be returned to the custody of his or her parent who is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with his or her parent, and to include nonrelative extended family members in the list of possible placement options, as is required under current law.

Amend rule 5.678 to add a factor that the court must consider when determining whether to release or detain a child

To conform to the recent statutory change to section 319, the committee recommends amending rule 5.678 to require that when determining whether to release or detain a child, the court must consider whether the child can be returned to the custody of his or her parent who is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with his or her parent.

[2] If the two findings above (bullets one and two) are not timely made, the child is *never* eligible for title IV-E funding. If the order above (bullet three) is not made, no funding can be claimed until it is made. (See 45 C.F.R. §§ 1356.21(b)–(c), 1356.71(d)(1) (2014).)

[3] See 45 C.F.R. § 1356.21(d)(1) (2014).

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Amend rule 5.708 to add a factor that the court must consider when determining whether to return a child at all status review hearings

To conform to recent statutory changes to sections 366.21, 366.22, and 366.25, the committee recommends amending rule 5.708 to require the court to consider—at all status review hearings, when determining whether return of a child to the parent or legal guardian would create a substantial risk of detriment to the child—whether the child can be returned to the custody of his or her parent who is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with his or her parent.

Comments, Alternatives Considered, and Policy Implications

Comments

This proposal circulated for comment as part of the spring 2015 invitation to comment cycle, from April 17 to June 17, 2015, posted to the California Courts website and send to the standard electronic mailing list for family and juvenile law proposals. Included on the list were appellate court presiding justices and administrators; trial court presiding judges, executive officers, judges, court administrators, and clerks; attorneys; family law facilitators and self-help center staff; social workers; probation officers; CASA program directors; and other juvenile and family law professionals. Seven individuals or organizations provided comment; four agreed with the proposal, two agreed if modified, and one disagreed with the proposal. A chart with the full text of the comments received and the committee's responses is attached at pages 9–15.

The committee sought specific comment on whether rule 5.674 should require that the two title IV-E findings and one title IV-E order reviewed at a federal audit be stated on the record. Three commentators expressed concern that eliminating the requirement that the findings and order reviewed at a federal audit must be made on the record could jeopardize federal foster care funding. The committee determined that the findings and order should be included in the rule as required to be made on the record because the findings and order are critical to federal funding; there are often clerical errors with the documentation of the court's findings and orders; and at a federal title IV-E audit, a transcript of the court proceedings is the only documentation other than a court order that will be accepted to verify that the required determinations have been made.

The one commentator that disagreed with the proposal was a public interest law firm that works on behalf of children in the child welfare and juvenile justice systems in California and across the country. The firm disagreed with the recommended removal from rule 5.674 of the requirement that the court state the findings and orders on the record. It commented that the requirements that the court consider and rule on specific factors help to assure that the intention of the underlying law will be carried out. Another commentator, however—the California Judges Association—commented: "We support the proposal. Anything that will streamline the process to give the courts and especially court staff more time to devote to substantive issues is worthwhile." The committee agrees with the latter comment and concluded that the removal of the requirement would free up much-needed court time and make detention hearings shorter or more thorough and meaningful. Additionally, the committee notes that the requirement that the findings and orders be made on the record is only in rule 5.674, which governs dependency

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detention hearings; the requirement is not contained in any other rule governing any of the other dependency and delinquency hearing types.

Alternatives Considered

The committee considered not requiring the findings and order reviewed at a federal title IV-E audit to be made on the record; however, the committee determined that the findings and order should be included in the rule as required to be made on the record for the reasons given in the Rationale for Recommendation.

The committee also considered revising *Findings and Orders After Detention Hearing* (form JV-410) to include a conditional release order that the child is released to the parent only while the parent remains at the substance abuse treatment facility. Practices around conditional releases, however, vary throughout the state, and in jurisdictions that use them, there are multiple conditional release situations, none of which are currently included on the form. The committee decided to leave the form as is, allowing courts that order conditions of release to continue to do so by filling in item 19, "Other findings and orders," on form JV-410.

Implementation Requirements, Costs, and Operational Impacts

This proposal is unlikely to impose any costs on the court. The proposal does not recommend changes to existing Judicial Council forms and does not create any new court hearings or processes. Removing the requirement in rule 5.674 to eliminate the requirement that *all* findings and orders be made on the record at detention hearings will likely reduce the length of those hearings and free up time for courts and court staff.

Attachments and Links

1. Cal. Rules of Court, rules 5.674, 5.676, 5.678, and 5.708, at pages 6–8
2. Chart of comments, at pages 9–15
3. Senate Bill 977, http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB977&search_keywords=

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Rules 5.674, 5.676, 5.678, and 5.708 of the California Rules of Court would be amended, effective January 1, 2016, to read:

Rule 5.674. Conduct of hearing; admission, no contest, submission

(a) * * *

(b) Detention hearing; general conduct (§ 319; 42 U.S.C. § 600 et seq.)

(1) The court must read, consider, and reference any reports submitted by the social worker and any relevant evidence submitted by any party or counsel. All detention findings and orders must ~~be made on the record and~~ appear in the written orders of the court.

(2) The findings and orders that must be made on the record are:

(A) Continuance in the home is contrary to the child's welfare;

(B) Temporary placement and care are vested with the social services agency;

(C) Reasonable efforts have been made to prevent removal; and

(D) The findings and orders required to be made on the record under section 319.

(c)–(d) * * *

Rule 5.676. Requirements for detention

(a) * * *

(b) Evidence required at detention hearing

In making the findings required to support an order of detention, the court may rely solely on written police reports, probation or social worker reports, or other documents.

The reports relied on must include:

(1) * * *

(2) * * *

(3) If a parent is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with his or her parent, information and a

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recommendation regarding whether the child can be returned to the custody of that parent.

~~(3)~~ (4) * * *

~~(4)~~ (5)If continued detention is recommended, information about any parent or guardian of the child with whom the child was not residing at the time the child was taken into custody ~~or~~ and about any relative or nonrelative extended family member as defined under section 362.7 with whom the child may be detained.

Rule 5.678. Findings in support of detention; factors to consider; reasonable efforts; detention alternatives

(a) * * *

(b) Factors to consider

In determining whether to release or detain the child under (a), the court must consider the following:

(1) Whether the child can be returned home if the court orders services to be provided, including services under section 306; and

(2) Whether the child can be returned to the custody of his or her parent who is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with his or her parent.

(c)–(e) * * *

Rule 5.708. General review hearing requirements

(a)–(c) * * *

(d) Return of child—detriment finding (§§ 366.21, 366.22, 366.25)

(1) * * *

(2) The court must consider whether the child can be returned to the custody of his or her parent who is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with his or her parent.

~~(2)~~(3)* * *

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~~(3)~~(4)* * *

~~(4)~~(5)* * *

~~(5)~~(6)* * *

(e)–(o) * * *

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SPR15-25
Juvenile Law: Substance Abuse Treatment Facilities and Placement
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	The Executive Committee of the Family Law Section of the State Bar of California (FLEXCOM) The Law Offices of David M. Lederman David M. Lederman The State Bar of California Saul Bercovitch	AM	The Executive Committee of the Family Law Section of the State Bar (FLEXCOM) supports this proposal, so long as the proposal to revise Rule 5.674 limiting findings and orders at the detention hearing to those required under Welfares and Institutions Code section 319 would not jeopardize federal title IV-E funding.	The committee has amended the rule to include the required title IV-E findings and orders to the list of those which must be made orally at the hearing. The committee determined the findings and order should be included in the rule as required to be made on the record because the findings and order are critical to federal funding; there are often clerical errors with the documentation of the court's findings and orders; and at a federal title IV-E audit, a transcript of the court proceedings is the only other documentation that will be accepted to verify that the required determinations have been made.
2.	California Judges Association President Joan P. Weber Sacramento, CA	A	The proposal would amend four rules to conform to recent statutory changes to the factors a juvenile dependency court must consider when determining whether to release or detain a child. Amendments to various sections of WIC, effective Jan. 1, 2015, now require that at detention, disposition and review hearings, the agency address and the court consider, whether at each of these hearings a child can be released to a parent who is enrolled in a qualified inpatient program. Juvenile and Family Law Advisory Committee recommends proposed changes to the CRC to appropriately address these amendments and I see no issues or inconsistencies.	No response required. No response required.

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Juvenile Law: Substance Abuse Treatment Facilities and Placement
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	Commentator	Position	Comment	Committee Response
			The committee also recommended revising rule 5.674 to eliminate the requirement that all detention findings and orders be made on the record, and instead narrow those findings and orders that must be made on the record to only those required under section 319 while retaining the requirement for the three title IV-E findings and orders that are reviewed at a federal audit also be made on the record. According to the Committee, eliminating all non-statutory requirements on findings and orders on the record will free up much needed court time and making detention hearings shorter or more thorough and meaningful. We support the proposal. Anything that will streamline the process to give the courts and especially court staff more time to devote to substantive issues is worthwhile.	The committee has amended the rule to include the required title IV-E findings and orders to the list of those which must be made orally at the hearing. The committee determined the findings and order should be included in the rule as required to be made on the record because the findings and order are critical to federal funding; there are often clerical errors with the documentation of the court's findings and orders; and at a federal title IV-E audit, a transcript of the court proceedings is the only other documentation that will be accepted to verify that the required determinations have been made. No response required.
3.	Dependency Advocacy Center Hilary Kushins San Jose CA	A	No comment	No response required.
4.	County of San Diego Leesa Rosenberg	AM	That the proposal that not all detention findings and orders be stated on the record be opposed. This proposal is problematic as a failure of the court to make these findings and not have a record of the findings could result in problems with federal audits and impact funding levels.	The committee has amended the rule to include the required title IV-E findings and orders to the list of those which must be made orally at the hearing. The committee determined the findings and order should be included in the rule as required to be made on the record because the findings and order are critical to federal funding; there are often clerical errors with the documentation of the court's findings and orders; and at a federal title IV-E audit, a transcript of the court proceedings is the only other documentation

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	Commentator	Position	Comment	Committee Response
				that will be accepted to verify that the required determinations have been made.
5.	Youth Law Center Tyler Whittenberg Staff Attorney San Francisco CA	N	The Youth Law Center appreciates the opportunity to comment on SPR15-25, a series of proposed revisions to California Rules of Court 5.674, 5.676, 5.678, and 5.708. The Youth Law Center is a San Francisco-based, public interest law firm that works on behalf of children in the juvenile justice and child welfare systems in California and throughout the country. For over three decades, our attorneys have worked to improve the juvenile court process and ensure that courts are making decisions in the best interest of children. We submit the following comments in support of the proposed revisions to rules 5.676, 5.678, and 5.708; and in opposition to the proposed revision to rule 5.674. Support for Proposed Revision to Rules 5.676, 5.678 and 5.708 We agree with the proposed changes to rules 5.676, 5.678 and 5.708. They are consistent with the recent statutory changes to Sections 319, 366.21, 366.22, and 366.25 of the Welfare and Institutions Code that establish reporting, recommendation and consideration requirements for determining whether a child can be returned to the custody of his or her parent who is enrolled in a certified substance abuse treatment facility that allows a dependent	No response required. No response required.

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	Commentator	Position	Comment	Committee Response
			child to reside with his or her parent. Opposition to Proposed Revision to Rule 5.674 We oppose the proposed revision to rule 5.674. Rule 5.674 (b) requires the court to read, consider and reference all relevant evidence presented by the parties and reports provided by the social worker and mandates that all detention findings and orders are made on the record and appear in written court orders. The proposed revision to rule 5.674 would limit the findings and orders that must be made on the record to those required under Section 319 of the Welfare and Institutions Code. The Committee suggests that eliminating all nonstatutory requirements will free up court time and make detention hearings "shorter or more thorough and meaningful." In our experience, requirements that the court consider and rule on specific factors help to assure that the intention of the underlying law will be carried out. Even if some courts view the existing requirements as a mere formality, our court rules should not support bypassing the legislative intent that underlies the statutory requirements. By relieving the court of the duty to at least state the findings in court, the proposed revision to rule 5.674 would not achieve the stated goal of making detention hearings more thorough and meaningful. Conversely, the revision would encourage detention hearings that are less meaningful by	The committee concluded that the removal of the requirement that all detention findings and orders be made orally on the record would free up much-needed court time and make detention hearings shorter or more thorough and meaningful. Additionally, the committee notes that the requirement that the findings and orders be made on the record is only in rule 5.674 which governs dependency detention hearings; the requirement is not contained in any other rule governing any of the other dependency and delinquency hearing types.

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	Commentator	Position	Comment	Committee Response
			insulating arbitrary or inaccurate findings and orders and undermining the intent of the law that certain issues be given specific attention and consideration. The proposed revision will also make detention hearings less meaningful for parents and youth who may not get the benefit of at least hearing the recitation of the findings or having the findings discussed in open court. For example, limiting the educational rights of a parent and the appointment of an Educational Rights Holder (ERH) requires careful consideration as it has significant impact on the child and the child-parent relationship. The Order Designating Educational Rights Holder (form JV-535) merely states "Having considered the evidence and made the findings required by law, THE COURT ORDERS that…" If some courts treat the "unavailable, unable, or unwilling" finding as a mere formality, and we remove the requirements for findings, young people and their parents may not receive the full benefit of laws intended to permit removal of education decision-making authority only when the parent is unable and unwilling to carry out those responsibilities. Moreover, without the requirement that these findings be made on the record, the parent may not be able to meaningfully challenge the court order and its underlying rationale. The proposed revision also potentially risks losing title IV-E foster care funding. During a	The committee has amended the rule to include the required title IV-E findings and orders to the

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	Commentator	Position	Comment	Committee Response
			federal title IV-E audit, only documented court findings and orders are accepted to verify that the required findings and orders have been made. 45 C.F.R. § 1356.21 (d)(1). However, court orders often contain clerical errors and are frequently misplaced. Thus, the revision would eliminate the ability of the State to rely on transcripts of proceedings to verify that the requisite findings were made and avoid fiscal penalties for non-compliance with the requirements of title IV-E. Courts have a responsibility to act in the best interests of youth in their care. The minor convenience afforded courts by the revision is far outweighed by the interest in protecting children from arbitrary findings and orders and ensuring they receive the financial support necessary to thrive. For the reasons stated above, we oppose the proposed revision of rule 5.674 and believe that all detention hearing findings and orders should be made on the record. Thank you for your consideration. We are grateful for the work that has already gone into the proposed revisions, and hope that further consideration will result in rejection of the proposed revision to rule 5.674. Please let us know if we can clarify any of the comments or otherwise be of assistance in the rulemaking process.	list of those which must be made orally at the hearing. The committee determined the findings and order should be included in the rule as required to be made on the record because the findings and order are critical to federal funding; there are often clerical errors with the documentation of the court's findings and orders; and at a federal title IV-E audit, a transcript of the court proceedings is the only other documentation that will be accepted to verify that the required determinations have been made. See response above. No response required.
6.	Superior Court of California, County of San Diego	A	No comment	No response required.

DRAFT

SPR15-25
Juvenile Law: Substance Abuse Treatment Facilities and Placement
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
	Mike Roddy Executive Officer			
7.	Orange County Bar Association Ashleigh Aitken President	A	No Comment	No response required.

DRAFT

Judicial Council of California · Administrative Office of the Courts

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 27, 2015

Title
Forms: Miscellaneous Technical Changes

Rules, Forms, Standards, or Statutes Affected
Amend rule 3.35; and revise forms CH-700, CH-710, CH-720, CR-132, CR-165, DV-150, JV-100, JV-110, WG-002, and WG-030

Recommended by
Judicial Council staff
Susan R. McMullan, Senior Attorney
Legal Services

Agenda Item Type
Action Required

Effective Date
January 1,2 016

Date of Report
July 30, 2015

Contact
Susan R. McMullan, 415-865-7990
susan.mcmullan@jud.ca.gov

DRAFT

Executive Summary

Various Judicial Council advisory committee members, court personnel, members of the public, and Judicial Council staff have identified errors in a rule of the California Rules of Court and Judicial Council forms resulting from inadvertent omissions, typographical errors, and changes resulting from legislation. The staff to the Judicial Council recommends making the necessary corrections to avoid confusing court users, clerks, and judicial officers.

Recommendation

The staff to the Judicial Council recommends that the council, effective January 1, 2016:

1. Amend rule 3.35(b) to correct a reference from “rules 5.70 and 5.71” to “5.425”.

2. Revise forms CH-700, CH-710, and CH-720 to reflect an amendment to Code of Civil Procedure section 527.6(n) proposed in AB 1081. Subdivision (n) currently provides:

(n) A notice of hearing under this section shall notify the respondent that if he or she does not attend the hearing, the court may make orders against him or her that could last up to three years.

The proposed amendment would bring subdivision (n) in line with subdivision (j)(1), which raised the maximum duration of a renewed civil harassment protective order from three years to five. Should the Legislature not pass or the Governor not sign AB 1081, these changes would not go forward.

3. Revise form CR-132, page 2, "Reminder", to correct a reference from "8.835(b)" to "8.853".

4. Revise form CR-165, "Notice of Termination of Protective Order in Criminal Proceeding (CLETS)," to remove the word "CLETS" from the title of the form, and to add the word "Cancel" to the parenthetical in the form's footer to read "(CLETS-CANCEL)," as requested by the Department of Justice. These revisions will facilitate accuracy in coding courts' termination of criminal protective orders when those orders are entered into the California Law Enforcement Telecommunications System (CLETS) background check database. The revision would also make the format of form CR-165's footer consistent with proposed form DV-400, "Findings and Order to Terminate Restraining Order After Hearing."

5. Revise form DV-150 to eliminate all references to "therapeutic visitation providers," to conform with Family Code section 3200.5. Requirements recently enacted by Family Code section 3200.5, which governs supervised visitation, recognize only two types of supervised visitation providers: nonprofessional or professional. The Judicial Council, effective January 1, 2015, approved revisions to standard 5.20 of the California Standards of Judicial Administration, to conform to these requirements To ensure that form DV-150is consistent with both section 3200.5 and standard 5.20, item 5.c. on this form, which references "therapeutic" as a type of provider, has been eliminated. A similar change was made to form FL-341(A) effective January 1, 2015, to delete the option to order therapeutic visitation.

6. Revise forms JV-100 and JV-110 to allow for auto-text to be programmed rather than requiring manual entry of one of the checkboxes on both forms. Effective June 20, 2014, Welfare and Institutions Code section 300 was amended to add a new subsection (b)(2) and the previous language in (b) was renumbered as (b)(1) (see Senate Bill 855 [Stats. 2014, ch 29]). Forms JV-100 and JV-110 are alternative petition forms to initiate a juvenile dependency proceeding and contain checkboxes for each applicable subdivision—on form JV-100, under item a, and on form JV-110 under item b. Most counties use the Child Welfare Services/Case Management System (CMS/CWS) to complete the petitions, and staff for CMS/CWS requested that these current checkboxes be split into b(1) and b(2) on both forms to correspond with the statutory change and allow for auto-text to be programmed rather than requiring manual entry.

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7. Revise forms WG-002 and WG-030 to update the table on page 2 to reflect the new state minimum wage of $10.00, effective January 1, 2016; This change in minimum wage will change the maximum amount of a judgment debtor's earnings that may be garnished under an earning withholding order. WG-002 and WG-030 include instructions to employers describing the maximum amounts that may be garnished. The forms should be amended so that they will describe the correct amounts to be garnished based on the increased minimum wage.

Copies of the revised rule and forms are attached at pages 4–21.

Previous Council Action

Although the Judicial Council has acted on these rules and forms previously, this proposal recommends only minor corrections unrelated to any prior action.

Rationale for Recommendation

The changes to these rules are technical in nature and necessary to correct inadvertent omissions and incorrect references.

Comments, Alternatives Considered, and Policy Implications

These proposals were not circulated for public comment because they 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).)

Implementation Requirements, Costs, 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. Rule 3.35 at page 4;
2. Forms CH-700, CH-710, CH-720, CR-132, CR-165, DV-150, JV-100, JV-110, WG-002, and WG-030 at pages 5–21

DRAFT

Rule 3.35 of the California Rules of Court is amended, effective January 1, 2016, to read:

Rule 3.35. Definition of limited scope representation; application of rules

(a) * * *

(b) Application

Rules 3.35 through 3.37 apply to limited scope representation in civil cases, except in family law cases. Rule~~s 5.70 and 5.71~~ 5.425 ~~apply~~ applies to limited scope representation in family law cases.

(c) * * *

DRAFT

CH-700 Request to Renew Restraining Order

Clerk stamps date here when form is filed.

1 Protected Person

a. Your Full 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: _____

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: _____

Address *(if known)*: _____

City: _____ State: _____ Zip: _____

3 Request to Renew Restraining Order

I ask the court to renew the *Civil Harassment Restraining Order After Hearing* (form CH-130). A copy of the order is attached.

a. The order ends on *(date):* _____

b. ☐ This is my first request to renew the order.

☐ The order has been renewed _____ times.

c. I want the order to be renewed for ☐ five years ☐ other *(specify):* _____

d. I ask the court to renew the order because *(explain below):*

☐ *Check here if there is not enough space for your answer. Attach a sheet of paper and write "Attachment 3d—Reasons to Renew Order" for a title. You may use form MC-025,* Attachment.

_____

_____

_____

_____

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

_____ ▶ _____

Type or print your name *Sign your name*

This is not a Court Order.

DRAFT

CH-710 Notice of Hearing to Renew Restraining Order

Clerk stamps date here when form is filed.

1 Protected Person

a. Your Full 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: _____

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: _____
Address *(if known):* _____
City: _____ State: _____ Zip: _____

To the Restrained Person

3 Court Hearing

The judge has set a court hearing date. *Court will fill in box below.*

The current restraining order stays in effect until the end of the hearing.

Name and address of court if different from above:

Hearing Date →
Date: _____ Time: _____
Dept.: _____ Room: _____

_____
_____
_____
_____

At the hearing, the judge can renew the current restraining order for up to another five years. You *must* continue to obey the current restraining order until the hearing. At the hearing, you can tell the judge if you do not want the order against you renewed. If the restraining order is renewed, you *must* obey the order even if you do not attend the hearing.

If you wish to make a written response to the request to renew the restraining order, you may fill out form CH-720, *Response to Request to Renew Restraining Order*. File the original with the court before the hearing and have someone age 18 or older—**not you**—mail a copy of it to the protected person at the address in (1) at least _____ days before the hearing. Also file form CH-250, *Proof of Service of Response by Mail*, with the court before the hearing.

This is a Court Order.

DRAFT

Case Number:

To the Protected Person:

4 Service and Response

Someone age 18 or older**—not you or anyone else protected by the restraining order—**must personally serve (give) a copy of the following forms on the restrained person at least _____ days before the hearing.

- CH-700, *Request to Renew Restraining Order;*
- CH-710, *Notice of Hearing to Renew Restraining Order* (this form);
- CH-720, *Response to Request to Renew Restraining Order* (blank copy);
- CH-130, the current *Civil Harassment Restraining Order After Hearing* for which renewal is requested.

After the restrained person has been served, file form CH-200, *Proof of Personal Service,* with the court clerk. For help with service, read form CH-200-INFO, *What Is "Proof of Personal Service"?*

Date: _____ _____

Judicial Officer

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office or go to *www.courts.ca.gov/forms* for *Request for Accommodations by Persons with Disabilities and Response* (form MC-410). (Civ. Code, § 54.8.)

DRAFT

This is a Court Order.

CH-720 Response to Request to Renew Restraining Order

Clerk stamps date here when form is filed.

Use this form to respond to the *Request to Renew Restraining Order* (Form CH-700)

- Fill out this form and then take it to the court clerk.
- Have someone age 18 or older—**not the restrained person**—serve the protected person by mail with a copy of this form and any attached pages. *(Use form CH-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 Protected Person *(Form CH-700, item 1)*

Name: _____

2 Restrained Person

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: _____

The court will consider your *Response* at the hearing. Write your hearing date, time, and place from Form CH-710 item 3 here.

Hearing Date → Date: _____

Time: _____

Dept.: _____ Room: _____

You must continue to obey the current restraining order until the hearing. At the hearing, the court can extend the order against for up to another five years.

3 Response

a. ☐ I agree to extend the order.

b. ☐ I do not agree to extend the order.

c. ☐ I agree to the following order instead *(specify below):*

☐ *Check here if there is not enough space for your answer. Attach a sheet of paper and write "Attachment 3c—Order Requested" for a title. You may use form MC-025,* Attachment.

_____

_____

_____

_____

d. ☐ I ask the court not to renew the order for the following reasons *(specify 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 3d—Reasons Not to Renew" for a title.*

_____

_____

_____

_____

DRAFT

Date: _____

_____
Lawyer's name, if you have one

▶ _____
Lawyer's signature

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

_____
Type or print your name

▶ _____
Sign your name

DRAFT

CR-132 Notice of Appeal (Misdemeanor)

Clerk stamps date here when form is filed.

Instructions

- This form is only for appealing in a **misdemeanor case.** You can get other forms for appealing in a civil or infraction case at any courthouse or county law library or online at *www.courts.ca.gov/forms.*
- Before you fill out this form, read *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO) to know your rights and responsibilities. You can get form CR-131-INFO at any courthouse or county law library or online at *www.courts.ca.gov/forms*.
- **You must file this form no later than 30 days after the trial court issued the judgment or order you are appealing** (see rule 8.853(b) of the California Rules of Court for very limited exceptions). **If your notice of appeal is late, the court will not take your appeal.**
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the clerk's office for the same trial 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: _____

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

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

Phone: _____ E-mail *(if available):* _____

b. Appellant's lawyer *(skip this if the appellant is filling out this form):*

The lawyer filling out this form is *(check (1) or (2)):*

(1) ☐ was the appellant's lawyer in the trial court. (2) ☐ is the appellant's 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 *(if available):* _____

Fax *(if available):* _____

DRAFT

Trial Court Case Name: _____

Trial Court Case Number:

2 Judgment or Order You Are Appealing

I am/My client is appealing *(check one):*

a. ☐ The final judgment of conviction in this case (Penal Code section 1466(b)(1)).
   ☐ I am/My client is contesting only the conditions of the probation.

b. ☐ The following order made after the judgment in this case that affects an important right of mine/my client (for example, an order after a probation violation) (Penal Code section 1466(b)(1)).
   ☐ An order modifying the conditions of probation.
   ☐ Other*(describe the action you are appealing and give the date the trial court took the action):*
   _____

c. ☐ The trial court has not yet issued a final judgment in this case. I am appealing before final judgment an order that denied a motion to suppress evidence in this case (Penal Code section 1538.5(j)).

d. ☐ Other action *(describe the action you are appealing and give the date the trial court took the action):*
   _____
   _____
   _____

3 Record on Appeal

See form CR-131-INFO for information about the record on appeal.)

a. ☐ I have attached a completed *Notice Regarding Record on Appeal (Misdemeanor)* (form CR-134).

b. ☐ I have **not** attached a *Notice Regarding Record on Appeal (Misdemeanor)* (form CR-134). I understand that I must file this notice in the trial court within either: (1) 20 days after I file this notice of appeal; or, if it is later, (2) 10 days after the court appoints a lawyer for me (if I file a request for a court-appointed lawyer within 20 days after I file my notice of appeal). I also understand that if I do not file the notice on time, the court will not be able to consider what was said in the trial court in deciding whether an error was made in he trial court proceedings.

4 Court-Appointed Lawyer

a. I/My client ☐ was ☐ was not represented by the public defender or another court-appointed lawyer in the trial court.

b. I am/My client is *(check (1) or (2)):*

(1) ☐ asking the court to appoint a lawyer to represent me/my client in this appeal. I have completed *Request for Court-Appointed Lawyer in Misdemeanor Appeal* (form CR-133) and attached it to this notice of appeal.

(2) ☐ **not** asking the court to appoint a lawyer to represent me/my client in this appeal.

REMINDER—Except in the very limited circumstances listed in rule 8.853, you must file this form no later than 30 days after the trial court issued the judgment or order you are appealing in your case. If your notice of appeal is late, the court will not take your appeal.

Date: _____

_____ ▶ _____

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

DRAFT

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*):	
PEOPLE OF THE STATE OF CALIFORNIA *vs.* DEFENDANT:	
NOTICE OF TERMINATION OF PROTECTIVE ORDER IN CRIMINAL PROCEEDING **(Penal Code, §§ 136.2, 136.2(i)(1), 273.5(j), 646.9(k), and 1203.097(a)(2))**	CASE NUMBER:

NOTICE: THIS TERMINATION ORDER DOES *NOT* TERMINATE ANY EXISTING FAMILY, JUVENILE, OR PROBATE COURT ORDERS.

ORDER

1. **THE COURT ORDERS:**

   Effective *(today's date):* , the Protective Order in the above-entitled case and issued on *(date):* ,

   restraining *(name of restrained person):* ,

   listing as protected person(s):

   ,

   is terminated.

2. This termination order supersedes all prior protective orders in the above-entitled case.

3. The court or its designee must ensure that this order is electronically transmitted to the Department of Justice within one business day by either:
   a. ☐ transmitting a physical copy of the order to a local law enforcement agency authorized by the Department of Justice to enter orders into the California Law Enforcement Telecommunications System (CLETS); or
   b. ☐ entering the order into CLETS directly, but only with the approval of the Department of Justice.

4. ☐ The prosecuting agency is to notify the protected person(s) of this order.

Executed on: _____ _____ Department/Division:
(DATE) (SIGNATURE OF JUDICIAL OFFICER)

DRAFT

DV-150 Supervised Visitation and Exchange Order

Case Number:

This form is attached to ☐ DV-110, *Temporary Restraining Order* ☐ DV-130, *Restraining Order After Hearing*
☐ DV-140, *Child Custody and Visitation Order*

(1) **Name of Protected Person:** _____ ☐ Mom ☐ Dad ☐ Other*

(2) **Other Parent's Name:** _____ ☐ Mom ☐ Dad ☐ Other*

**If* Other, *specify relationship to child:* _____

The Court Orders:

(3) Mediation, Visitation and Exchange

a. ☐ Parties must go to mediation at: _____

b. ☐ Visitation of children is supervised.
Parent to be supervised is: ☐ Mom ☐ Dad ☐ Other *(name):* _____

c. ☐ Exchanges of children are supervised.

(4) Schedule of Supervised Visits

a. ☐ All visits as provided in the schedule on Form DV-140, item (4) (d) are to be supervised.

b. ☐ Supervised visits shall be _____ visit(s) per week of _____ hours(s) each, to be arranged with the provider.

c. ☐ Other schedule of supervised visits is attached. *(Check here and attach a sheet of paper with "DV-150, Other Schedule" for a title.)*

(5) Type of Provider

a. ☐ Professional (individual or supervised visitation center)

b. ☐ Nonprofessional

(6) Provider's Information

Name: _____

Telephone number: _____

Address: _____

(7) Costs Will Be Paid As Follows:

☐ Mom to pay: _____ %

☐ Dad to pay: _____ %

☐ Other: _____

(8) Contact With Provider

☐ Mom to contact provider before *(date):* _____

☐ Dad to contact provider before *(date):* _____

☐ Other: _____

(9) The court also orders *(specify):* _____

_____

This is a Court Order.

DRAFT

For counties filing a separate dependency petition for each child or for counties using *Additional Children Attachment* (form JV-101(A)) **JV-100**

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

SUPERIOR COURT OF CALIFORNIA, COUNTY OF
STREET ADDRESS:
MAILING ADDRESS:
CITY AND ZIP CODE:
BRANCH NAME:

CASE NAME:

CASE NUMBER:

RELATED CASE *(if any):*

JUVENILE DEPENDENCY PETITION (VERSION ONE)
(Welf. & Inst. Code, § 300 et seq.)

☐ **§ 300—Original** ☐ **§ 342—Subsequent** ☐ **§ 387—Supplemental**

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 boxes; see attachment 1a 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. Sex:

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

2. I have asked about Indian ancestry for this child and have completed and attached the required *Indian Child Inquiry Attachment,* form ICWA-010(A). *(If this is a subsequent filing and there is no new information, form ICWA-010(A) is not required.)*

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(See important notice on page 2.)

CHILD'S NAME:	CASE NUMBER:

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: _____ ☐ Other children are listed on *Additional Children Attachment* (form JV-101(A))

— 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.

DRAFT

DRAFT NOT APPROVED BY THE JUDICIAL COUNCIL

For counties filing a joint dependency petition for children with the same mother and father

JV-110

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*
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE 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	Sex	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 ☐ father ☐ guardian ☐ unknown
Address:
If mother or father *(check all that apply):*
☐ legal ☐ biological ☐ presumed ☐ alleged

d. Name: ☐ mother ☐ father ☐ guardian ☐ unknown
Address:
If mother or father *(check all that apply):*
☐ legal ☐ biological ☐ presumed ☐ alleged

e. Name: ☐ mother ☐ father ☐ guardian ☐ unknown
Address:
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

2. I have asked about Indian ancestry for each child and have completed and attached the required *Indian Child Inquiry Attachment,* form ICWA-010(A).

(See important notice on page 2.)

CHILD'S NAME:	CASE NUMBER:

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.

DRAFT

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*):	LEVYING OFFICER (*Name and address*):
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: **DEFENDANT/RESPONDENT:**	CASE NUMBER:
EARNINGS WITHHOLDING ORDER **(Wage Garnishment)**	LEVYING OFFICER FILE NUMBER:
EMPLOYEE: *KEEP YOUR COPY OF THIS LEGAL PAPER.* **EMPLEADO:** *GUARDE ESTE PAPEL OFICIAL.*	

EMPLOYER: Enter the following date to assist your recordkeeping.

Date this order was received by employer (specify the date of personal delivery by levying officer or registered process server or the date mail receipt was signed):

TO THE EMPLOYER REGARDING YOUR EMPLOYEE:

Name and address of employer	Name and address of employee

Social Security No. ☐ on form WG-035 ☐ unknown

1. A judgment creditor has obtained this order to collect a court judgment against your employee. You are directed to withhold part of the earnings of the employee (*see instructions on reverse of this form).* Pay the withheld sums to the **levying officer** *(name and address above*).

   If the employee works for you now, you must **give the employee a copy of this order and the *Employee Instructions* (form WG-003)** within 10 days after receiving this order.

   Complete both copies of the form *Employer's Return* (form WG-005) and **mail them to the levying officer** within 15 days after receiving this order, whether or not the employee works for you.

2. The total amount due is: $

   Count 10 calendar days from the date when you received this order. If your employee's pay period ends before the 10th day, **do not** withhold earnings payable for that pay period. **Do** withhold from earnings that are payable for any pay period ending on or after that 10th day.

   Continue withholding for all pay periods until you withhold the amount due. The levying officer will notify you of an assessment you should withhold in addition to the amount due. Do not withhold more than the total of these amounts. Never withhold any earnings payable before the beginning of the earnings withholding period.

3. The judgment was entered in the court on (*date):*

   The judgment creditor *(if different from the plaintiff)* is *(name):*

4. The *INSTRUCTIONS TO EMPLOYER* on the reverse tell you how much of the employee's earnings to withhold each payday and answer other questions you may have.

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE)

☐ LEVYING OFFICER ☐ REGISTERED PROCESS SERVER

(Employer's Instructions on reverse)

Form Adopted for Mandatory Use
Judicial Council of California
WG-002 [Rev. January 1, 2016]

EARNINGS WITHHOLDING ORDER
(Wage Garnishment)

Code of Civil Procedure, §§ 706.022, 706.108, 706.125
www.courts.ca.gov

DRAFT

INSTRUCTIONS TO EMPLOYER ON EARNINGS WITHHOLDING ORDERS

The instructions in paragraph 1 on the reverse of this form describe your early duties to provide information to your employee and the levying officer.

Your other duties are TO WITHHOLD THE CORRECT AMOUNT OF EARNINGS (if any) and PAY IT TO THE LEVYING OFFICER during the *withholding period.*

The withholding period is the period covered by the *Earnings Withholding Order* (this order). The withholding period begins ten (10) calendar days after you receive the order and continues until the total amount due, plus additional amounts for costs and interest (which will be listed in a levying officer's notice), is withheld.

It may end sooner if (1) you receive a written notice signed by the levying officer specifying an earlier termination date, or (2) an order of higher priority (explained on the reverse of the *EMPLOYER'S RETURN)* is received.

You are entitled to rely on and must obey all written notices signed by the levying officer.

The *Employer's Return* (form WG-005) describes several situations that could affect the withholding period for this order. If you receive more than one *Earnings Withholding Order* during a withholding period, review that form *(Employer's Return)* for instructions.

If the employee stops working for you, the *Earnings Withholding Order* ends after no amounts are withheld for a continuous 180-day period. If withholding ends because the earnings are subject to an order of higher priority, the *Earnings Withholding Order* ends after a continuous two-year period during which no amounts are withheld under the order. **Return the Earnings Withholding Order to the levying officer with a statement of the reason it is being returned.**

WHAT TO DO WITH THE MONEY

The amounts withheld during the withholding period must be paid to the levying officer by the 15th of the next month after each payday. If you wish to pay more frequently than monthly, each payment must be made within 10 days after the close of the pay period.

Be sure to mark each *check with the case number, the levying officer's file number, if different, and the employee's name so the money will be applied to the correct account.*

WHAT IF YOU STILL HAVE QUESTIONS?

The garnishment law is contained in the Code of Civil Procedure beginning with section 706.010. Sections 706.022, 706.025, 706.050, and 706.104 explain the employer's duties.

The Federal Wage Garnishment Law and federal rules provide the basic protections on which the California law is based. Inquiries about the federal law will be answered by mail, telephone, or personal interview at any office of the Wage and Hour Division of the U.S. Department of Labor. Offices are listed in the telephone directory under the U.S. Department of Labor in the U.S. Government listing.

THE CHART BELOW AND THESE INSTRUCTIONS APPLY UNDER NORMAL CIRCUMSTANCES. THEY DO NOT APPLY TO ORDERS FOR THE SUPPORT OF A SPOUSE, FORMER SPOUSE, OR CHILD.

The chart below shows *HOW MUCH TO WITHHOLD* when the state minimum wage is $10.00 per hour, for different amounts of *disposable earnings* (as described in the Computation Instructions) and different pay periods. If the minimum wage changes in the future, the levying officer will provide a chart showing the new withholding rates.

COMPUTATION INSTRUCTIONS

State and federal law limits the amount of earnings that can be withheld. The limitations are based on the employee's disposable earnings, which are different from gross pay or take-home pay.

To determine the CORRECT AMOUNT OF EARNINGS TO BE WITHHELD (if any), compute the employee's *disposable earnings.*

(A) Earnings include any money (whether called wages, salary, commissions, bonuses, or anything else) that is paid by an employer to an employee for personal services. Vacation or sick pay is subject to withholding as it is received by the employee. Tips are generally not included as earnings since they are not paid by the employer.

(B) *Disposable earnings* are the earnings left after subtracting the part of the earnings a state or federal law requires an employer to withhold. Generally these required deductions are (1) federal income tax, (2) federal social security, (3) state income tax, (4) state disability insurance, and (5) payments to public employee retirement systems. Disposable earnings will change when the required deductions change.

After the employee's *disposable earnings* are known, use the chart below to determine what amount should be withheld. In the column listed under the employee's pay period, find the employee's disposable earnings. The amount shown below that is the amount to be withheld. For example, if the employee is paid disposable earnings of $2000 twice a month (semi-monthly), the correct amount to withhold is 25 percent each payday, or $500.

The chart below is based on the state minimum wage that is in effect on January 1, 2016. It will change when the minimum wage changes. Restrictions are based on the minimum wage effective at the time the earnings are payable.

Occasionally, the employee's earnings will also be subject to a *Wage and Earnings Assignment Order,* an order available from family law courts for child, spousal, or family support. The amount required to be withheld for that order should be deducted from the amount to be withheld for this order.

IMPORTANT WARNINGS

1. IT IS AGAINST THE LAW TO FIRE THE EMPLOYEE BECAUSE OF *EARNINGS WITHHOLDING ORDERS* FOR THE PAYMENT OF ONLY ONE INDEBTEDNESS. No matter how many orders you receive, so long as they all relate to a single indebtedness (no matter how many debts are represented in that judgment), the employee may not be fired.
2. IT IS ILLEGAL TO AVOID AN *EARNINGS WITHHOLDING ORDER* BY POSTPONING OR ADVANCING THE PAYMENT OF EARNINGS. The employee's pay period must not be changed to prevent the order from taking effect.

   IT IS ILLEGAL NOT TO PAY AMOUNTS WITHHELD FOR THE *EARNINGS WITHHOLDING ORDER* TO THE LEVYING OFFICER. Your duty is to pay the money to the levying officer who will pay the money in accordance with the law that applies to this case.

   IF YOU VIOLATE ANY OF THESE LAWS YOU MAY BE HELD LIABLE TO PAY CIVIL DAMAGES AND YOU MAY BE SUBJECT TO CRIMINAL PROSECUTION!

MAXIMUM WITHHOLDING FROM DISPOSABLE EARNINGS BY PAY PERIOD

MINIMUM WAGE: $10.00 per hour **(Beginning January 1, 2016)**

Daily or Weekly	Every Two Weeks	Twice a Month	Monthly
$400.00 or less in a workweek: No withholding	$800.00 or less: No withholding	$866.67 or less: No withholding	$1,733.33 or less: No withholding
From $400.01 to $533.32: Amount above $400.00	From $800.01 to $1,066.66: Amount above $800.00	From $866.68 to $1,155.55: Amount above $866.67	From $1,733.34 to $2,311.10: Amount above $1,733.33
$533.33 or more: 25% of disposable earnings	$1,066.67 or more: 25% of disposable earnings	$1,155.56 or more: 25% of disposable earnings	$2,311.11 or more: 25% of disposable earnings

DRAFT

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*):	LEVYING OFFICER (*Name and address*):
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: **DEFENDANT/RESPONDENT:**	CASE NUMBER:
EARNINGS WITHHOLDING ORDER FOR ELDER OR DEPENDENT ADULT FINANCIAL ABUSE (Wage Garnishment)	LEVYING OFFICER FILE NUMBER:

EMPLOYEE: *KEEP YOUR COPY OF THIS LEGAL PAPER.* ***EMPLEADO:*** *GUARDE ESTE PAPEL OFICIAL.*

EMPLOYER: Enter the following date to assist your record keeping.
Date this order was received by employer (*specify the date of personal delivery by levying officer or registered process server or the date mail receipt was signed*):

TO THE EMPLOYER REGARDING YOUR EMPLOYEE:

Name and address of employer

Name and address of employee

Social Security No. ☐ on form WG-035 ☐ unknown

1. A judgment creditor has obtained this order to collect a court judgment against your employee. You are directed to withhold part of the earnings of the employee *(see instructions on reverse of this form).*

   Pay the withheld sums to the **levying officer** *(name and address above).* If the employee works for you now, you must **give the employee a copy of this order and the *Employee Instructions (form WG-003)*** within 10 days after receiving this order.

   Complete both copies of the *Employer's Return* (form WG-005) and mail them to the levying officer within 15 days after receiving this order, whether or not the employee works for you.

2. a. The total amount due is: $
   b. The amount arising from an elder or dependent financial abuse claim is: $

   Count 10 calendar days from the date when you received this order. If your employee's pay period ends before the tenth day, **do not** withhold earnings payable for that pay period. **Do** withhold from earnings that are payable for any pay period ending on or after that tenth day.

   Continue withholding for all pay periods until you withhold the amount due. The levying officer will notify you of an assessment you should withhold in addition to the amount due. Do not withhold more than the total of these amounts. Never withhold any earnings payable before the beginning of the earnings withholding period.

3. The judgment was entered in the court on *(date):*

   The judgment creditor *(if different from the plaintiff)* is *(name):*

4. The EMPLOYER'S INSTRUCTIONS on the reverse tell you how much of the employee's earnings to withhold each payday. Follow those instructions unless you receive a court order or order from the levying officer giving you other instructions.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE)

☐ LEVYING OFFICER ☐ REGISTERED PROCESS SERVER

(Employer's Instructions on reverse)

Form Adopted for Mandatory Use
Judicial Council of California
WG-030 [Rev. January 1, 2016]

EARNINGS WITHHOLDING ORDER FOR ELDER OR DEPENDENT ADULT FINANCIAL ABUSE (Wage Garnishment)

Code of Civil Procedure,
§§ 706.023 706.108, 706.052
www.courts.ca.gov

DRAFT

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State and federal law limits the amount of earnings that can be withheld. The limitations are based on the employee's disposable earnings, which are different from gross pay or take-home pay.

To determine the CORRECT AMOUNT OF EARNINGS TO BE WITHHELD (if any), compute the employee's *disposable earnings.*

(A) Earnings include any money (whether called wages, salary, commissions, bonuses, or anything else) that is paid by an employer to an employee for personal services. Vacation or sick pay is subject to withholding as it is received by the employee. Tips are generally not included as earnings since they are not paid by the employer.

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   IT IS ILLEGAL NOT TO PAY AMOUNTS WITHHELD FOR THE *EARNINGS WITHHOLDING ORDER* TO THE LEVYING OFFICER. Your duty is to pay the money to the levying officer who will pay the money in accordance with the law that applies to this case.

   IF YOU VIOLATE ANY OF THESE LAWS YOU MAY BE HELD LIABLE TO PAY CIVIL DAMAGES AND YOU MAY BE SUBJECT TO CRIMINAL PROSECUTION!

MAXIMUM WITHHOLDING FROM DISPOSABLE EARNINGS BY PAY PERIOD

MINIMUM WAGE: $10.00 per hour **(Beginning January 1, 2016)**

Daily or Weekly	Every Two Weeks	Twice a Month	Monthly
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From $400.01 to $533.32: Amount above $400.00	From $800.01 to $1,066.66: Amount above $800.00	From $866.68 to $1,155.55: Amount above $866.67	From $1,733.34 to $2,311.10: Amount above $1,733.33
$533.33 or more: 25% of disposable earnings	$1,066.67 or more: 25% of disposable earnings	$1,155.56 or more: 25% of disposable earnings	$2,311.11 or more: 25% of disposable earnings

EARNINGS WITHHOLDING ORDER FOR ELDER OR DEPENDENT ADULT FINANCIAL ABUSE (Wage Garnishment)

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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: October 27, 2015

Title
Judicial Branch Administration: Changes to Rules, Standards, and Forms to Replace the Names "Administrative Office of the Courts" and "AOC"

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, titles 2, 3, 4, 5, 7, 8, and 10 and Appendixes D and F; and Cal. Stds. Jud. Admin., stds. 5.40, 5.45, 10.10, 10.11, 10.15, 10.16, and 10.80, and revise forms MC-700 and MC-704

Recommended by
Hon. Douglas P. Miller, Chair
Executive and Planning Committee
Hon. Kenneth K. So, Chair
Policy Coordination and Liaison Committee
Hon. Harry E. Hull, Jr., Chair
Rules and Projects Committee
Hon. David M. Rubin, Chair
Litigation Management Committee

Agenda Item Type
Action Required

Effective Date
January 1, 2016

Date of Report
September 4, 2015

Contact
Susan R. McMullan, 415-865-7990
susan.mcmullan@jud.ca.gov

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Executive Summary

The chairs of the Judicial Council's Executive and Planning, Policy Coordination and Liaison, Rules and Projects, and Litigation Management Committees recommend that the California Rules of Court and Standards of Judicial Administration be amended and Judicial Council forms be revised to replace the names "Administrative Office of the Courts" and "AOC" with "Judicial Council," or "Judicial Council staff," as appropriate, to further effectuate the name change that began

in July 2014 and to make other technical and minor substantive changes to the name of a Judicial Council advisory body, staff office, or staff position to accurately reflect the current name and to accurately state the number of internal committees and describe policymaking positions.

Recommendation

The chairs of the Judicial Council's Executive and Planning, Policy Coordination and Liaison, Rules and Projects, and Litigation Management Committees (internal chairs) recommend that the Judicial Council, effective January 1, 2016, take action to fully implement the change of the names "Administrative Office of the Courts" and "AOC" to "Judicial Council" or "Judicial Council staff" as appropriate, to shorten "Administrative Director of the Courts" to "Administrative Director," and to make other technical and minor substantive changes by:

1. Amending titles 2, 3, 4, 5, 7, 8, and 10 and Appendixes D and F of the California Rules of Court;

2. Amending the California Standards of Judicial Administration standards 5.40, 5.45, 10.10, 10.11, 10.15, 10.16, and 10.80; and

3. Revising forms MC-700 and MC-704.

The text of the amended rules and standards and the revised forms are attached at pages 6–81.

Previous Council Action

On July 22, 2014, the Judicial Council accepted the recommendation of the five internal chairs, acting at the direction of the Chief Justice, to amend the rules of court to retire the use of the names "Administrative Office of the Courts" and "AOC" for the Judicial Council staff.[1] At that time, the council amended rules 10.1, 10.80, and 10.81 and accepted other recommendations concerning the name change, including: "Direct the [internal committee] chairs to undertake a systematic review of the California Rules of Court and to propose additional rules amendments in the future to eliminate the references to 'Administrative Office of the Courts' and 'AOC,' replacing them with references to 'Judicial Council,' 'Judicial Council staff,' or 'Administrative Director,' as appropriate."

Rationale for Recommendation

The July 2014 report to the council explained the rationale for these changes. The council concluded that, as a matter of sound policy, it was desirable and beneficial to unite the Judicial Council and its staff under the single name "Judicial Council of California" by retiring the separate name "Administrative Office of the Courts" or "AOC." For years, the Chief Justice and Judicial Council members had encountered confusion among those unfamiliar with the judicial branch about the role and relationship of the AOC to the council. It was a common

[1] Judicial Council of Cal., *Judicial Branch Administration: Retirement of the Names "Administrative Office of the Courts" and "AOC"* (July 22, 2014), available at: http://www.courts.ca.gov/documents/jc-20140729-itemB.pdf.

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misperception that the AOC was an entity that was separate from, and in some way independent of, the council, with its own policymaking authority. In reality, the AOC was not a separate entity. It was a name that many years ago had been conferred on staff to the Judicial Council by the council itself. Unfortunately, while unintended, that act of naming the staff had confused many members of the public and other branches of government about the true roles and responsibilities of the council. This confusion was impeding the council in advancing the interests of the judicial branch with both the legislative and executive branches. Accordingly, the council determined that a change in nomenclature was desirable to bring the council into conformity with other state government entities and offices that do not give separate names to their staff.

The California Rules of Court are amended throughout to replace "Administrative Office of the Courts" and "AOC," with "Judicial Council," "Judicial Council staff," or another appropriate reference. In addition, references to "Administrative Director of the Courts" are shortened to "Administrative Director." As referenced in the title of rule 10.80, "Administrative Director" is a shortened version of "Administrative Director of the Courts." The Administrative Director is appointed by the Judicial Council under article VI, section 6 of the California Constitution and performs those functions prescribed by the Constitution and laws of the state, or delegated to the director by the Judicial Council or the Chief Justice. (Cal. Rules of Court, rule 10.80(a).) These rule amendments would implement the changes initiated in July 2014 and will carry out the directive of the council.[2] The amendments are not intended to make any substantive changes, unless specifically identified as minor substantive changes.

Replacing "Administrative Office of the Courts" with "Judicial Council"

The words "Administrative Office of the Courts" and "AOC" in the existing rules and standards are used to describe both (1) individual and groups of staff with specific responsibilities and (2) the entire staff of the Judicial Council. Most references in the rules and standards replace "Administrative Office of the Courts" with "Judicial Council staff."

In some rules and standards, it is appropriate to substitute "Judicial Council" without "staff" in place of "Administrative Office of the Courts." Thus, for example, rule 2.1050(c), on public access to Judicial Council jury instructions, is amended to provide that the Judicial Council, rather than the Administrative Office of the Courts, must provide copies and updates of approved jury instructions to the public on the California Courts website. Standard 10.16 currently provides that a model code of ethical behavior for court staff is published by the Administrative Office of the Courts. Because there is no need to specify that this code is published by staff, the rule is amended to replace "Administrative Office of the Courts" with "Judicial Council."

[2] Since the council's action in July 2014 to eliminate the names "Administrative Office of the Courts" and "AOC," various specific rules have already been amended to use the new nomenclature when they have been amended for other purposes. The name change is also included in a separate proposal (to amend rule 10.620) that is on this meeting's agenda. The purpose of the present proposal is to implement a comprehensive revision of the California Rules of Court so that there will be consistent terminology used throughout the rules.

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In rule 10.30(b)(3), concerning the functions of council advisory bodies, "Administrative Director" replaces "Administrative Office of the Courts" in a provision stating that the council may assign policy-implementation and programmatic responsibilities to an advisory body and may request that the body make recommendations to the Administrative Director (formerly "Administrative Office of the Courts") on implementation of council policy or programs. Because the Administrative Director, under rule 10.80, is responsible for accomplishing the council's goals and priorities and for allocating resources for advisory bodies to achieve branch goals and policies adopted by the council, it is appropriate that this rule be amended to use "Administrative Director" rather than "Judicial Council staff."

Other amendments

Other amendments are made to reflect the current name of smaller units within the Judicial Council staff. For example, in rule 10.14(c) and elsewhere, "the Office of the General Counsel" is amended to read "Judicial Council Legal Services." Rules that refer to the Finance Division and Human Resources Division have been amended to replace the word "Division" with "office" and rules that refer to "the AOC Education Division" have been amended to delete that name, and add "Judicial Council's" before "Center for Judicial Education and Research." Similar changes substitute "Chief Counsel" for "General Counsel."

Minor substantive changes have been made to reflect current responsibilities of council groups and management staff. Rule 10.2 is amended to acknowledge the addition of the Judicial Council Technology Committee as an internal committee of the Judicial Council. Subdivision (b) of that rule is amended to state that the council has five (rather than four) internal committees and eight (rather than seven) officers, including the chairs of the internal committees. Rule 10.104(c) is amended to delete "the Chief Deputy Director," a position that no longer exists, and to add Chief of Staff, Chief Operating Officer, and Chief Administrative Officer to the list of those who are in policymaking positions.

Rule 10.172 is amended to replace the name "Working Group on Court Security," which no longer exists, with "Court Security Advisory Committee," which has the responsibilities described in this rule that were formerly held by the working group.[3] Subdivision (d) of that rule is amended to provide that a superior court must "give notice to the council" of whether it has made any changes to its court security plan.

Form Revisions

Two forms, *Prefiling Order—Vexatious Litigant* (MC-700) and *Order on Application to Vacate Prefiling Order and Remove Plaintiff/Petitioner From Judicial Council Vexatious Litigant List* (MC-704), are revised to replace "Administrative Office of the Courts" with "Judicial Council" in the address box at the bottom of the page.

[3] This proposal is not intended to make any substantive changes to advisory bodies' names and responsibilities.

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Comments, Alternatives Considered, and Policy Implications

The proposal circulated for public comment from April 17 to June 17, 2015. Two commentators submitted comments: the Superior Courts of Riverside and San Diego Counties.[4] Both agreed with the proposal without providing any narrative comments.

Alternatives

The internal committee chairs did not consider alternatives because the council directed these changes be made, and they complete the amendment of rules to reflect the name change from "Administrative Office of the Courts" to "Judicial Council" and "Judicial Council staff." Other technical and minor substantive changes were needed to update the name of a council advisory body, staff office, or staff position that has changed and to accurately state the number of internal committees and describe policymaking positions.

Implementation Requirements, Costs, and Operational Impacts

Costs will be minimal. Following council adoption, publishers will publish the amended rules and standards and revised forms and they will be posted on the California Courts website.

Attachments and Links

1. Cal. Rules of Court, titles 2, 3, 4, 5, 7, 8, and 10, at pages 6–64
2. Cal Stds. Jud. Admin., stds. 5.40, 5.45, 10.10, 10.11, 10.15, 10.16, and 10.80, at pages 65–69
3. Cal. Rules of Court, Appendixes D and F, at pages 70–79
4. Judicial Council forms MC-700 and MC-704, at pages 80–81
4. Chart of comments, at page 82

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[4] The comments received and committee responses are included in a comment chart attached at page 82.

Rules 2.503, 2.892, 2.894, 2.952, 2.954, 2.1050, 3.221, 3.500, 3.501, 3.550, 3.869, 4.102, 4.152, 4.153, 5.210, 5.225, 5.230, 5.505, 5.518, 5.655, 7.1101, 8.300, 8.405, 8.825, 8.831, 8.851, 8.852, 8.901, 8.904, and 8.930 of the California Rules of Court, are amended, effective January 1, 2016, to read:

Rule 2.503. Public access

(a)–(i) * * *

Advisory Committee Comment

The rule allows a level of access by the public to all electronic records that is at least equivalent to the access that is available for paper records and, for some types of records, is much greater. At the same time, it seeks to protect legitimate privacy concerns.

Subdivision (c). ***

Subdivisions (f) and (g). These subdivisions limit electronic access to records (other than the register, calendars, or indexes) to a case-by-case basis and prohibit bulk distribution of those records. These limitations are based on the qualitative difference between obtaining information from a specific case file and obtaining bulk information that may be manipulated to compile personal information culled from any document, paper, or exhibit filed in a lawsuit. This type of aggregate information may be exploited for commercial or other purposes unrelated to the operations of the courts, at the expense of privacy rights of individuals.

Courts must send a copy of the order permitting remote electronic access in extraordinary criminal cases to: ~~Secretariat, Executive Office Programs Division, Administrative Office of the Courts~~Criminal Justice Services, Judicial Council of California, 455 Golden Gate Avenue, San Francisco, CA 94102-3688~~ or secretariat@jud.ca.gov~~.

Rule 2.892. Guidelines for approval of certification programs for interpreters for deaf and hard-of-hearing persons

Each organization, agency, or educational institution that administers tests for certification of court interpreters for deaf and hard-of-hearing persons under Evidence Code section 754 must comply with the guidelines adopted by the Judicial Council effective February 21, 1992, and any subsequent revisions, and must hold a valid, current approval by the Judicial Council to administer the tests as a certifying organization. The guidelines are stated in the *Judicial Council Guidelines for Approval of Certification Programs for Interpreters for Deaf and Hard-of-Hearing Persons,* published by the ~~Administrative Office of the Courts~~Judicial Council.

Rule 2.894. Reports on appointments of certified and registered interpreters and noncertified and nonregistered interpreters

Each superior court must report to the Judicial Council on:

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(1) The appointment of certified and registered interpreters under Government Code section 71802, as required by the ~~Administrative Office of the Court~~s Judicial Council; and

(2) * * *

Rule 2.952. Electronic recording as official record of proceedings

(a)–(i) * * *

(j) Record on appeal

(1)–(2) * * *

(3) *Preparation of transcript*

On receiving directions to have a transcript prepared, the clerk may have the material transcribed by a court employee, but should ordinarily send the reels in question to a professional recording service that has been certified by the federal court system or the ~~Administrative Office of the Courts~~ Judicial Council or verified by the clerk to be skilled in producing transcripts.

Rule 2.954. Specifications for electronic recording equipment

(a)–(d) * * *

(e) Previous equipment

The Administrative Director ~~of the Courts~~ is authorized to approve any electronic recording devices and equipment acquired before the adoption or amendment of this rule that has been found by the court to produce satisfactory recordings of proceedings.

Rule 2.1050. Judicial Council jury instructions

(a)–(b) * * *

(c) Public access

The ~~Administrative Office of the Courts~~ Judicial Council must provide copies and updates of the approved jury instructions to the public on the California Courts website. The ~~Administrative Office of the Courts~~ Judicial Council may contract with an official publisher to publish the instructions in both paper and electronic

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formats. The Judicial Council intends that the instructions be freely available for use and reproduction by parties, attorneys, and the public, except as limited by this subdivision. The ~~Administrative Office of the Courts~~ Judicial Council may take steps necessary to ensure that publication of the instructions by commercial publishers does not occur without its permission, including, without limitation, ensuring that commercial publishers accurately publish the Judicial Council's instructions, accurately credit the Judicial Council as the source of the instructions, and do not claim copyright of the instructions. The ~~Administrative Office of the Courts~~ Judicial Council may require commercial publishers to pay fees or royalties in exchange for permission to publish the instructions. As used in this rule, "commercial publishers" means entities that publish works for sale, whether for profit or otherwise.

(d) Updating and amendments

The Judicial Council instructions will be regularly updated and maintained through its advisory committees on jury instructions. Amendments to these instructions will be circulated for public comment before publication. Trial judges and attorneys may submit for the advisory committees' consideration suggestions for improving or modifying these instructions or creating new instructions, with an explanation of why the change is proposed. Suggestions should be sent to the ~~Administrative Office of the Courts, Office of the General Counsel~~ Judicial Council of California, Legal Services.

(e) * * *

Rule 3.221. Information about alternative dispute resolution

(a) Court to provide information package

Each court must make available to the plaintiff, at the time the complaint is filed in all general civil cases, an alternative dispute resolution (ADR) information package that includes, at a minimum, all of the following:

(1) General information about the potential advantages and disadvantages of ADR and descriptions of the principal ADR processes. ~~The Administrative Office of the Courts has~~ Judicial Council staff have prepared model language that the courts may use to provide this information.

(2)–(4) * * *

(b)–(c) * * *

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Rule 3.500. Transfer and consolidation of noncomplex common-issue actions filed in different courts

(a)–(f) * * *

(g) Conflicting orders

The Judicial Council's coordination staff ~~in the Administrative Office of the Courts~~ must review all transfer orders submitted under (e) and must promptly confer with the presiding judges of any courts that have issued conflicting orders under Code of Civil Procedure section 403. The presiding judges of those courts must confer with each other and with the judges who have issued the orders to the extent necessary to resolve the conflict. If it is determined that any party to a case has failed to disclose information concerning pending motions, the court may, after a duly noticed hearing, find that the party's failure to disclose is an unlawful interference with the processes of the court.

(h) * * *

Rule 3.501. Definitions

As used in this chapter, unless the context or subject matter otherwise requires:

(1)–(5) * * *

(6) "Coordination attorney" means an attorney ~~in the Administrative Office of the Courts~~ with the Judicial Council staff appointed by the Chair of the Judicial Council to perform such administrative functions as may be appropriate under the rules in this chapter, including but not limited to the functions described in rules 3.524 and 3.550.

(7)–(19) * * *

Rule 3.550. General administration by ~~the Administrative Office of the Courts~~Judicial Council staff

(a) Coordination attorney

Except as otherwise provided in the rules in this chapter, all necessary administrative functions under this chapter will be performed at the direction of the Chair of the Judicial Council by a coordination attorney ~~in the Administrative Office of the Courts~~.

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(b)–(c) * * *

Rule 3.869. General requirements for complaint procedures and complaint proceedings

(a)–(g) * * *

Advisory Committee Comment

~~The Administrative Office of the Courts has~~ Judicial Council staff have developed model local rules that satisfy the requirements of this rule. These model local rules were developed with input from judicial officers, court administrators, alternative dispute resolution (ADR) program administrators, court-program mediators, and public commentators and are designed so that they can be readily adapted to the circumstances of individual courts and specific complaints. Courts are encouraged to adopt rules that follow the model rules, to the extent feasible. Courts can obtain copies of these model rules from the Judicial Council's civil ADR program staff ~~at the Administrative Office of the Courts~~.

Subdivision (a). * * *

Subdivision (c). * * *

Subdivision (d). * * *

Rule 4.102. Uniform bail and penalty schedules—traffic, boating, fish and game, forestry, public utilities, parks and recreation, business licensing

The Judicial Council of California has established the policy of promulgating uniform bail and penalty schedules for certain offenses in order to achieve a standard of uniformity in the handling of these offenses.

In general, bail is used to ensure the presence of the defendant before the court. Under Vehicle Code sections 40512 and 13103, bail may also be forfeited and forfeiture may be ordered without the necessity of any further court proceedings and be treated as a conviction for specified Vehicle Code offenses. A penalty in the form of a monetary sum is a fine imposed as all or a portion of a sentence imposed.

To achieve substantial uniformity of bail and penalties throughout the state in traffic, boating, fish and game, forestry, public utilities, parks and recreation, and business licensing cases, the trial court judges, in performing their duty under Penal Code section 1269b to annually revise and adopt a schedule of bail and penalties for all misdemeanor and infraction offenses except Vehicle Code infractions, must give consideration to the

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Uniform Bail and Penalty Schedules approved by the Judicial Council. The Uniform Bail and Penalty Schedule for infraction violations of the Vehicle Code will be established by the Judicial Council in accordance with Vehicle Code section 40310. Judges must give consideration to requiring additional bail for aggravating or enhancing factors.

After a court adopts a countywide bail and penalty schedule, under Penal Code section 1269b, the court must, as soon as practicable, mail a copy of the schedule to the Judicial Council with a report stating how the revised schedule differs from the council's uniform traffic bail and penalty schedule, uniform boating bail and penalty schedule, uniform fish and game bail and penalty schedule, uniform forestry bail and penalty schedule, uniform public utilities bail and penalty schedule, uniform parks and recreation bail and penalty schedule, or uniform business licensing bail and penalty schedule.

The purpose of this uniform bail and penalty schedule is to:

(1) Show the standard amount for bail, which for Vehicle Code offenses may also be the amount used for a bail forfeiture instead of further proceedings; and

(2) Serve as a guideline for the imposition of a fine as all or a portion of the penalty for a first conviction of a listed offense where a fine is used as all or a portion of the penalty for such offense. The amounts shown for the misdemeanors on the boating, fish and game, forestry, public utilities, parks and recreation, and business licensing bail and penalty schedules have been set with this dual purpose in mind.

Unless otherwise shown, the maximum penalties for the listed offenses are six months in the county jail or a fine of $1,000, or both. The penalty amounts are intended to be used to provide standard fine amounts for a first offense conviction of a violation shown where a fine is used as all or a portion of the sentence imposed.

Note:
Courts may obtain copies of the Uniform Bail and Penalty Schedules by contacting:
~~Office of the General Counsel~~
~~Administrative Office of the Courts~~
Criminal Justice Services
Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102-3688
(415) 865-7611 or
~~*www.courts.ca.gov/reference*~~http://www.courts.ca.gov/7532.htm

Rule 4.152. Selection of court and trial judge

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When a judge grants a motion for change of venue, he or she must inform the presiding judge of the transferring court. The presiding judge, or his or her designee, must:

(1) Notify the Administrative Director ~~of the Courts~~ of the change of venue. After receiving the transferring court's notification, the Administrative Director, in order to expedite judicial business and equalize the work of the judges, must advise the transferring court which courts would not be unduly burdened by the trial of the case.

(2) * * *

Rule 4.153. Order on change of venue

After receiving the list of courts from the Administrative Director ~~of the Courts~~, the presiding judge, or his or her designee, must:

(1)–(3) * * *

Rule 5.210. Court-connected child custody mediation

(a)–(f) * * *

(g) Education and training providers

Only education and training acquired from eligible providers meet the requirements of this rule. "Eligible providers" includes the ~~Administrative Office of the Courts~~ Judicial Council and may include educational institutions, professional associations, professional continuing education groups, public or private for-profit or not-for-profit groups, and court-connected groups.

(1) * * *

(2) Effective July 1, 2005, all education and training programs must be approved by ~~the Administrative Office of the Courts~~ Judicial Council staff in consultation with the Family and Juvenile Law Advisory Committee.

(h) * * *

Rule 5.225. Appointment requirements for child custody evaluators

(a)–(m) * * *

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(n) Education and training providers

"Eligible providers" includes the ~~Administrative Office of the Courts~~ Judicial Council and may include educational institutions, professional associations, professional continuing education groups, public or private for-profit or not-for-profit groups, and court-connected groups. Eligible providers must:

(1)–(6) * * *

(o) Program approval required

All education and training programs must be approved by ~~the Administrative Office of the Courts~~ Judicial Council staff in consultation with the Family and Juvenile Law Advisory Committee. Education and training courses that were taken between January 1, 2000, and July 1, 2003, may be applied toward the requirements of this rule if they addressed the subjects listed in (d) and either were certified or approved for continuing education credit by a professional provider group or were offered as part of a related postgraduate degree or licensing program.

Rule 5.230. Domestic violence training standards for court-appointed child custody investigators and evaluators

(a)–(c) * * *

(d) Mandatory training

Persons appointed as child custody investigators under Family Code section 3110 or Evidence Code section 730, and persons who are professional staff or trainees in a child custody or visitation evaluation or investigation, must complete basic training in domestic violence issues as described in Family Code section 1816 and, in addition:

(1) *Advanced training*

Sixteen hours of advanced training must be completed within a 12-month period. The training must include the following:

(A) Twelve hours of instruction, as approved by ~~theAdministrative Office of the Courts~~ Judicial Council staff, in:

(i)–(v) * * *

(B) * * *

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(2) * * *

(e) Education and training providers

Only education and training acquired from eligible providers meets the requirements of this rule. "Eligible providers" includes the ~~Administrative Office of the Courts~~ Judicial Council and may include educational institutions, professional associations, professional continuing education groups, public or private for-profit or not-for-profit groups, and court-connected groups.

(1) * * *

(2) Effective July 1, 2005, all education and training programs must be approved by ~~the Administrative Office of the Courts~~ Judicial Council staff in consultation with the Family and Juvenile Law Advisory Committee.

(f)–(g) * * *

Rule 5.505. Juvenile dependency court performance measures

(a)–(b) * * *

(c) Data collection

(1) * * *

(2) Before implementation of the CCMS family and juvenile law module, each local court must collect and submit to the ~~AOC~~ Judicial Council the subset of juvenile dependency data described in (b) and further delineated in the *Implementation Guide to Juvenile Dependency Court Performance Measures* that it is reasonably capable of collecting and submitting with its existing court case management system and resources.

(3) On implementation of the CCMS family and juvenile law module in a local court, and as the necessary data elements become electronically available, the local court must collect and submit to the ~~AOC~~ Judicial Council the juvenile dependency data described in (b) and further delineated in the *Implementation Guide to Juvenile Dependency Court Performance Measures*. For the purposes of this subdivision, "implementation of the CCMS family and juvenile law module" in a local court means that the CCMS family and juvenile law module has been deployed in that court, is

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functioning, and has the ability to capture the required data elements and that local court staff has been trained to use the system.

(d) Use of data and development of measures before CCMS implementation

Before CCMS implementation, the ~~AOC~~ Judicial Council must:

(1) * * *

(2) Establish a procedure to assist the local courts in submitting the required data to the ~~AOC~~ Judicial Council;

(3)–(5) * * *

(e) Use of data after CCMS implementation

On implementation of CCMS, the ~~AOC~~ Judicial Council must:

(1)–(4) * * *

Rule 5.518. Court-connected child protection/dependency mediation

(a)–(h) * * *

(i) Education and training providers

Only education and training acquired from eligible providers meet the requirements of this rule. "Eligible providers" includes the ~~Administrative Office of the Courts~~ Judicial Council and may include educational institutions, professional associations, professional continuing education groups, public or private for-profit or not-for-profit groups, and court-connected groups.

(1) * * *

(2) Effective July 1, 2005, all education and training programs must be approved by ~~the Administrative Office of the Courts~~ Judicial Council staff in consultation with the Family and Juvenile Law Advisory Committee.

(j) * * *

Rule 5.655. Program requirements for Court Appointed Special Advocate programs

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(a) * * *

(b) Definitions

(1) * * *

(2) ~~The~~ Judicial Council~~'s Administrative Office of the Courts (AOC)~~ staff may create a *CASA Program Policies and Procedures Manual* containing recommended program policies and procedures. If ~~the AOC~~ Judicial Council staff create~~s~~ a manual, it will be developed in collaboration with the California CASA Association and California CASA program directors. The protocols will address program and fiscal management, and the recruitment, screening, selection, training, and supervision of lay volunteers.

(3)–(5) * * *

(c)–(j) * * *

(k) CASA program administration and management

A CASA program must adopt and adhere to a written plan for program governance and evaluation that includes the following as applicable:

(1) Articles of incorporation, bylaws, and a board of directors. Any CASA program that functions under the auspices of a public agency or private entity must specify in its plan a clear administrative relationship with the parent organization and clearly delineated delegations of authority and accountability. No CASA program may function under the auspices of a probation department or department of social services. CASA programs may receive funds from probation departments, local child welfare agencies, and the California Department of Social Services if:

(A)–(B) * * *

(C) Any MOU or contract between a CASA program and the contributing agency is submitted to and approved by ~~AOC~~ Judicial Council staff.

(2)–(5) * * *

(*l*) Finance, facility, and risk management

(1) A CASA program must adopt a written plan for fiscal control. The fiscal plan must include an annual audit, conducted by a qualified professional, that is

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consistent with generally accepted accounting principles and the audit protocols in the program's contract with the ~~Administrative Office of the Courts~~ Judicial Council.

(2)–(7) * * *

(m) * * *

Rule 7.1101. Qualifications and continuing education required of counsel appointed by the court in guardianships and conservatorships

(a) Definitions

As used in this rule, the following terms have the meanings stated below:

(1)–(5) * * *

~~(6) "AOC" is the Administrative Office of the Courts.~~

(~~7~~ 6) "Counsel in private practice" includes attorneys employed by or performing services under contracts with nonprofit organizations.

(b)–(h) * * *

(i) Reporting

The ~~AOC~~ Judicial Council may require courts to report appointed counsel's qualifications and completion of continuing education required by this rule to ensure compliance with Probate Code section 1456.

Rule 8.300. Appointment of appellate counsel by the Court of Appeal

(a)–(e) * * *

Advisory Committee Comment

Subdivision (b). The "designated oversight committee" referred to in subdivision (b)(2) is currently the Appellate Indigent Defense Oversight Advisory Committee. The criteria approved by this committee can be found on the judicial branch's public website at ~~*www.courtsinfo.ca.gov.*~~ http://www.courts.ca.gov/4206.htm

Rule 8.405. Filing the appeal

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(a)–(b) * * *

Advisory Committee Comment

Subdivision (a). *Notice of Appeal—Juvenile (California Rules of Court, Rule 8.400)* (form JV-800) may be used to file the notice of appeal required under this rule. This form is available at any courthouse or county law library or online at *www.courts~~info~~.ca.gov/forms*.

Rule 8.825. Abandonment, voluntary dismissal, and compromise

(a)–(c) * * *

Advisory Committee Comment

Abandonment of Appeal (Limited Civil Case) (form APP-10~~6~~7) may be used to file an abandonment under this rule. This form is available at any courthouse or county law library or online at *www.courts~~info~~.ca.gov/forms*.

Rule 8.831. Notice designating the record on appeal

(a)–(b) * * *

Advisory Committee Comment

Appellant's Notice Designating Record on Appeal (Limited Civil Case) (form APP-103) may be used to file the designation required under this rule. This form is available at any courthouse or county law library or online at *www.courts~~info~~.ca.gov/forms*. To assist parties in making appropriate choices, courts are encouraged to include information about whether the proceedings were recorded by a court reporter or officially electronically recorded in any information that the court provides to parties concerning their appellate rights.

If the appellant designates a clerk's transcript or reporter's transcript under this rule, the respondent will have an opportunity to designate additional documents to be included in the clerk's transcript under rule 8.832(b)~~(1)~~(2) or additional proceedings to be included in the reporter's transcript under rule 8.834(a)(3).

Rule 8.851. Appointment of appellate counsel

(a)–(c) * * *

Advisory Committee Comment

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Request for Court-Appointed Lawyer in Misdemeanor Appeal (form CR-133) may be used to request that appellate counsel be appointed in a misdemeanor case. If the appellant was not represented by the public defender or other appointed counsel in the trial court, the appellant must use *Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense* (form MC-210) to show indigency. These forms are available at any courthouse or county law library or online at *www.courts~~info~~.ca.gov/forms*.

Rule 8.852. Notice of appeal

(a)–(b) * * *

Advisory Committee Comment

Notice of Appeal (Misdemeanor) (form CR-132) may be used to file the notice of appeal required under this rule. This form is available at any courthouse or county law library or online at *www.courts~~info~~.ca.gov/forms.*

Subdivision (a). The only orders that a defendant can appeal in a misdemeanor case are (1) orders granting or denying a motion to suppress evidence (Penal Code section 1538.5(j)); and (2) orders made after the final judgment that affects the substantial rights of the defendant (Penal Code section 1466).

Rule 8.901. Notice of appeal

(a)–(b) * * *

Advisory Committee Comment

Notice of Appeal and Record ~~of Oral Proceedings~~ on Appeal (Infraction) (form CR-142) may be used to file the notice of appeal required under this rule. This form is available at any courthouse or county law library or online at *www.courts~~info~~.ca.gov/forms.*

Rule 8.904. Abandoning the appeal

(a)–(c) * * *

Advisory Committee Comment

Abandonment of Appeal (Infraction) (form CR-145) may be used to file an abandonment under this rule. This form is available at any courthouse or county law library or online at *www.courts~~info~~.ca.gov/forms*.

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Rule 8.930. Application

(a)–(b) * * *

Advisory Committee Comment

Information on Writ Proceedings in Misdemeanor, Infraction, and Limited Civil Cases (form APP-150-INFO) provides additional information about proceedings for writs in the appellate division of the superior court. This form is available at any courthouse or county law library or online at *www.courts~~info~~.ca.gov/forms*.

Subdivision (b). The superior courts, not the appellate divisions, have original jurisdiction in habeas corpus proceedings (see Cal. Const., art. VI, §10). Habeas corpus proceedings in the superior courts are governed by rules 4.550 et~~.~~ seq.

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Rules 10.2, 10.5, 10.6, 10.10, 10.11, 10.12, 10.13, 10.14, 10.16, 10.20, 10.21, 10.22, 10.30, 10.34, 10.46, 10.48, 10.50, 10.51, 10.52, 10.56, 10.102, 10.103, 10.104, 10.105, 10.106, 10.172, 10.180, 10.181, 10.182, 10.183, 10.184, 10.201, 10.202, 10.203, 10.350, 10.452, 10.455, 10.461, 10.462, 10.468, 10.469, 10.478, 10.481, 10.491, 10.500, 10.501, 10.502, 10.601, 10.630, 10.660, 10.670, 10.742, 10.761, 10.762, 10.776, 10.777, 10.781, 10.782, 10.800, 10.801, 10.805, 10.811, 10.815, 10.820, 10.830, 10.854, 10.870, and 10.960 of the California Rules of Court is amended, effective January 1, 2016, to read:

TITLE 10. JUDICIAL ADMINISTRATION RULES

Rule 10.2. Judicial Council membership and terms

(a) * * *

(b) Council officers and duties

(1) * * *

(2) *Chairs and vice-chairs of the internal committees*

The Judicial Council has ~~four~~ five internal committees composed of Judicial Council members, as specified in rule 10.10. The Chief Justice appoints for a one-year term the chair and vice-chair of each of the council's internal committees. Chairs call meetings, as necessary, and provide reports to the council on the activities of the internal committees.

(3) *Officers*

The Judicial Council has ~~seven~~ eight officers: the chair, vice-chair, secretary, and the chairs of the council's ~~four~~ five internal committees.

(4) *Administrative Director~~ of the Courts~~*

The Administrative Director~~ of the Courts~~ is the secretary to the Judicial Council and performs administrative and policymaking functions as provided by the Constitution and the laws of the State of California and as delegated by the Judicial Council and the Chief Justice. The secretary is not a voting member of the council.

(c)–(e) * * *

Rule 10.5. Notice and agenda of council meetings

(a) * * *

(b) Meeting schedule

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The ~~Administrative Office of the Courts~~ Judicial Council must publish a regular annual schedule that states the planned date~~, purpose,~~ and location of each meeting. Additional meetings may be scheduled as necessary.

(c) Notice of business meetings

"Business meetings" are council meetings at which a majority of voting members are present to discuss and decide matters within the council's jurisdiction. The ~~Administrative Office of the Courts~~ Judicial Council must give public notice of the date, location, and agenda of each business meeting at least seven days before the meeting. The notice must state whether the meeting is open or closed. If the meeting is partly closed, the notice must indicate which agenda items are closed. A meeting may be conducted without notice in case of an emergency requiring prompt action.

(d) Budget meetings

A "budget meeting" is that portion of any business meeting at which trial court budgets are to be discussed. The ~~Administrative Office of the Courts~~ Judicial Council must provide notice of a budget meeting in the same manner as any other business meeting. Budget meetings normally are scheduled as follows:

(1)–(4) * * *

(e) Form of notice

The notice and agenda for council meetings must be posted ~~at the Administrative Office of the Courts and~~ on the California Courts ~~Web site~~ website (*www.courts~~info~~.ca.gov*). In addition, the notice and agenda for budget meetings must be provided to designated employee representatives who have submitted a written request to the ~~Administrative Office of the Courts~~ Judicial Council (attention ~~Secretariat~~ Judicial Council Support).

(f) * * *

(g) Meeting materials

(1) * * *

(2) *Budget materials*

(A) * * *

(B) *Distribution*

Materials must be made available by posting on the California Courts

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~~Web site~~ website and by distribution to designated employee representatives who have submitted a written request to the ~~Administrative Office of the Courts~~ Judicial Council of California (attention ~~Secretariat~~ Judicial Council Support).

(C) * * *

**(h) * * *

Rule 10.6. Judicial Council meetings

(a)–(c) * * *

(d) Requests to speak—general

The Executive and Planning Committee, in its discretion, may allow a member of the public to speak at a business meeting. Unless the Chief Justice waives this requirement, any member of the public who wishes to speak at a business meeting must submit a request of no more than two pages to the chair of the Executive and Planning Committee by delivering it to the ~~Administrative Office of the Courts~~ Judicial Council (attention Judicial Council Support) at least four business days before the meeting.

(1)–(2) * * *

(e) Presentation of information on trial court budget matters

(1) * * *

(2) *Oral presentation*

Any designated employee representative who wishes to make an oral presentation to the Judicial Council must make a written request to the ~~Administrative Office of the Courts~~ Judicial Council of California (attention ~~Secretariat~~ Judicial Council Support) no later than 24 hours before the meeting unless the issue has arisen within the last five business days before the meeting, in which case the written request may be made on the day of the meeting.

(3) * * *

(f)–(g) * * *

Rule 10.10. Judicial Council internal committees

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(a)–(c) * * *

(d) Meetings

Each internal committee meets as often as necessary to perform its responsibilities. The Administrative Director ~~of the Courts~~, as secretary of the Judicial Council, may attend and participate in the meetings of each internal committee. ~~Internal committee meetings are closed to the public but may be opened at the committee chair's discretion.~~

(e)–(g) * * *

Rule 10.11. Executive and Planning Committee

(a)–(e) * * *

(f) Topics for making policy and receiving updates

The committee develops a schedule of topics that the council intends to consider for making policy and receives updates from the Administrative Director ~~of the Courts~~ or ~~Administrative Office of the Courts~~ Judicial Council staff.

(g)–(j) * * *

Rule 10.12. Policy Coordination and Liaison Committee

(a) Legislative activities

The Policy Coordination and Liaison Committee performs the following functions:

(1) Taking a position on behalf of the council on pending legislative bills, after evaluating input from the council advisory bodies and ~~the Administrative Office of the Courts~~ Judicial Council staff, and any other input received from the courts, provided that the position is consistent with the council's established policies and precedents;

(2) Making recommendations to the council on all proposals for council-sponsored legislation and on an annual legislative agenda after evaluating input from council advisory bodies and ~~the Administrative Office of the Courts~~ Judicial Council staff, and any other input received from the courts; and

(3) * * *

(b)–(d) * * *

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Rule 10.13. Rules and Projects Committee

(a)–(e) * * *

(f) Responsibility of the Administrative Director ~~of the Courts~~

The Administrative Director is responsible for ensuring that items submitted to the committee for circulation for comment and the council's agenda comply with the committee's procedures and its guidelines on format and style.

Rule 10.14. Litigation Management Committee

(a) Litigation oversight

The Litigation Management Committee oversees litigation and claims against trial court judges, appellate court justices, the Judicial Council, ~~the Administrative Office of the Courts~~ its staff, the trial and appellate courts, and the employees of those bodies in which the likely monetary exposure is $100,000 or more or that raise issues of significance to the judicial branch by:

(1) * * *

(2) Consulting with the Administrative Director or ~~General~~ Chief Counsel, on request, regarding important strategy issues.

(b) * * *

(c) Strategic decisions

The committee resolves written objections described in rule 10.202(d) presented by ~~the Office of the General Counsel~~ Legal Services.

Rule 10.16. Technology Committee

(a) * * *

(b) Coordination

The committee coordinates the activities of the Administrative Director ~~of the Courts~~, council internal committees and advisory committees, the courts, justice partners, and stakeholders on matters relating to court information technology. The committee also, in collaboration or consultation with the Policy Coordination and Liaison Committee, coordinates with other branches of government on information technology issues.

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(c)–(e) * * *

Rule 10.20. Proposals for new or amended rules, standards, or forms; rule-making process in general

(a) * * *

(b) Proposals

The council will consider proposals that are submitted to it by an internal committee, an advisory committee, a task force, or ~~the Administrative Office of the Courts~~ Judicial Council staff, in accordance with rule 10.22 and any policies and procedures established by the Rules and Projects Committee.

(c) * * *

Rule 10.21. Proposals from members of the public for changes to rules, standards, or forms

(a) Application

This rule applies to proposals for changes to rules, standards, or forms by a member of the public (any person or organization other than a Judicial Council internal committee, advisory committee, or task force, or ~~the Administrative Office of the Courts~~ Judicial Council staff).

(b) Submission and content of proposals

Proposals must be submitted in writing to: Judicial Council of California, Attention: ~~General~~ Chief Counsel. Proposals should include:

(1)–(8) * * *

(c) Advisory committee's review of proposal

The ~~General~~ Chief Counsel must refer each proposal from a member of the public to an appropriate advisory committee for consideration and recommendation, or, if no appropriate advisory committee exists, to the Rules and Projects Committee. A~~n Administrative Office of the Courts~~ Judicial Council staff member may independently review the proposal and present an analysis and a recommendation to the committee. The committee may take one of the following actions:

(1)–(3) * * *

Rule 10.22. Rule-making procedures

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(a) Who may make proposals

A Judicial Council internal committee, advisory committee, task force, or ~~the Administrative Office of the Courts~~ Judicial Council staff may recommend that the council adopt, amend, or repeal a rule or standard or adopt, approve, revise, or revoke a form.

(b) Legal and advisory committee review

The internal committee, advisory committee, task force, or ~~Administrative Office of the Courts~~ Judicial Council staff (the proponent) must first submit its proposal to ~~the Office of the General Counsel~~ Legal Services for legal and drafting review. If the proponent is not an advisory committee, and an appropriate advisory committee exists, the proponent must also submit the proposal to that advisory committee for review.

(c) Recommendation to Rules and Projects Committee

After the proposal has been reviewed by ~~the Office of the General Counsel~~ Legal Services and any appropriate advisory committee, the proponent must submit the proposal to the Rules and Projects Committee with a recommendation that it be (1) circulated for public comment or (2) submitted to the council for approval without public comment.

(d)–(g) * * *

Rule 10.30. Judicial Council advisory bodies

(a) * * *

(b) Functions

The advisory bodies:

(1)–(2) * * *

(3) Generally do not implement policy. The council may, however, assign policy-implementation and programmatic responsibilities to an advisory body and may request it make recommendations to the Administrative ~~Office of the Courts~~ Director on implementation of council policy or programs;

(4) * * *

(5) Are responsible, through ~~the Administrative Office of the Courts~~ Judicial Council staff, for gathering stakeholder perspectives on policy recommendations they plan to present to the council.

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(c)–(e) * * *

(f) Role of the Administrative Director ~~of the Courts~~

The Administrative Director ~~of the Courts~~ sits as an ex officio member of each advisory body.

(g) * * *

Rule 10.34. Duties and responsibilities of advisory committees

(a) * * *

(b) Annual charges

(1) * * *

(2) Advisory committees have limited discretion to pursue matters in addition to those specified in each committee's annual charge, as long as the matters are consistent with a committee's general charge, within the limits of resources available to the committee, and within any other limits specified by the council, the designated internal committee, or the Administrative Director ~~of the Courts~~.

(c) * * *

(d) Role of the Administrative Director ~~of the Courts~~

(1)–(2) * * *

(e) Role of staff

(1) Advisory committees are assisted by ~~the~~ Judicial Council staff ~~of the Administrative Office of the Courts~~. The duties of staff members include drafting committee annual agendas, managing the committee's budget and resources, coordinating committee activities, providing legal and policy analysis to the committee, organizing and drafting reports, selecting and supervising consultants, providing technical assistance, and assisting committee chairs in presenting the committee's recommendations to the Judicial Council. Staff may provide independent legal or policy analysis of issues that is different from the committee's position, if authorized to do so by the Administrative Director ~~of the Courts~~.

(2) Staff report to the Administrative Director ~~of the Courts~~. The decisions or instructions of an advisory body or its chair are not binding on the staff

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except in instances when the council or the Administrative Director has specifically authorized such exercise of authority.

(f) Review of annual agendas

(1)–(2) * * *

(3) To pursue matters in addition to those specified in its annual charge, an advisory committee must have the approval of the internal committee with oversight responsibility for the advisory committee. The matters must be consistent with the advisory committee's general charge, as set forth in the rules of court, its approved annual agenda, and the council's long-range strategic plan. The additional matters must also be within the committee's authorized budget and available resources, as specified by the council or the Administrative Director ~~of the Courts~~.

Rule 10.46. Trial Court Presiding Judges Advisory Committee

(a) * * *

(b) Additional duties

In addition to the duties specified in rule 10.34, the committee may:

(1) * * *

(2) Respond and provide input to the Judicial Council, appropriate advisory committees, or ~~the Administrative Office of the Courts~~ Judicial Council staff on pending policy proposals and offer new recommendations on policy initiatives in the areas of legislation, rules, forms, standards, studies, and recommendations concerning court administration; and

(3) Provide for liaison between the trial courts and the Judicial Council, its advisory committees, task forces, and working groups, and ~~the Administrative Office of the Courts~~ Judicial Council staff.

(c)–(f) * * *

Rule 10.48. Court Executives Advisory Committee

(a) * * *

(b) Additional duties

In addition to the duties specified in rule 10.34, the committee must:

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(1)–(4) * * *

(5) Meet periodically with the ~~Administrative Office of the Courts~~ Judicial Council's executive team to enhance branch communications.

(c)–(g) * * *

Rule 10.50. Governing Committee of the Center for Judicial Education and Research

(a) Establishment and purpose

In 1973, the Judicial Council of California and the California Judges Association created the Center for Judicial Education and Research (CJER), ~~which subsequently became the Education Division of the Administrative Office of the Courts~~. The Governing Committee of CJER was made an advisory committee to the council in 1993 through the adoption of former rule 1029. In 2001, the rule that specifies the CJER Governing Committee's duties was made consistent with the rules pertaining to other Judicial Council advisory committees, but it continues to acknowledge the historic participation of the California Judges Association.

(b)–(f) * * *

Rule 10.51. Court Interpreters Advisory Panel

(a) * * *

(b) Additional duty

The advisory panel is charged with reviewing and making recommendations to the council on the findings of the study of language and interpreter use and need for interpreters in court proceedings that is conducted by ~~the Administrative Office of the Courts~~ Judicial Council every five years under Government Code section 68563.

(c)–(d) * * *

Rule 10.52. Administrative Presiding Justices Advisory Committee

(a) * * *

(b) Additional duties

In addition to the duties described in rule 10.34, the committee must:

(1)–(3) * * *

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(4) Comment on and make recommendations to the council about appellate court operations, including:

(A) Initiatives to be pursued by the council or ~~the Administrative Office of the Courts~~ its staff; and

(B) * * *

(c) * * *

(d) Funding

Each year, the committee must recommend budget change proposals to be submitted to the Chief Justice for legislative funding to operate the appellate courts. These proposals must be consistent with the budget management guidelines of the Judicial Council's Finance ~~Division~~ office ~~of the Administrative Office of the Courts~~.

(e) * * *

(f) Administrative Director ~~of the Courts~~

* * *

Rule 10.56. Collaborative Justice Courts Advisory Committee

(a) * * *

(b) Additional duties

In addition to the duties described in rule 10.34, the committee must:

(1)–(4) * * *

(5) Make recommendations regarding grant funding programs that are administered by ~~the Administrative Office of the Courts~~ Judicial Council staff for drug courts and other treatment courts; and

(6) * * *

(c) * * *

Rule 10.102. Acceptance of gifts

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(a) Administrative Director's ~~of the Courts'~~ authority to accept gifts

The Administrative Director ~~of the Courts~~ may accept on behalf of any entity listed in (b) any gift of real or personal property if the gift and any terms and conditions are found to be in the best interest of the state. Any applicable standards used by the Director of Finance under Government Code section 11005.1 may be considered in accepting gifts.

(b) Delegation of authority

The Administrative Director may delegate the authority to accept gifts to the following, under any guidelines established by the Administrative ~~Office of the Courts~~ Director:

(1)–(3) * * *

(4) The Judicial Council's director of ~~the~~ Finance ~~Division of the Administrative Office of the Courts~~, for gifts to the Judicial Council ~~and the Administrative Office of the Courts~~.

Rule 10.103. Limitation on intrabranch contracting

(a) Definitions

For purposes of this rule, "judicial branch entity" includes a trial court, a Court of Appeal, the Supreme Court, and the ~~Administrative Office of the Courts~~ Judicial Council.

(b)–(d) * * *

Rule 10.104. Limitation on contracting with former employees

(a) Trial and appellate court contracts with former employees

A trial or appellate court may not enter into a contract for goods or services for which compensation is paid with a person previously employed by that court or by the ~~Administrative Office of the Courts~~ Judicial Council:

(1) * * *

(2) For a period of 24 months following the date of the former employee's retirement, dismissal, or separation from service, if he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by the court or the ~~Administrative Office of the Courts~~ Judicial Council.

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(b) ~~Administrative Office of the Courts~~ Judicial Council contracts with former employees

The ~~Administrative Office of the Courts~~ Judicial Council may not enter into a contract for goods or services for which compensation is paid with a person previously employed by it:

(1) For a period of 12 months following the date of the former employee's retirement, dismissal, or separation from service, if he or she was employed in a policymaking position at the ~~Administrative Office of the Courts~~ Judicial Council in the same general subject area as the proposed contract within the 12-month period before his or her retirement, dismissal, or separation; or

(2) For a period of 24 months following the date of the former employee's retirement, dismissal, or separation from service, if he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by the ~~Administrative Office of the Courts~~ Judicial Council.

(c) Policymaking position

"Policymaking position" includes:

(1)–(2) * * *

(3) In the ~~Administrative Office of the Courts~~ Judicial Council, the Administrative Director ~~of the Courts~~, ~~the Chief Deputy Director~~, Chief of Staff, Chief Operating Officer, Chief Administrative Officer, any director, and any other position designated by the Administrative Director as a policymaking position.

(d) Scope

This rule does not prohibit any court or the ~~Administrative Office of the Courts~~ Judicial Council from (1) employing any person or (2) contracting with any former judge or justice.

Rule 10.105. Allocation of new fee, fine, and forfeiture revenue

(a) * * *

(b) Methodology

~~The Administrative Office of the Courts~~ Judicial Council staff must recommend a methodology for the allocation and must recommend an allocation based on this

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methodology. On approval of a methodology by the Judicial Council, ~~the Administrative Office of the Courts~~ Judicial Council staff must issue a Finance Memo stating the methodology adopted by the Judicial Council.

Rule 10.106. Judicial branch travel expense reimbursement policy

(a) * * *

(b) Applicability

The judicial branch travel expense reimbursement policy applies to official state business travel by:

(1) * * *

(2) Officers, employees, retired annuitants, and members of the Supreme Court, the Courts of Appeal, superior courts, the Judicial Council and its staff, ~~the Administrative Office of the Courts~~, the Habeas Corpus Resource Center, and the Commission on Judicial Performance; and

(3) Members of task forces, working groups, commissions, or similar bodies appointed by the Chief Justice, the Judicial Council, or the Administrative Director ~~of the Courts~~.

(c) Amendments

The Judicial Council delegates to the Administrative Director ~~of the Courts~~, under article VI, section 6(c) of the California Constitution and other applicable law, the authority to make technical changes and clarifications to the judicial branch travel expense reimbursement policy. The changes and clarifications must be fiscally responsible, provide for appropriate accountability, and be in general compliance with the policy initially adopted by the Judicial Council.

Rule 10.172. Court security plans

(a)–(c) * * *

(d) Submission of court a plan to the ~~Administrative Office of the Courts~~ Judicial Council

On or before November 1, 2009, each superior court must submit a court security plan to the ~~Administrative Office of the Courts (AOC)~~ Judicial Council. On or before February 1, 2011, and each succeeding February 1, each superior court must ~~report~~ give notice to the ~~AOC~~ Judicial Council whether it has made any changes to the court security plan and, if so, identify each change made and provide copies of the current court security plan and current assessment report. In preparing any

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submission, a court may request technical assistance from ~~the~~ ~~AOC~~ Judicial Council staff.

(e) Plan review process

~~The AOC~~ Judicial Council staff will evaluate for completeness submissions identified in (d). Annually, the submissions and evaluations will be provided to the ~~Working Group on~~ Court Security Advisory Committee. Any submissions determined by the ~~working group~~ advisory committee to be incomplete or deficient must be returned to the submitting court for correction and completion. ~~No later than July 1 of each year, the working group must submit to the Judicial Council a summary of the submissions for the Judicial Council's report to the Legislature.~~

(f) * * *

Advisory Committee Comment

This rule is adopted to comply with the mandate in Government Code section 69925, which requires the Judicial Council to provide for the areas to be addressed in a court security plan and to establish a process for the review of such plans. ~~The Working Group on Court Security is authorized by Government Code section 69927 and established by rule 10.170 for the purpose of studying and making recommendation to the Judicial Council regarding court security matters. For the assistance of the courts and sheriffs in preparing and submitting their court security plans, the Working Group on Court Security has prepared *Court Security Plan Guidelines* with respect to each of the subject areas identified in subsections (b)(1) and (b)(2). The courts and sheriffs may obtain copies of the *Court Security Plan Guidelines* from the Administrative Office of the Courts' Emergency Response and Security unit.~~

Rule 10.180. Court facilities standards

(a) Development of standards

~~The Administrative Office of the Courts~~ Judicial Council staff is responsible for developing and maintaining standards for the alteration, remodeling, renovation, and expansion of existing court facilities and for the construction of new court facilities.

(b) Adoption by the Judicial Council

The standards developed by ~~the Administrative Office of the Courts~~ Judicial Council staff must be submitted to the Judicial Council for review and adoption as the standards to be used for court facilities in the state. Nonsubstantive changes to the standards may be made by the ~~Administrative Office of the Courts~~ Judicial Council staff; substantive changes must be submitted to the Judicial Council for review and adoption.

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(c) Use of standards

The Judicial Council and its staff, ~~the Administrative Office of the Courts,~~ affected courts, and advisory groups on court facilities issues created under these rules must use the standards adopted under (b) in reviewing or recommending proposed alteration, remodeling, renovation, or expansion of an existing court facility or new construction. Courts and advisory groups must report deviations from the standards to ~~the Administrative Office of the Courts~~ Judicial Council staff through a process established for that purpose.

Rule 10.181. Court facilities policies, procedures, and standards

(a) Responsibilities of ~~the Administrative Office of the Courts~~ Judicial Council staff

~~The Administrative Office of the Courts~~ Judicial Council staff, after consultation with the Court Facilities Transitional Task Force, must prepare and present to the Judicial Council recommendations for policies, procedures, and standards concerning the operation, maintenance, alteration, remodeling, renovation, expansion, acquisition, space programming, design, and construction of appellate and trial court facilities under Government Code sections 69204(c) and 70391(e).

(b) * * *

Rule 10.182. Operation and maintenance of court facilities

(a) Intent

The intent of this rule is to allocate responsibility and decision making for the operation and maintenance of court facilities among the courts and ~~the Administrative Office of the Courts~~ Judicial Council staff.

(b) Responsibilities of ~~the Administrative Office of the Courts~~ Judicial Council staff

(1) In addition to those matters expressly authorized by statute, ~~the Administrative Office of the Courts is~~ Judicial Council staff are responsible for:

(A) Taking action on the operation of court facilities, including the day-to-day operation of a building and maintenance of a facility. ~~The Administrative Office of the Courts~~ Judicial Council staff must, in cooperation with the court, perform its responsibilities concerning operation of the court facility to effectively and efficiently support the day-to-day operation of the court system and services of the court. These actions include maintaining proper heating, ventilation, and air

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conditioning levels; providing functional electrical, fire safety, vertical transportation, mechanical, and plumbing systems through preventive maintenance and responsive repairs; and maintaining structural, nonstructural, security, and telecommunications infrastructures.

(B)–(C) * * *

(2) ~~The Administrative Office of the Courts~~ Judicial Council staff must consult with affected courts concerning the annual operations and maintenance needs assessment, development of annual priorities, and fiscal planning for the operational and maintenance needs of court facilities.

(3) ~~The Administrative Office of the Courts~~ Judicial Council staff may, when appropriate, delegate its responsibilities for ongoing operation and management to the court for some or all of the existing court facilities used by that court. Any delegation of responsibility must ensure that:

(A)–(D) * * *

(4) ~~The Administrative Office of the Courts~~ Judicial Council staff must, whenever feasible, seek review and recommendations from the Court Facilities Transitional Task Force, before recommending action on appellate and trial court facilities issues to the Judicial Council.

(c) Responsibilities of the courts

(1) The affected courts must consult with ~~the Administrative Office of the Courts~~ Judicial Council staff concerning the annual operations and maintenance needs assessment, development of annual priorities, and fiscal planning for the operational and maintenance needs of court facilities, including contingency planning for unforeseen facility maintenance needs.

(2) Each court to which responsibility is delegated under (b)(3) must report to ~~the Administrative Office of the Courts~~ Judicial Council staff quarterly or more often, as provided in the delegation. The report must include the activities and expenditures related to the delegation that are specified for reporting in the delegation. Each court must also account to ~~The Administrative Office of the Courts~~ Judicial Council staff for all expenditures related to the delegation. ~~The Administrative Office of the Courts~~ Judicial Council staff may conduct an internal audit of any receipts and expenditures.

Rule 10.183. Decision making on transfer of responsibility for trial court facilities

(a) Intent

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The intent of this rule is to allocate among the Judicial Council, the trial courts, and ~~the Administrative Office of the Courts~~ Judicial Council staff, responsibility and decision making for the transfer of responsibility for trial court facilities from the counties to the Judicial Council.

(b)–(c) * * *

(d) Responsibilities of ~~the Administrative Office of the Courts~~ Judicial Council staff

~~The Administrative Office of the Courts~~ Judicial Council staff are responsible for the following matters related to transfer of responsibility for court facilities, in addition to matters expressly authorized by statute:

(1)–(4) * * *

(e) Appeal of county facilities payment amount

The Administrative Director ~~of the Courts~~ must obtain the approval of the Executive and Planning Committee before pursuing correction of a county facilities payment amount under Government Code section 70367. This provision does not preclude the Administrative Director ~~of the Courts~~ from submitting a declaration as required by Government Code section 70367(a). The Administrative Director ~~of the Courts~~ must report to the Executive and Planning Committee any decision not to appeal a county facilities payment amount.

Rule 10.184. Acquisition, space programming, construction, and design of court facilities

(a) Intent

The intent of this rule is to allocate responsibility and decision making for acquisition, space programming, construction, and design of court facilities among the courts, ~~and~~ the ~~Administrative Office of the Courts~~ Judicial Council, and its staff.

(b) Responsibilities of ~~the Administrative Office of the Courts~~ Judicial Council staff

(1) In addition to those matters expressly provided by statute, ~~the Administrative Office of the Courts is~~ Judicial Council staff are responsible for the acquisition, space programming, construction, and design of a court facility, consistent with the facilities policies and procedures adopted by the Judicial Council and the California Rules of Court.

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(2) ~~The Administrative Office of the Courts~~ Judicial Council staff must prepare and submit to the Judicial Council separate annual capital outlay proposals for the appellate courts and the trial courts, as part of the yearly judicial branch budget development cycle, specifying the amounts to be spent for these purposes. The capital outlay proposal for the trial courts must specify the money that is proposed to be spent from the State Court Facilities Construction Fund and from other sources. The annual capital outlay proposals must be consistent with the Five-Year Capital Infrastructure Plan or must recommend appropriate changes in the Five-Year Capital Infrastructure Plan. ~~The Administrative Office of the Courts~~ Judicial Council staff must, whenever feasible, seek review and recommendations from the Court Facilities Transitional Task Force before recommending action to the Judicial Council on these issues.

(3) ~~The Administrative Office of the Courts~~ Judicial Council staff must consult with the affected courts concerning the annual capital needs of the courts.

(c) Responsibilities of the courts

(1) Affected courts must consult with ~~the Administrative Office of the Courts~~ Judicial Council staff concerning the courts' annual capital needs.

(2) * * *

(d) Advisory group for construction projects

~~The Administrative Office of the Courts~~ Judicial Council staff, in consultation with the leadership of the affected court, must establish and work with an advisory group for each court construction or major renovation project. The advisory group consists of court judicial officers, other court personnel, and others affected by the court facility. The advisory group must work with ~~the Administrative Office of the Courts~~ Judicial Council staff on issues involved in the construction or renovation, from the selection of a space programmer and architect through occupancy of the facility.

Rule 10.201. Claim and litigation procedure

(a) Definitions

As used in this chapter:

(1)–(2) * * *

(3) "~~Office of the General Counsel~~ Legal Services" means the ~~Office of the General Counsel of the Administrative Office of the Courts~~ Judicial Council's Legal Services office; and

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(4) * * *

(b) Procedure for action on claims

To carry out the Judicial Council's responsibility under Government Code section 912.7 to act on a claim, claim amendment, or application for leave to present a late claim against a judicial branch entity or a judge, ~~the Office of the General Counsel~~ Legal Services, under the direction of the Administrative Director ~~of the Courts~~, must:

(1)–(2) * * *

(3) If determined by ~~the Office of the General Counsel~~ Legal Services to be appropriate, refer a claim or claim amendment for further investigation to a claims adjuster or other investigator under contract with the ~~Administrative Office of the Courts~~ Judicial Council;

(4) * * *

(5) Allow a claim in the amount justly due as determined by ~~the Office of the General Counsel~~ Legal Services if it is a proper charge against the judicial branch entity and the amount is less than $100,000; and

(6) * * *

(c) Allowance and payment of claims

The following may allow and authorize payment of any claim arising out of the activities of a judicial branch entity or judge:

(1) ~~The Office of the General Counsel~~ Legal Services, under the direction of the Administrative Director ~~of the Courts~~, if the payment is less than $100,000; or

(2) * * *

(d) Settlement of lawsuits and payment of judgments

The following may settle lawsuits, after consultation with the affected entity and any judge or employee being defended by the Judicial Council, and authorize payment of judgments arising out of the activities of a judicial branch entity or judge:

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(1) ~~The Office of the General Counsel~~ Legal Services, under the direction of the Administrative Director ~~of the Courts~~, if the payment is less than $100,000 and the lawsuit does not raise issues of significance to the judicial branch; or

(2) * * *

Rule 10.202. Claims and litigation management

(a) * * *

(b) Duties of ~~the Office of the General Counsel~~ Legal Services

To carry out the duty of the Judicial Council to provide for the representation, defense, and indemnification of justices of the Courts of Appeal or the Supreme Court, judges, subordinate judicial officers, court executive officers and administrators, and trial and appellate court employees under part 1 (commencing with section 810) to part 7 (commencing with section 995), inclusive, of the Government Code, ~~the Office of the General Counsel~~ Legal Services, under the direction of the Administrative Director ~~of the Courts~~ and the ~~General~~ Chief Counsel, must:

(1)–(8) * * *

(c) Duties of trial and appellate courts

The trial and appellate courts must:

(1) Notify ~~the Office of the General Counsel~~ Legal Services promptly on receipt of notice of a dispute that is likely to result in a claim or lawsuit, or of a claim or lawsuit filed, against the court, a justice, a judge or subordinate judicial officer, a court executive officer or administrator, or a court employee, and forward the claim and lawsuit to ~~the Office of the General Counsel~~ Legal Services for handling; and

(2) Consult with ~~the Office of the General Counsel~~ Legal Services regarding strategic and settlement decisions in claims and lawsuits.

(d) Disagreements about major strategic decisions

Following consultation with ~~the Office of the General Counsel~~ Legal Services, a presiding judge or administrative presiding justice may object to a proposed decision of ~~the Office of the General Counsel~~ Legal Services about major strategic decisions, such as retention of counsel and proposed settlements, by presenting to ~~the Office of the General Counsel~~ Legal Services a written statement of the objection. ~~The Office of the General Counsel~~ Legal Services must present the

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written objection to the Litigation Management Committee, which will resolve the objection.

Rule 10.203. Contractual indemnification

(a) Intent

The intent of this rule is to facilitate the use of contractual indemnities that allocate legal risk and liability to parties that contract with a superior court or Court of Appeal, the Supreme Court, or the Judicial Council~~, or the Administrative Office of the Courts~~ (a "judicial branch entity" as defined in Gov. Code, § 900.3).

(b) Defense and indemnification provisions

Notwithstanding rule 10.14, 10.201, or 10.202, a judicial branch entity may enter into a contract that requires the contractor or the contractor's insurer to indemnify, defend, and hold harmless the entity and its officers, agents, and employees against claims, demands, liability, damages, attorney fees, costs, expenses, or losses arising from the performance of the contract. Upon receipt of notice of a claim or lawsuit that may be subject to contractual indemnities, the judicial branch entity must notify ~~the Office of the General Counsel~~ Legal Services, which will manage the claim or lawsuit to obtain the benefits of the contractual indemnities to the extent consistent with the interests of the public and the judicial branch.

Rule 10.350. Workers' compensation program

(a) Intent

The intent of this rule is to:

(1) Establish procedures for the ~~Administrative Office of the Courts~~ Judicial Council's workers' compensation program for the trial courts; and

(2) * * *

(b) Duties of ~~the Administrative Office of the Courts~~ Judicial Council staff

To carry out the duty of the Judicial Council to establish a workers' compensation program for the trial courts, ~~the Administrative Office of the Courts~~ the council's Human Resources ~~Division~~ office must:

(1)–(4) * * *

(5) Make personnel available by telephone to consult with trial courts regarding the cost and benefits of the plan being offered by the ~~Administrative Office of the Courts~~ Judicial Council; and

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(6) * * *

(c) Duties of the trial courts

(1) Each trial court that elects to participate in the program made available through the ~~Administrative Office of the Courts~~ Judicial Council must:

(A) Timely notify the Human Resources ~~Division~~ office of its decision to participate in the workers' compensation program being offered through the ~~Administrative Office of the Courts~~ Judicial Council;

(B) Timely complete and return necessary paperwork to the Human Resources ~~Division~~ office; and

(C) * * *

(2) Each trial court that elects not to participate in the workers' compensation program available through the ~~Administrative Office of the Courts~~ Judicial Council must:

(A) * * *

(B) Timely submit to the Human Resources ~~Division~~ office for its approval the information necessary to evaluate the workers' compensation program identified by the trial court to provide benefits for its employees; and

(C) * * *

Rule 10.452. Minimum education requirements, expectations, and recommendations

(a)–(c) * * *

(d) Responsibilities of Chief Justice and administrative presiding justices

The Chief Justice and each administrative presiding justice:

(1)–(2) * * *

(3) In addition to the educational leave required under (d)(1)–(2), should grant leave to a justice, clerk/administrator, or managing attorney to serve on education committees and as a faculty member at education programs when the individual's services have been requested for these purposes by ~~the~~ ~~Administrative Office of the Courts~~ Judicial Council staff, the California

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Judges Association, or the court. If a court's calendar would not be adversely affected, the court should grant additional leave for a justice, the clerk/administrator, or the managing attorney to serve on an educational committee or as a faculty member for judicial branch education;

(4) * * *

(5) Must ensure that justices, the clerk/administrator, and the managing attorney are reimbursed by their court in accordance with the travel policies issued by the ~~Administrative Office of the Courts~~ Judicial Council for travel expenses incurred in attending in-state education programs as a participant, except to the extent that: (i) certain expenses are covered by the ~~Administrative Office of the Courts~~ Judicial Council; or (ii) the education provider or sponsor of the program pays the expenses. Provisions for these expenses must be part of every court's budget. The Chief Justice or the administrative presiding justice may approve reimbursement of travel expenses incurred by justices, the clerk/administrator, and the managing attorney in attending out-of-state education programs as a participant; and

(6) Must retain the records and cumulative histories of participation provided by justices. These records and cumulative histories are subject to periodic audit by t~~he Administrative Office of the Courts~~ Judicial Council staff. The Chief Justice and the administrative presiding justice must report the data from the records and cumulative histories on an aggregate basis to the Judicial Council, on a form provided by the Judicial Council, within six months after the end of each three-year period.

(e) Responsibilities of presiding judges

Each presiding judge:

(1)–(2) * * *

(3) In addition to the educational leave required or authorized under rule 10.603 or (e)(1)–(2), should grant leave to a judge or subordinate judicial officer or the executive officer to serve on education committees and as a faculty member at education programs when the judicial officer's or executive officer's services have been requested for these purposes by ~~the~~ Judicial Council staff, the California Judges Association, or the court. If a court's calendar would not be adversely affected, the presiding judge should grant additional leave for a judge or subordinate judicial officer or executive officer to serve on an educational committee or as a faculty member for judicial branch education;

(4)–(5) * * *

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(6) Must ensure that judges, subordinate judicial officers, and the court executive officer are reimbursed by their court in accordance with the Trial Court Financial Policies and Procedures Manual for travel expenses incurred in attending in-state education programs as a participant, except to the extent that: (i) certain expenses are covered by the ~~Administrative Office of the Courts~~ Judicial Council; or (ii) the education provider or sponsor of the program pays the expenses. Provisions for these expenses must be part of every court's budget. The presiding judge may approve reimbursement of travel expenses incurred by judges, subordinate judicial officers, and the court executive officer in attending out-of-state education programs as a participant; and

(7) Must retain the records and cumulative histories of participation provided by judges. These records and cumulative histories are subject to periodic audit by ~~the Administrative Office of the Courts~~ Judicial Council staff. The presiding judge must report the data from the records and cumulative histories on an aggregate basis to the Judicial Council, on a form provided by the Judicial Council, within six months after the end of each three-year period.

(f) Responsibilities of Supreme Court and Court of Appeal justices, clerk/administrators, managing attorneys, and supervisors

Each court's justices, clerk/administrator, managing attorney, and supervisors:

(1)–(2) * * *

(3) Should allow and encourage court personnel, in addition to participating as students in educational activities, to serve on court personnel education committees and as faculty at court personnel education programs when an employee's services have been requested for these purposes by ~~the Administrative Office of the Courts~~ Judicial Council staff or the court;

(4) * * *

(5) Must ensure that supervisors and other court personnel are reimbursed by their court in accordance with the travel policies issued by the ~~Administrative Office of the Courts~~ Judicial Council for travel expenses incurred in attending in-state education programs as a participant, except to the extent that: (i) certain expenses are covered by the ~~Administrative Office of the Courts~~ Judicial Council; or (ii) the education provider or sponsor of the program pays the expenses. Provisions for these expenses must be part of every court's budget. The clerk/administrator or the managing attorney may approve reimbursement of travel expenses incurred by supervisors and other court personnel in attending out-of-state education programs as a participant.

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(g) Responsibilities of trial court executive officers, managers, and supervisors

Each trial court's executive officer, managers, and supervisors:

(1)–(2) * * *

(3) Should allow and encourage court personnel, in addition to participating as students in education activities, to serve on court personnel education committees and as faculty at court personnel education programs when an employee's services have been requested for these purposes by ~~the~~ Judicial Council staff or the court;

(4) * * *

(5) Must ensure that managers, supervisors, and other court personnel are reimbursed by their court in accordance with the Trial Court Financial Policies and Procedures Manual for travel expenses incurred in attending in-state education programs as a participant, except to the extent that: (i) certain expenses are covered by the ~~Administrative Office of the Courts~~ Judicial Council; or (ii) the education provider or sponsor of the program pays the expenses. Provisions for these expenses must be part of every court's budget. The court executive officer may approve reimbursement of travel expenses incurred by managers, supervisors, and other court personnel in attending out-of-state education programs as a participant.

Rule 10.455. Ethics orientation for Judicial Council members and for judicial branch employees required to file a statement of economic interests

(a) * * *

(b) Definitions

For purposes of this rule, "judicial branch employee" includes an employee of a trial or appellate court or the ~~Administrative Office of the Courts~~ Judicial Council, but does not include court commissioners or referees.

(c) Judicial Council members and judicial branch employees

(1) ~~The Administrative Office of the Courts~~ Judicial Council staff must provide an ethics orientation course for Judicial Council members and for judicial branch employees who are required to file a statement of economic interests.

(2)–(3) * * *

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Rule 10.461. Minimum education requirements for Supreme Court and Court of Appeal justices

(a) * * *

(b) Content-based requirement

Each new Court of Appeal justice, within two years of confirmation of appointment, must attend a new appellate justice orientation program sponsored by a national provider of appellate orientation programs or by the ~~Administrative Office of the Courts'~~ Judicial Council's ~~Education Division/~~Center for Judicial Education and Research.

(c)–(e) * * *

Advisory Committee Comment

The requirements formerly contained in subdivision (e)(2) of rule 970, which has been repealed, are carried forward without change in rule 10.461(b).

~~The Administrative Office of the Courts (AOC) has~~ Judicial Council staff have developed both a manual format and an automated format of the individual justice's recording and reporting form referenced in rule 10.461(e) that gathers all the information needed by the Chief Justice or the administrative presiding justice to complete the aggregate report to the Judicial Council required under rule 10.452(d)(6). The Chief Justice or the administrative presiding justice may determine which form should be used in his or her court and may provide the manual or automated format of the ~~AOC~~ council-developed form (available from the ~~AOC's~~ council's ~~Education Division/~~Center for Judicial Education and Research) or may provide another appropriate form that has been developed by his or her court or by another court that gathers all the information needed by the Chief Justice or the administrative presiding justice to complete the aggregate report to the Judicial Council.

Rule 10.462. Minimum education requirements and expectations for trial court judges and subordinate judicial officers

(a)–(b) * * *

(c) Content-based requirements

(1) Each new trial court judge and subordinate judicial officer must complete the "new judge education" provided by the ~~Administrative Office of the Courts'~~ Judicial Council's ~~Education Division/~~Center for Judicial Education and Research (CJER) as follows:

(A)–(C) * * *

(2)–(4) * * *

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(d)–(g) * * *

Advisory Committee Comment

The minimum judicial education requirements in rule 10.462 do not apply to retired judges seeking to sit on regular court assignment in the Assigned Judges Program. Retired judges who seek to serve in the Assigned Judges Program must comply with the Chief Justice's Standards and Guidelines for Judges Who Serve on Assignment, which includes education requirements.

~~The Administrative Office of the Courts (AOC) has~~ Judicial Council staff have developed both a manual format and an automated format of the individual judge's recording and reporting form referenced in rule 10.462(f) that gathers all the information needed by the presiding judge to complete the aggregate report to the Judicial Council required under rule 10.452(e)(7). The presiding judge may determine which form should be used in his or her court and may provide the manual or automated format of the ~~AOC~~ council-developed form (available from the ~~AOC's Education Division/~~ Judicial Council's Center for Judicial Education and Research) or may provide another appropriate form that has been developed by his or her court or by another court that gathers all the information needed by the presiding judge to complete the aggregate report to the Judicial Council.

Rule 10.468. Content-based and hours-based education for superior court judges and subordinate judicial officers regularly assigned to hear probate proceedings

(a) Definitions

As used in this rule, the following terms have the meanings stated below:

(1)–(5) * * *

~~(6) "AOC" is the Administrative Office of the Courts.~~

(~~7~~ 6) "CJER" is the ~~AOC Education Division/~~Judicial Council's Center for Judicial Education and Research.

(~~8~~ 7) "CJA" is the California Judges Association.

(b)* * *

(c) Hours-based continuing education

(1)–(5) * * *

(6) A judicial officer may fulfill the education requirement in (1) or (2) through ~~AOC~~ council-sponsored education, an approved provider (see rule 10.481(a)), or education approved by the judicial officer's presiding judge as meeting the education criteria specified in rule 10.481(b).

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(7) * * *

**(d) * * *

(e) Record keeping and reporting

(1) * * *

(2) Presiding judges' records of judicial officer participation in the education required by this rule are subject to audit by ~~the AOC~~ Judicial Council staff under rule 10.462. ~~The AOC~~ Judicial Council staff may require courts to report participation by judicial officers in the education required by this rule to ensure compliance with Probate Code section 1456.

Rule 10.469. Judicial education recommendations for justices, judges, and subordinate judicial officers

**(a) * * *

(b) Jury trial assignment

Each judge or subordinate judicial officer assigned to jury trials should regularly use the ~~Administrative Office of the Courts' Education Division/~~Judicial Council CJER educational materials or other appropriate materials and should regularly complete CJER or other appropriate educational programs devoted to the conduct of jury voir dire and the treatment of jurors.

**(c)–(e) * * *

Rule 10.478. Content-based and hours-based education for court investigators, probate attorneys, and probate examiners

(a) Definitions

As used in this rule, the following terms have the meanings specified below, unless the context or subject matter otherwise require:

(1)–(4) * * *

~~(5) "AOC" is the Administrative Office of the Courts;~~

(~~6~~ 5) "CJER" is the ~~AOC Education Division/~~Judicial Council's Center for Judicial Education and Research.

(b) Content-based requirements for court investigators

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(1) * * *

(2) A court investigator may fulfill the education requirement in (1) through ~~AOC~~ council-sponsored education, an approved provider (see rule 10.481(a)), or education approved by the court executive officer or the court investigator's supervisor as meeting the education criteria specified in rule 10.481(b).

(3)–(4) * * *

(c) Content-based education for probate attorneys

(1) * * *

(2) A probate attorney may fulfill the education requirement in (1) through ~~AOC~~ council-sponsored education, an approved provider (see rule 10.481(a)), or education approved by the court executive officer or the probate attorney's supervisor as meeting the education criteria specified in rule 10.481(b).

(3)–(4) * * *

(d) Content-based education for probate examiners

(1) * * *

(2) A probate examiner may fulfill the education requirement in (1) through ~~AOC~~ council-sponsored education, an approved provider (see rule 10.481(a)), or education approved by the court executive officer or the probate examiner's supervisor as meeting the education criteria specified in rule 10.481(b).

(3)–(4) * * *

(e) Hours-based education for court investigators

(1) * * *

(2) A court investigator may fulfill the education requirement in (1) through ~~AOC~~ council-sponsored education, an approved provider (see rule 10.481(a)), or education approved by the court executive officer or the court investigator's supervisor as meeting the education criteria specified in rule 10.481(b).

(3)–(4) * * *

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(f) Hours-based education for probate attorneys

(1) * * *

(2) A probate attorney may fulfill the education requirement in (1) through ~~AOC~~ council-sponsored education, an approved provider (see rule 10.481(a)), or education approved by the court executive officer or the probate attorney's supervisor as meeting the education criteria specified in rule 10.481(b).

(3)–(4) * * *

(g) Hours-based education for probate examiners

(1) * * *

(2) A probate examiner may fulfill the education requirement in (1) through ~~AOC~~ council-sponsored education, an approved provider (see rule 10.481(a)), or education approved by the court executive officer or the probate examiner's supervisor as meeting the education criteria specified in rule 10.481(b).

(3)–(4) * * *

(h) * * *

(i) Record keeping and reporting

(1) * * *

(2) ~~The AOC~~ Judicial Council staff may require courts to report participation by court investigators, probate attorneys, and probate examiners in the education required by this rule as necessary to ensure compliance with Probate Code section 1456.

Rule 10.481. Approved providers; approved course criteria

(a) Approved providers

The ~~Administrative Office of the Courts'~~ Judicial Council's ~~Education Division/~~Center for Judicial Education and Research (CJER) is responsible for maintaining a current list of approved providers. The list of approved providers must include the ~~Administrative Office of the Courts~~ Judicial Council, the California Judges Association, and all California state courts and should include other reputable national and state organizations that regularly offer education directed to justices, judges, and court personnel. The director of ~~the Education Division/~~CJER may add or remove organizations from the list of approved

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providers as appropriate according to these criteria. Any education program offered by any of the approved providers that is relevant to the work of the courts or enhances the individual participant's ability to perform his or her job may be applied toward the education requirements and expectations stated in rules 10.461–10.479, except for the requirements stated in rules 10.461(b), 10.462(c), and 10.473(b), for which specific providers are required.

(b) * * *

Advisory Committee Comment

Subdivision (b). The director of ~~the Education Division/~~CJER is available to assist those authorized to approve a request to apply education offered by a non-approved provider in determining whether the education meets the listed criteria.

Rule 10.491. Minimum education requirements for ~~Administrative Office of the Courts~~ Judicial Council executives, managers, supervisors, and other employees

(a) Applicability

All ~~Administrative Office of the Courts (AOC)~~ Judicial Council executives, managers, supervisors, and other employees must complete these minimum education requirements.

(b) Content-based requirements

(1) Each new manager or supervisor must complete the ~~AOC's~~ New Manager/Supervisor Orientation within six months of being hired or assigned as a manager or supervisor.

(2) Each new employee, including each new manager or supervisor, must complete ~~the AOC's~~ New Employee Orientation within six months of being hired and should complete it as soon as possible after being hired.

(3) The Administrative Director ~~of the Courts~~ may require new managers, supervisors, and other employees to complete specific ~~AOC~~ compliance courses in addition to the required orientation courses.

(c) Hours-based requirements

(1)–(5) * * *

(6) Each hour of participation in traditional (live, face-to-face) education; distance education such as broadcasts, videoconference courses, and online coursework; and faculty service counts toward the requirement on an hour-for-hour basis. The Administrative Director ~~of the Courts~~ or an executive,

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manager, or supervisor, if delegated by the Administrative Director, has discretion to determine the number of hours, if any, of traditional (live, face-to-face) education required to meet the continuing education requirement.

(7) * * *

(8) The Administrative Director ~~of the Courts~~ may require executives, managers, supervisors, and other employees to complete specific ~~AOC~~ compliance courses as part of the continuing education requirements.

(d) Extension of time

(1) For good cause, the Administrative Director ~~of the Courts~~ or an executive, manager, or supervisor, if delegated by the Administrative Director, may grant a one-year extension of time to complete the education requirements in this rule. If an extension is granted, the subsequent two-year compliance period begins immediately after the extended compliance period ends, unless otherwise determined by the Administrative Director.

(2) * * *

**(e) * * *

(f) Responsibilities of Administrative Director ~~of the Courts~~ and of ~~AOC~~Judicial Council executives, managers, and supervisors

The Administrative Director ~~of the Courts~~ and each ~~AOC~~ Judicial Council executive, manager, and supervisor:

(1)–(3) * * *

(4) Must ensure that executives, managers, supervisors, and other employees are reimbursed ~~by the AOC~~ in accordance with the travel policies issued by the ~~Administrative Office of the Courts~~ Judicial Council for travel expenses incurred in attending in-state education programs as a participant in order to complete the minimum education requirements in (b)–(c). Provisions for these expenses must be part of the ~~AOC's~~ Judicial Council's budget. The Administrative Director ~~of the Courts~~ may approve reimbursement of travel expenses incurred by executives, managers, supervisors, and other employees in attending out-of-state education programs as participants.

Rule 10.500. Public access to judicial administrative records

(a)–(b) * * *

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(c) Definitions

As used in this rule:

(1)–(2) * * *

(3) "Judicial branch entity" means the Supreme Court, each Court of Appeal, each superior court, and the Judicial Council~~, and the Administrative Office of the Courts~~.

(4)–(6) * * *

(d) * * *

(e) Public access

(1) * * *

(2) *Examples*

Judicial administrative records subject to inspection and copying unless exempt from disclosure under subdivision (f) include, but are not limited to, the following:

(A) Budget information submitted to the ~~Administrative Office of the Courts~~ Judicial Council after enactment of the annual Budget Act;

(B)–(F) * * *

(3)–(12) * * *

(f)–(i) * * *

(j) Public access disputes

(1) Unless the petitioner elects to proceed under (2) below, disputes and appeals of decisions with respect to disputes with the Judicial Council~~, Administrative Office of the Courts,~~ or a superior court regarding access to budget and management information required to be maintained under rule 10.501 are subject to the process described in rule 10.803.

(2)–(6) * * *

Advisory Committee Comment

Subdivision (a). * * *

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Subdivisions (b)(1) and (b)(2). * * *

Subdivision (c)(2). * * *

Subdivision (e)(4). * * *

Subdivision (f)(3).* * *

Subdivision (f)(10). * * *

Subdivision (f)(11). * * *

Subdivision (j)(1). Under current rule 10.803 a petitioner may file a writ in a superior court regarding a dispute with a superior court or the ~~Administrative Office of the Courts~~ Judicial Council with respect to disclosure of records and information required to be maintained under current rule 10.802. The writ petition must be heard on an expedited basis and includes a right to an appeal. The statutory authority for the hearing process set forth in current rule 10.803, Government Code section 71675(b), does not extend this procedure to other disputes with respect to public access. The rule provides that petitioners with a dispute with any other judicial branch entity, or with respect to records that are not required to be maintained under rule 10.802, may follow the procedure set forth in (j)(2) through (j)(6), which is equivalent to the dispute resolution procedure of the California Public Records Act. A petitioner eligible for the dispute resolution process set out in current rule 10.803 may also elect to proceed with his or her dispute under the procedure set forth in (j)(2) through (j)(6).

Rule 10.501. Maintenance of budget and management information

(a) Maintenance of information by the superior court

Each superior court must maintain for a period of three years from the close of the fiscal year to which the following relate:

(1) Official documents of the superior court pertaining to the approved superior court budget allocation adopted by the Judicial Council and actual final year-end superior court revenue and expenditure reports as required in budget procedures issued by ~~the Administrative Office of the Courts~~ Judicial Council staff to be maintained or reported to the council, including budget allocation, revenue, and expenditure reports;

(2)–(3) * * *

(b) Maintenance of information by ~~the Administrative Office of the Courts~~ Judicial Council staff

~~The Administrative Office of the Courts~~ Judicial Council staff must maintain for a period of three years from the close of the fiscal year to which the following relate:

(1) * * *

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(2) Actual final year-end superior court revenue and expenditure reports required by budget procedures issued by ~~the Administrative Office of the Courts~~ Judicial Council staff to be maintained or reported to the council that are received from the courts, including budget revenues and expenditures for each superior court;

(3)–(4) * * *

Rule 10.502. Judicial sabbatical pilot program

(a)–(b) * * *

(c) Application

(1) An eligible judge may apply for a sabbatical by submitting a sabbatical proposal to the Administrative Director ~~of the Courts~~ with a copy to the presiding judge or justice.

(2) * * *

(d) Judicial Sabbatical Review Committee

A Judicial Sabbatical Review Committee will be appointed to make recommendations to the Judicial Council regarding sabbatical requests.

(1) * * *

(2) *Staffing*

The committee will be staffed by the Judicial Council's Human Resources ~~Division~~ office ~~of the Administrative Office of the Courts~~ and may elect its chair and vice-chair.

(e) Evaluation

(1) The Administrative Director ~~of the Courts~~ must forward all sabbatical requests that comply with (c) to the Judicial Sabbatical Review Committee.

(2)–(3) * * *

(f)–(j) * * *

Rule 10.601. Superior court management

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(a) * * *

(b) Goals

The rules in this division are intended to ensure the authority and responsibility of the superior courts to do the following, consistent with statutes, rules of court, and standards of judicial administration:

(1)–(4) * * *

(5) Provide input to the Judicial Council, the Trial Court Budget ~~Working Group~~ Advisory Committee, and ~~the Administrative Office of the Courts~~ Judicial Council on the trial court budget process; and

(6) * * *

(c) * * *

Rule 10.630. Reporting of reciprocal assignment orders

A "reciprocal assignment order" is an order issued by the Chief Justice that permits judges in courts of different counties to serve in each other's courts. A court must report to ~~the Administrative Office of the Courts~~ Judicial Council staff, on a monthly basis, each assignment of a judge from another county to its court under a reciprocal assignment order.

Rule 10.660. Enforcement of agreements—petitions (Gov. Code, §§ 71639.5, 71825.2)

(a) * * *

(b) Assignment of Court of Appeal justice to hear the petition

(1) * * *

(2) When the petition is filed, the clerk of the court must immediately request of the Judicial Council's ~~Judicial Assignments Unit~~ Assigned Judges Program ~~of the Administrative Office of the Courts~~ the assignment of a hearing judge from the panel established under (e).

(3) * * *

(c)–(e) * * *

Rule 10.670. Trial court personnel plans

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(a)–(d) * * *

(e) Submission of personnel plans

The superior court of each county must submit to the Judicial Council a personnel plan in compliance with these provisions by March 1, 1999. The superior court of each county must submit to the Judicial Council any changes to this plan by March 1 of every following year. If requested by a superior court, ~~the Administrative Office of the Courts~~ Judicial Council staff must review the court's personnel plan and provide the court with technical assistance in preparing the plan.

Rule 10.742. Use of attorneys as court-appointed temporary judges

(a)–(b) * * *

(c) Record and report of uses

Each trial court that uses attorneys as temporary judges must record and report to ~~the Administrative Office of the Courts~~ Judicial Council staff on a quarterly basis information concerning its use of them. The report must state:

(1)–(3) * * *

Rule 10.761. Regional Court Interpreter Employment Relations Committees

(a) * * *

(b) Membership

(1)–(3) * * *

(4) Each Regional Court Interpreter Employment Relations Committee may appoint a chief negotiator to bargain with recognized employee organizations. The chief negotiator may be Judicial Council staff ~~of the Administrative Office of the Courts~~.

(5) * * *

(c)–(d) * * *

(e) ~~Administrative Office of the Courts~~ Judicial Council staff

~~The~~ Judicial Council staff ~~of the Administrative Office of the Courts~~ will assist each Regional Court Interpreter Employment Relations Committee in performing its functions.

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Rule 10.762. Cross-assignments for court interpreter employees

(a) * * *

(b) Definitions

As used in this rule:

(1)–(3) * * *

(4) "Regional court interpreter coordinator" means ~~an~~ a Judicial Council employee ~~of the Administrative Office of the Courts~~ whose duty it is to locate, assign, and schedule available court interpreter employees for courts within and across regions, which are described under Government Code section 71807(a).

(5) * * *

(c) * * *

(d) Payment for cross-assignments

The home court must issue payment to the court interpreter for all cross-assignments, including per diem compensation and mileage reimbursement. ~~The Administrative Office of the Courts~~ Judicial Council staff will administer funding to the home court for payments associated with cross-assignments.

(e)–(f) * * *

Rule 10.776. Definitions

As used in the rules in this chapter, the following terms have the meanings stated below:

(1)–(4) * * *

(5) An "accredited educational institution" is a college or university, including a community or junior college, accredited by a regional accrediting organization recognized by the Council for Higher Education Accreditation~~; and~~.

~~(6) "AOC" is the Administrative Office of the Courts.~~

Rule 10.777. Qualifications of court investigators, probate attorneys, and probate examiners

(a)–(e) * * *

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(f) Record keeping and reporting

The ~~AOC~~ Judicial Council may require courts to report on the qualifications of the court investigators, probate attorneys, or probate examiners hired or under contract under this rule, and on waivers made under (e), as necessary to ensure compliance with Probate Code section 1456.

Rule 10.781. Court-related ADR neutrals

(a) Qualifications of mediators for general civil cases

Each superior court that makes a list of mediators available to litigants in general civil cases or that recommends, selects, appoints, or compensates mediators to mediate any general civil case pending in the court must establish minimum qualifications for the mediators eligible to be included on the court's list or to be recommended, selected, appointed, or compensated by the court. A court that approves the parties' agreement to use a mediator who is selected by the parties and who is not on the court's list of mediators or that memorializes the parties' agreement in a court order has not thereby recommended, selected, or appointed that mediator within the meaning of this rule. In establishing these qualifications, courts are encouraged to consider the Model Qualification Standards for Mediators in Court-Connected Mediation Programs for General Civil Cases issued by the ~~Administrative Office of the Courts~~ Judicial Council staff.

(b)–(d) * * *

Rule 10.782. ADR program information

(a) Report to Judicial Council

Each court must report information on its ADR programs to the Judicial Council, as requested by ~~the Administrative Office of the Courts~~ Judicial Council staff.

(b) * * *

Rule 10.800. Superior court budgeting

(a) * * *

(b) Development of budget requests

Each superior court must prepare and submit to the ~~Administrative Office of the Courts~~ Judicial Council a budget according to the schedule and procedures established by the ~~Judicial~~ council.

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(c) * * *

Rule 10.801. Superior court budget procedures

(a) Adoption of budget procedures by ~~the Administrative Office of the Courts~~ Judicial Council staff

~~The Administrative Office of the Courts~~ Judicial Council staff must adopt superior court budget procedures to be included in the *Trial Court Financial Policies and Procedures Manual*, the annual Baseline Budget Development Package, and the annual *Budget Change Request Package*. These procedures include the following:

(1)–(9) * * *

(b) Technical assistance

~~The Administrative Office of the Courts~~ Judicial Council staff, on request, provide~~s~~ technical assistance and ongoing training in budget development and implementation to the superior courts.

Rule 10.805. Notice of change in court-county relationship

If, under Government Code section 77212, the county gives notice to the superior court that the county will no longer provide a specific county service or the court gives notice to the county that the court will no longer use a specific county service, the court must, within 10 days of receiving or giving such notice, provide a copy of this notice to the Judicial Council's Finance ~~Division~~ office ~~of the Administrative Office of the Courts~~.

Rule 10.811. Reimbursement of costs associated with homicide trials

(a)–(b) * * *

(c) Submission

A request for reimbursement must be submitted by the court's presiding judge or executive officer to ~~the Administrative Office of the Courts~~ Judicial Council staff. All requests for reimbursement must comply with guidelines approved by the Judicial Council and include a completed *Request for Reimbursement of Extraordinary Homicide Trial Costs* form.

Rule 10.815. Fees to be set by the court

(a)–(d) * * *

(e) Reporting requirement

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Each court that charges a fee under this rule must provide ~~the Administrative Office of the Courts~~ Judicial Council staff with a description of the fee, how the amount of the fee was determined, and how the fee is applied.

(f)–(g) * * *

Rule 10.820. Acceptance of credit cards by the superior courts

(a) Delegation of authority to Administrative Director ~~of the Courts~~

The Administrative Director ~~of the Courts~~ is authorized, under rule 10.80, to approve on behalf of the Judicial Council requests from the superior courts to accept credit cards for the payment of court fees or to impose a charge for the use of credit cards. The authority is given to the Judicial Council by Government Code section 6159.

(b) Standards for use of credit cards

The Administrative Director ~~of the Courts~~ is authorized to approve requests under (a) for acceptance of credit cards if all of the following are true:

(1)–(3) * * *

(c) Standards for charge for the use of credit cards

The Administrative Director ~~of the Courts~~ is authorized to approve requests under (a) for the imposition of a charge for the use of credit cards if both of the following are true:

(1)–(2) * * *

(d) Referral to Judicial Council

The Administrative Director ~~of the Courts~~ may refer any request under (a) to the Judicial Council for its action.

(e) * * *

Rule 10.830. Disposal of surplus court personal property

(a) * * *

(b) Exception for disposal of technology equipment acquired on or after July 1, 2000

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A superior court that wishes to dispose of surplus technology equipment to which the court acquired title on or after July 1, 2000 must provide a written description of such technology equipment to the Administrative Director ~~of the Courts~~. If, within 60 days of receipt of the description, the Administrative Director determines that another court of record of the State of California is in need of the surplus technology equipment, the court holding title to the equipment must donate it to the court determined to be in need. If the Administrative Director determines that no other court needs the equipment or makes no determination within 60 days of receiving the written description of it, the court holding title to the equipment may dispose of it as provided in (a), (c), and (d). The Administrative Director must provide to the courts a definition of the term "technology equipment" as used in this rule and must provide 30 days' notice of any amendment to the definition.

(c)–(d) * * *

Rule 10.854. Standards and guidelines for trial court records

(a) The standards and guidelines

~~The Administrative Office of the Courts~~ Judicial Council staff, in collaboration with trial court presiding judges and court executives, must prepare, maintain, and distribute a manual providing standards and guidelines for the creation, maintenance, and retention of trial court records (the *Trial Court Records Manual*), consistent with the Government Code and the rules of court and policies adopted by the Judicial Council. The manual should assist the courts and the public to have complete, accurate, efficient, and accessible court records. Before the manual is issued, it must be made available for comment from the trial courts.

(b) * * *

(c) Updating the manual

~~The Administrative Office of the Courts~~ Judicial Council staff, in collaboration with trial court presiding judges and court executives, must periodically update the *Trial Court Records Manual* to reflect changes in technology that affect the creation, maintenance, and retention of court records. Except for technical changes, corrections, or minor substantive changes not likely to create controversy, proposed changes in the manual must be made available for comment from the courts before the manual is updated or changed. Courts must be notified of any changes in the standards or guidelines, including all those relating to the permanent retention of records.

(d) * * *

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Rule 10.870. Trial court automation standards

Each superior court that acquires, develops, enhances, or maintains automated accounting or case management systems through funding provided under Government Code section 68090.8 must comply with the standards approved by the Judicial Council. The approved standards are stated in *Judicial Council Trial Court Automation Standards* ~~published by the Administrative Office of the Courts~~.

Rule 10.960. Court self-help centers

(a)–(e) * * *

(f) Budget and funding

A court must include in its annual budget funding necessary for operation of its self-help center. In analyzing and making recommendations on the allocation of funding for a court self-help center, ~~the~~ ~~Administrative Office of the Courts~~ Judicial Council staff will consider the degree to which individual courts have been successful in meeting the guidelines and procedures for the operation of the self-help center.

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Standards 5.40, 5.45, 10.10, 10.11, 10.15, 10.16, and 10.80 of the Standards of Judicial Administration are amended, effective January 1, 2016, to read:

Standard 5.40. Juvenile court matters

(a)–(h)* * *

Advisory Committee Comment

Subdivision (a). * * *

Subdivision (b)(2). * * *

Subdivision (c)(4). * * *

Subdivision (d)(4). Juvenile court law is a specialized area of the law that requires dedication and study. The juvenile court judge has a responsibility to maintain high quality in the practice of law in the juvenile court. The quality of representation in the juvenile court depends in good part on the education of the lawyers who appear there. In order to make certain that all parties receive adequate representation, it is important that attorneys have adequate training before they begin practice in juvenile court and on a continuing basis thereafter. The presiding judge of the juvenile court should mandate such training for all court-appointed attorneys and urge leaders of public law offices to provide at least comparable training for attorneys assigned to juvenile court.

A minimum of six hours of continuing legal education is suggested; more hours are recommended. Education methods can include lectures and tapes that meet the legal education requirements.

In addition to basic legal training in juvenile dependency and delinquency law, evidentiary issues, and effective trial practice techniques, training should also include important related issues, including child development, alternative resources for families, effects and treatment of substance abuse, domestic violence, abuse, neglect, modification and enforcement of all court orders, dependency, delinquency, guardianships, conservatorships, interviewing children, and emancipation. Education may also include observational experience such as site visits to institutions and operations critical to the juvenile court.

A significant barrier to the establishment and maintenance of well-trained attorneys is a lack of educational materials relating to juvenile court practice. Law libraries, law offices, and court systems traditionally do not devote adequate resources to the purchase of such educational materials.

Effective January 1, 1993, guidelines and training material will be available from ~~the Administrative Office of the Courts~~ Judicial Council staff.

Subdivision (e)(11). * * *

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Standard 5.45. Resource guidelines for child abuse and neglect cases

(a) * * *

(b) Distribution of guidelines

~~The Administrative Office of the Courts~~ Judicial Council staff will distribute a copy of the resource guidelines to each juvenile court and will provide individual copies to judicial officers and court administrators on written request.

Advisory Committee Comment

Child abuse and neglect cases impose a special obligation on juvenile court judges to oversee case progress. Case oversight includes monitoring the agency's fulfillment of its responsibilities and parental cooperation with the case plan. Court involvement in child welfare cases occurs simultaneously with agency efforts to assist the family. Federal and state legal mandates assign to the juvenile court a series of interrelated and complex decisions that shape the course of state intervention and determine the future of the child and family.

Unlike almost all other types of cases in the court system, child abuse and neglect cases deal with an ongoing and changing situation. In a child welfare case, the court must focus on agency casework and parental behavior over an extended period of time. In making a decision, the court must take into account the agency's plan to help the family and anticipated changes in parental behavior. At the same time, the court must consider the evolving circumstances and needs of each child.

The purpose of these resource guidelines is to specify the essential elements of properly conducted court hearings. The guidelines describe the requirements of juvenile courts in fulfilling their oversight role under federal and state laws, and they specify the necessary elements of a fair, thorough, and speedy court process in child abuse and neglect cases. The guidelines cover all stages of the court process, from the initial removal hearing to the end of juvenile court involvement. These guidelines assume that the court will remain involved until after the child has been safely returned home, has been placed in another permanent home, or has reached adulthood.

Currently, juvenile courts in California operate under the same juvenile court law and rules, and yet the rules are implemented with considerable variation throughout the state. In part, this is due to the lack of resource guidelines. The adoption of the proposed resource guidelines will help encourage more consistent juvenile court procedures in the state.

The guidelines are meant to be goals, and, as such, some of them may appear out of reach because of fiscal constraints or lack of judicial and staff resources. The Judicial Council Family

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and Juvenile Law Advisory Committee and Judicial Council staff ~~of the Administrative Office of the Courts~~ are committed to providing technical assistance to each juvenile court to aid in implementing these goals.

Standard 10.10. Judicial branch education

(a) Purpose

Judicial branch education for all trial and appellate judicial officers and court employees is essential to improving the fair, effective, and efficient administration of justice. Judicial branch education is acknowledged as a vital component in achieving the goals of the Judicial Council's Long-Range Strategic Plan, including access and fairness, branch independence, modernization, and quality of justice. The Judicial Council has charged the Governing Committee of the Center for Judicial Education and Research (CJER), an advisory committee to the council, with developing and maintaining a comprehensive and quality education program on behalf of the Judicial Council for the California judicial branch.

(b)–(c) * * *

(d) Elements of comprehensive education program

The Governing Committee of CJER is responsible for developing and maintaining a comprehensive and quality education program for the judicial branch. This program is to be implemented by CJER ~~as the Education Division of the Administrative Office of the Courts~~. The program should be designed to meet the educational needs and requirements of judicial officers and court employees as stated in standards 10.11 and 10.15 and should include the following elements:

(1)–(10) * * *

Standard 10.11. General judicial education standards

(a)–(i) * * *

Advisory Committee Comment

Subdivision (a). This provision recognizes that judicial officers must develop, maintain, and improve their professional competence by participating in judicial orientation and training programs when they first assume their judicial positions, and thereafter in continuing education programs throughout their judicial careers.

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The judiciary will assess its own educational needs and establish appropriate programs and tools for meeting those needs. Various judicial organizations in this state, such as the ~~Administrative Office of the Courts~~ Judicial Council, the California Judges Association, and the Center for Judicial Education and Research, provide judicial officers with comprehensive educational opportunities in all areas of their judicial responsibilities. These organizations typically use experienced judicial officers to plan, conduct, oversee, and evaluate the effectiveness of their programs. Judicial officers determine all aspects of the programs offered by the California Judges Association. The Center for Judicial Education and Research is governed by an 11-member governing committee appointed by the Chief Justice of California as Chair of the Judicial Council. Four of the judicial members are nominated by the California Judges Association and four are appointed on behalf of the Judicial Council; three court administrator members are appointed on behalf of the Judicial Council. Subject to the Judicial Council's authority, the committee is responsible for determining matters relating to the center's judicial branch education policies and for making recommendations to the Judicial Council for action. The center's educational activities are planned, conducted, and overseen by a broad base of judicial officers and administrators serving on planning committees under the governing committee's supervision.

Subdivision (b). * * *

Subdivision (d). * * *

Subdivision (g). * * *.

Standard 10.15. General court employee education standards

(a) * * *

(b) Responsibilities of executive and administrative officers

Executive and administrative officers should develop, as a part of the annual budget process for their courts, annual education plans that facilitate employees' participation as both students and faculty in judicial branch education programs, as prescribed by this standard. The plans may designate, either locally or regionally, a training specialist to coordinate the implementation of the plans. The plans should include methods of measuring the effectiveness of education programs. A copy of the locally developed education plans should be forwarded to the Center for Judicial Education and Research (CJER), which will serve as a depository.

(c) * * *

(d) Executive and administrative officer education

(1)–(4) * * *

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(5) Executive and administrative officers should make training available to their employees on a local or regional level. This training should include an orientation program for all new employees on the background, history, and structure of the judicial branch, including the Judicial Council ~~and the Administrative Office of the Courts~~.

(6) * * *

(e)–(j) * * *

Standard 10.16. Model code of ethics for court employees

Each trial and appellate court should adopt a code of ethical behavior for its support staff, and in doing so should consider rule 10.670(c)(12) of the California Rules of Court, and the model Code of Ethics for the Court Employees of California approved by the Judicial Council on May 17, 1994, and any subsequent revisions. The approved model code is published by the ~~Administrative Office of the Courts~~ Judicial Council.

Standard 10.80. Court records management standards

Each court should develop records management practices consistent with the standards approved by the Judicial Council. The approved standards are specified in Judicial Council Court Records Management Standards, published by the ~~Administrative Office of the Courts~~ Judicial Council.

Implementation of these standards, which cover creation, use, maintenance, and destruction of records, should lead to more efficient court administration, better protection and preservation of records, and improved public access to records.

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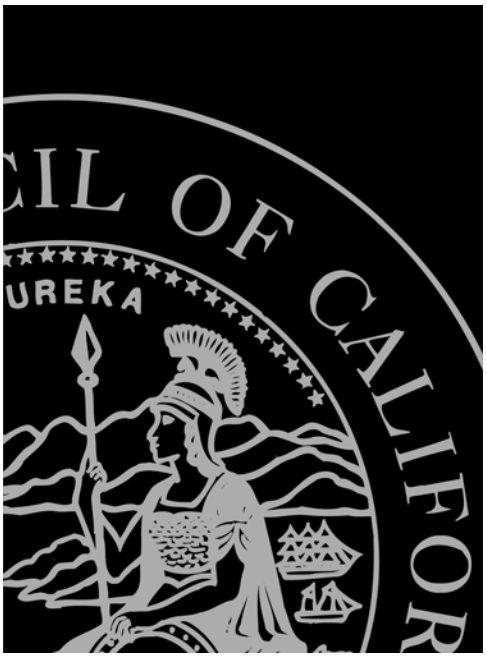

Judicial Council Governance Policies

~~JUNE 2008~~ JANUARY 2016

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JUDICIAL COUNCIL
OF CALIFORNIA

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Judicial Council Governance Policies

I. Governance Process

A. The Judicial Council

1.–3. * * *

4. Judicial Branch Goals
The Judicial Council develops judicial branch goals in its strategic and operational plans. At six-year intervals, the council develops and approves a long-range strategic plan. At three-year intervals, the council develops and approves an operational plan for the implementation of the strategic plan. Each plan is developed in consultation with branch stakeholders and justice system partners. The goals and priorities of the council are set forth in the *Justice in Focus: The Strategic Plan for the California's Judicial Branch 2006–2012*:

5. * * *

6. Council Officers and Duties
The Judicial Council has ~~seven~~ eight officers: the Chair, Vice-Chair, Secretary, and the chairs of the council's ~~four~~ five internal committees: Executive and Planning, Litigation Management, Policy Coordination and Liaison, ~~and~~ Rules and Projects, and Judicial Council Technology.

The Chief Justice serves as Chair of the council and performs those functions prescribed by the Constitution and the laws of the State of California. The Chair is a voting member of the council.

The Chief Justice appoints a Vice-Chair from among the judicial members of the council. When the Chair is absent, unable to serve, or so directs, the Vice-Chair performs all of the duties of the Chair.

The Chief Justice appoints a Judicial Council member to serve as chair of the council in the event that both the Chief Justice and the council's Vice-Chair are absent or unable to serve. The Chief Justice determines the individuals to serve as chair from among the internal committee chairs and vice-chairs.

The Chief Justice appoints the chairs and vice-chairs of the council's ~~four~~ five internal committees from among the members of the council. Internal committee chairs are appointed for a one-year term. Committee chairs call meetings, as necessary, and provide reports to the council on the activities of the internal committees. ~~Meetings of the internal committees are closed to the public but may be opened at the chair's discretion.~~

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The Administrative Director ~~of the Courts~~ serves as Secretary to the council and performs administrative and policymaking functions as provided by the Constitution and the laws of the State of California and as delegated by the council and the Chief Justice (see II.B, *infra,* for duties of the Administrative Director). The Secretary is not a voting member of the council.

Together, the Chief Justice and the Administrative Director, on behalf of the Judicial Council and with regard to the budgets of the Supreme Court, the Courts of Appeal, the trial courts, the Judicial Council, the Habeas Corpus Resource Center, and the ~~Administrative Office of the Courts~~ Judicial Council staff, may: (1) make technical changes to the proposed budget, and (2) participate in budget negotiations with the legislative and executive branches consistent with the goals and priorities of the council.

The Chief Justice and the Administrative Director, on behalf of the Judicial Council, also may allocate funding appropriated in the State Budget to the Supreme Court, the Courts of Appeal, the Judicial Council, the Habeas Corpus Resource Center, and the ~~Administrative Office of the Courts~~ Judicial Council staff.

After the end of each fiscal year, the Administrative Director reports to the Judicial Council on actual expenditures in the budgets of the Supreme Court, the Courts of Appeal, the trial courts, the Judicial Council, the Habeas Corpus Resource Center, and the ~~Administrative Office of the Courts~~ Judicial Council staff.

7. * * *

B. Council Internal Committees

The internal committees of the Judicial Council assist the full membership of the council in its responsibilities by providing recommendations in their assigned areas including rules for court administration, practice, and procedure, and by performing duties delegated by the council. Internal committees generally work at the same policy level as the council, focusing on the establishment of policies that emphasize long-term strategic leadership and that align with judicial branch goals.

1. Executive and Planning Committee

The Executive and Planning Committee has the following functions and makes regular reports to the full council on its actions:

a.–e. * * *

f. Developing a schedule of topics about which the council wishes to consider making policy or to receive updates from the Administrative Director or ~~Administrative Office of the Courts~~ Judicial Council staff.

g.–j. * * *

**2.–3. * * *

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4. Litigation Management Committee
The Litigation Management Committee has the following functions and takes the following actions:

a. Overseeing litigation and claims against trial court judges, appellate court justices, the Judicial Council, ~~the Administrative Office of the Courts,~~ the trial and appellate courts, and the employees of those bodies that seek recovery of $100,000 or more, or raise important policy or court operations issues, by: (1) reviewing and approving any proposed settlement, stipulated judgment, or offer of judgment; and (2) consulting with the Administrative Director or ~~General~~ Chief Counsel on important strategy issues. Important policy or court operations issues may include whether to initiate litigation on behalf of a court, when to defend a challenged court practice, or how to resolve disputes where the outcome might have statewide implications.

b. * * *

c. When necessary, resolving written objections to major strategic decisions, such as retention of counsel and proposed settlements, presented by the ~~General~~ Chief Counsel.

C. Council Advisory Bodies

Council advisory bodies are typically advisory committees and task forces. They use the individual and collective experience, opinions, and wisdom of their members to provide policy recommendations and advice to the council on topics the Chief Justice or the council specifies. The council and its internal committees provide direction to the advisory bodies.

Council advisory bodies work at the same policy level as the council, developing recommendations that focus on strategic goals and long-term impacts that align with judicial branch goals.

Council advisory bodies generally do not implement policy. The council may, however, assign policy-implementation and programmatic responsibilities to an advisory body and may request it make recommendations to staff on implementation of council policy or programs.

Council advisory bodies do not speak or act for the council except when formally given such authority for specific and time-limited purposes.

Council advisory bodies, through staff, are responsible for gathering stakeholder perspectives on policy recommendations they plan to present to the council.

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The Chief Justice assigns oversight of each council advisory body to an internal committee. The council gives a general charge to each advisory body specifying the body's subject matter jurisdiction.

1. Council Advisory Committees

a.–b. * * *

c. Advisory committees have limited discretion to pursue matters in addition to those specified by the council in each committee's annual charge, as long as the matters are consistent with a committee's general charge, within the limits of resources available to the committee, and within any other limits specified by the council, the designated internal committee, or the Administrative Director ~~of the Courts~~.

d.–e. * * *

f. Staff report to the Administrative Director ~~of the Courts~~. Decisions or instructions of an advisory body or its leader are not binding on the staff except in instances when the council or the Administrative Director has specifically authorized such exercise of authority.

2. Council Task Forces and Other Advisory Bodies

The Chief Justice, Judicial Council, or the Administrative Director ~~of the Courts~~ may establish task forces and other advisory bodies to work on specific projects that cannot be addressed by the council's standing advisory committees. These task forces and other advisory bodies may be required to report to one of the council's internal committees or the Administrative Director, as designated in the charge.

II. Council-Staff Relationship

A. Unity of Control

1. The Judicial Council appoints an Administrative Director ~~of the Courts~~ who serves at the pleasure of the council and performs functions prescribed by the California Constitution and delegated by the council and the Chief Justice. Adopting rules of court administration, practice, and procedure is not delegated to the Administrative Director.

2. * * *

3. The Administrative Director, under the supervision of the Chief Justice, employs, organizes, and directs a staff agency~~, known as the Administrative Office of the Courts~~. The ~~Administrative Office of the Courts~~ Judicial Council staff assists the

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council and its Chair in carrying out their duties under the Constitution and laws of the State of California.

4. The Administrative Director is responsible for staff performance and has sole authority to assign, supervise, and direct staff. The Administrative Director is responsible for ensuring the completeness and quality of reports and other work product presented to the council. Council members may from time to time request information or assistance from staff, unless in the Director's opinion such requests require an unreasonable amount of staff time or become disruptive. Council members and advisory body members may individually provide information to the Administrative Director on the performance of the Judicial Council staff ~~and the Administrative Office of the Courts~~.

The Administrative Director is responsible for allocating financial and other resources of the ~~Administrative Office of the Courts~~ Judicial Council staff to achieve the goals of the Judicial Council and to implement the council's policies.

B. Relationship of the Administrative Director to the Council's Internal Committees and Advisory Bodies

* * *.

C. Accountability of the Administrative Director

The Administrative Director is accountable to the council and the Chair for the performance of the ~~Administrative Office of the Courts~~ Judicial Council staff. The Administrative Director's charge is to accomplish the council's goals and priorities, while avoiding the use of illegal, imprudent, or unethical means.

The Administrative Director reports to the Judicial Council at least once annually on the progress made toward achieving the council's goals. When the council sets the direction on projects or programs that require more than one year to complete, the Administrative Director will report back to the council at regular intervals on status and significant developments.

D. Delegation to the Administrative Director

The Administrative Director may use any reasonable interpretation of Judicial Council policies to achieve the council's goals, consistent with the limitations from the council and the Chief Justice.

In carrying out these duties, the Administrative Director is responsible for allocating the financial and other resources of the ~~Administrative Office of the Courts~~ Judicial Council staff (including, for example, funding the operation of advisory bodies and other activities) to achieve the branch goals and policies adopted by the Judicial Council of California.

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Appendix F of the California Rules of Court would be amended, effective January 1, 2016, to read:

Appendix F

Guidelines for the Juvenile Dependency Counsel Collections Program

1–4 * * *

5. Determination of Cost of Legal Services

The court is charged with determining the cost of dependency-related legal services. In doing so, the court may adopt one of the three methods in (a)–(c). In no event will the court seek reimbursement of an amount that exceeds the actual cost of legal services already provided to the children and the responsible person in the proceeding. The court may update its determination of the cost of legal services on an annual basis, on the conclusion of the dependency proceedings in the juvenile court, or on the cessation of representation of the child or responsible person.

(a) * * *

(b) Cost Model

The court may determine the cost of legal services provided to a child or responsible person in a dependency proceeding by applying the Uniform Regional Cost Model available on ~~*serranus.jud.ca.gov*~~ *serranus.courtinfo.ca.gov* or from *jdccp@jud.ca.gov*. Use of the cost model as described in this section will ensure that the court seeks reimbursement of an amount that most closely approximates, but does not exceed, the actual cost incurred by the court.

(c) * * *

6–9 * * *

10. Collection Services

(a) * * *

(b) Outside Collection Services Providers

When appropriate and consistent with policy FIN 10.01, a court may use an outside collection services provider.

(1) *Collection Services Provided by County*

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If collection services are provided by the county, the agreement should be formalized by a memorandum of understanding (MOU) between the court and county. ~~AOC~~ Judicial Council staff will provide a sample MOU on request. An electronic copy of the MOU, including a scanned copy of the completed signature page, must be sent to jdccp@jud.ca.gov.

(2) *Collection Services Provided by Private Vendor*

A court that uses a private collection service should use a vendor that has entered into a master agreement with the ~~AOC~~ Judicial Council to provide comprehensive collection services. A court that uses such a vendor should complete a participation agreement and send it to ~~the~~ ~~AOC~~ Judicial Council staff via e-mail to jdccp@jud.ca.gov.

(3) *Court Option for ~~AOC~~ Judicial Council Agreement with Collection Services Provider*

At a court's request, the ~~AOC~~ Judicial Council may directly enter into an MOU with the county or an agreement with a private collection services vendor for dependency counsel reimbursement collection services.

11. * * *

12. Remittance and Reporting of Collected Revenue

Courts will remit collected revenue to the ~~AOC~~ Judicial Council, less costs recoverable under section 903.47(a)(1)(B), in the same manner as required under Government Code section 68085.1 and will report this revenue on row 130 of *Court Remittance Advice* (form TC-145). The ~~AOC~~ Judicial Council will deposit the revenue received under these guidelines into the Trial Court Trust Fund.

(a) ~~AOC~~ Judicial Council Collections Agreement Option

Where the ~~AOC~~ Judicial Council has entered into an MOU or agreement with a county or a private collection services vendor under section 10(b)(3) of these guidelines, funds will be remitted directly to the ~~AOC~~ Judicial Council under the terms of the MOU or the agreement.

13. Program Data Reporting

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Each court should report collections program data to ~~the AOC~~ Judicial Council staff to ensure implementation of the Legislature's intent by determining the cost-effectiveness of the program and confirming that efforts to collect reimbursement do not negatively impact reunification; to provide a basis for projecting the amount of future reimbursements; and to evaluate the effectiveness of the reimbursement program at both statewide and local levels.

(a) * * *

14. Technical Assistance

~~AOC staff to the~~ Judicial Council staff will provide technical assistance on request to courts that do not yet have a dependency counsel reimbursement program in place or that wish to coordinate with other courts in establishing a regional reimbursement program. Courts may send requests by e-mail to jdccp@jud.ca.gov to receive technical assistance, which can include (but is not limited to) services such as:

(a)–(c) * * *

(d) Working with current collection services providers who have entered into master agreements with the ~~AOC~~ Judicial Council to ensure compliance with the JDCCP reporting requirements.

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ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: *(To be completed only if a party is making the motion)* NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*Name*):	***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:

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

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

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.

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

Date: _____

_____
JUDICIAL OFFICER

DRAFT

Form Adopted for Mandatory Use
Judicial Council of California
MC-700 [Rev. January 1, 2016]

Code of Civil Procedure, § 391,7
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.: E-MAIL ADDRESS: ATTORNEY FOR (*Name*):	***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:	
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:

Case Name:

Case Number:

Date prefiling order entered:

Court:

Case Name:

Case Number:

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
455 Golden Gate Avenue
San Francisco, California 94102-3688

DRAFT

SPR15-33

Judicial Branch Administration: Changes to Replace the Names "Administrative Office of the Courts" and "AOC"

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

	Commentator	Position	Comment	Committee Response
1.	Superior Court of Riverside County	A	No specific comment.	No response necessary.
2.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	No additional comments.	No response necessary.

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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: October 27, 2015

Title
Judicial Administration: Public Access to Administrative Decisions of Trial Courts

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Ct., rule 10.620

Recommended by
Trial Court Presiding Judges Advisory Committee
Hon. Brian L. McCabe, Chair

Court Executives Advisory Committee
Mr. Richard D. Feldstein, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2016

Date of Report
September 23, 2015

Contact
Claudia Ortega, 415-865-7623
claudia.ortega@jud.ca.gov

Katherine Sher, 415-865-8031
katherine.sher@jud.ca.gov

DRAFT

Executive Summary

The Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee recommend the amendment of California Rules of Court, rule 10.620, to repeal the provisions that apply the rule's requirements for public notice and input to the decisions of trial courts to close court facilities or reduce the hours of a court location, as these provisions are inconsistent with statutory requirements. Amendments to Government Code section 68106, which took effect on January 1, 2012, created new requirements for public notice and comment when trial courts decide to close court facilities or reduce hours. These requirements are inconsistent with the requirements of rule 10.620, and trial courts have faced confusion in determining how notice is to be provided. The recommendations in this report are intended to resolve this confusion, leaving Government Code section 68106 as the sole authority governing decisions to close court facilities or reduce hours.

Recommendation

The Trial Court Presiding Judges Advisory Committee (TCPJAC) and Court Executives Advisory Committee (CEAC) recommend that, effective January 1, 2016, the Judicial Council make the following changes to rule 10.620 of the California Rules of Court:

1. Amend subdivision (b) to update two references to the Administrative Office of the Courts to refer instead to the Administrative Director in one instance and the Judicial Council in the other.

2. Amend subdivision (d) to change the reference to the Administrative Office of the Courts in paragraph (1) to refer instead to Judicial Council staff, and to repeal current paragraph (3), which requires courts to seek public input regarding court closures and reductions in service, and renumber current paragraph (4) as (3).

3. Repeal current paragraph (5) of subdivision (f), which applies the public notice requirements of the rule to court closures or reductions in service, and renumber current paragraph (6) as (5).

4. Add an Advisory Committee Comment noting that the provisions of rule 10.620 do not apply where statutes specify another procedure for giving public notice and allowing public input.

The text of the proposed amended rule is attached at pages 6–7.

Previous Council Action

Rule 10.620 was adopted in 2004 (as rule 6.620) pursuant to Government Code section 68511.6, which requires that the Judicial Council adopt rules providing for public notice and an opportunity to comment on trial court administrative and financial decisions.

Rationale for Recommendation

When rule 10.620 was adopted in 2004, it put in place requirements for public notification and public input regarding trial court administrative decisions, including decisions to close court facilities or to reduce service hours. Government Code section 68106 then took effect in 2010, putting in place specific requirements for public notice and opportunity to comment on decisions to close courtrooms, or to close or reduce the hours of clerks' offices.

Under the previous language of section 68106, subdivision (b), 60 days' advance written public notice was required before closing any courtroom or closing or reducing the hours of a clerk's office. To reconcile the requirements of the statute with those of the rule, some courts used a two-step notice procedure. A first notice would be issued, pursuant to the rule, 15 court days before the decision was made, with public comment invited. Then, pursuant to the statute, another notice would be provided 60 days before the decision was implemented, but no further public comment would be solicited.

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Section 68106 was amended effective January 1, 2012, to add the following requirements: (1) that notice be given "by electronic distribution to individuals who have subscribed to the court's electronic distribution service" (subd. (b)(1)); (2) that the notice include "information on how the public may provide written comments during the 60-day period on the court's plan" (subd. (b)(2)(A)); (3) that the court "review and consider all public comments received" (*ibid.*); and (4) that the court "immediately provide notice to the public" if it changes its plans during the comment period (*ibid.*).

The existing notice requirements of rule 10.620, as applied to court closures and reduction of hours, are inconsistent with these new provisions of section 68106. In particular, rule 10.620 requires that public notice be given at least 15 court days before a decision is made, including a decision to close or significantly reduce the hours of a court location, and that public comment be allowed within that notice period. The rule further requires that a second public notice be given of such closures or service reductions within 15 court days after the action is taken. By contrast, Government Code section 68106 now requires public notice to be provided no less than 60 days before a courtroom is closed or a clerk's office is closed or its hours reduced, with the public comment period running concurrent with the notice period. Courts have continued to struggle with the question of how to provide notice due to the inconsistency of rule 10.620 with the new statutory requirements.

Trial court leaders have conveyed to members of both the TCPJAC and CEAC that the existing inconsistency between the rule and the statute has led to difficulty in determining how to provide notice and an opportunity to comment on court closures or reductions in service. A number of trial courts have asked the Judicial Council's Legal Services office for guidance regarding the notice requirements. Other courts, unaware of the statutory changes and resulting conflict, have mistakenly followed the now superseded requirements of the rule rather than the new statutory requirements.

With the repeal of current subdivisions (d)(3) and (f)(5), rule 10.620 would no longer apply to notice of court closures or reductions in service. Notice of such decisions would be subject solely to the statutory requirements of Government Code section 68106, eliminating any confusion over how to provide for public notice and comment.

Comments, Alternatives Considered, and Policy Implications

Comments

An invitation to comment on this proposal was circulated for public comment from April 17, 2015 to June 17, 2015. Four comments were received. Two supported the proposed amendments and two supported the amendments but suggested modification.

Both the Superior Court of Riverside County and the State Bar of California's Standing Committee on the Delivery of Legal Services raised issues regarding the language of subdivision (g)(3) as circulated for comment, which required that notices under the rule be posted "within or

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about court facilities" rather than, under the existing language, "at all locations of the court that accept papers for filing." The Riverside court suggested that language be added to the proposed language of (g)(3) such that notice would be required to be posted "within or about court facilities that are open to the public."

The State Bar Standing Committee on the Delivery of Legal Services (SCDLS) elaborated further on the issues raised by the proposed change to subdivision (g)(3). SCDLS noted that the existing requirements for posting notice are more likely to result in notices being seen by self-represented litigants, as those litigants must at times come to those locations to file their documents. SCDLS further commented that these self-represented litigants are the people who will be hit hardest if they do not get notice of a reduction in service or a court closure, as they may have to take multiple days off work to file court documents. SCDLS also noted that the existing language of subdivision (g)(3) does not conflict with Government Code section 68106, so no change is necessary.

The TCPJAC and CEAC, upon consideration of these comments, recommend that the change to subdivision (g)(3) of rule 10.620 that circulated for comment be dropped from the proposed amendments. The TCPJAC and CEAC agree with SCDLS that the existing language of section (g)(3) better ensures that litigants, including self-represented litigants, will receive notice of a trial court's proposed and completed administrative decisions. The TCPJAC and CEAC also note that if the remaining proposed changes to rule 10.620 are adopted, the rule will no longer apply to the posting of notice of the decisions covered under Government Code section 68106. The requirements for posting public notice for administrative decisions governed by the rule therefore need not be identical to the Government Code requirements for posting of notice of court closures or service reductions.

TCPJAC and CEAC therefore recommend that the rule be amended as originally proposed except that subdivision (g)(3) should remain unchanged.

Alternatives considered

The committees considered amending the rule to conform the notice and comment requirements regarding court closures and service reductions to the requirements of Government Code section 68106. The committees concluded that such an amendment would require significant revision of the rule to leave existing notice and comment requirements in place for the other types of decisions covered under the rule while creating new, specially applicable provisions for court closures and service reductions. The end result, however, would be the same as is accomplished by the simpler alternative of repealing subdivisions (d)(3) and (f)(5). Moreover, rewriting the rule to conform to the statute runs the risk of the statute once again being amended, leaving courts facing inconsistent requirements yet again.

Implementation Requirements, Costs, and Operational Impacts

The repeal of subdivisions (d)(3) and (f)(5) should have a positive operational impact on the trial courts, as they will no longer face conflicting requirements for public notice and comment

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regarding court closures and service reductions. There is a potential cost savings as courts will no longer have to give the two-step notification previously required to comply with both the statute and the rule.

Attachments

1. Cal. Rules of Court, rule 10.620, at pages 6–7.
2. Chart of comments, at pages 8–11.

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Rule 10.620 of the California Rules of Court is amended, effective January 1, 2016, to read:

Rule 10.620. Public access to administrative decisions of trial courts

(a) * * *

(b) Budget priorities

The Administrative ~~Office of the Courts~~ Director may request, on 30 court days' notice, recommendations from the trial courts concerning judicial branch budget priorities. The notice must state that if a trial court is to make recommendations, the trial court must also give notice, as provided in (g), that interested members of the public may send input to the ~~Administrative Office of the Courts~~ Judicial Council.

(c) * * *

(d) Other decisions requiring public input

Each trial court must seek input from the public, as provided in (e), before making the following decisions:

(1) A request for permission from ~~the Administrative Office of the Courts~~ Judicial Council staff to reallocate budget funds from one program component to another in an amount greater than $400,000 or 10 percent of the total trial court budget, whichever is greater.

(2) The execution of a contract without competitive bidding in an amount greater than $400,000 or 10 percent of the total trial court budget, whichever is greater. This subdivision does not apply to a contract entered into between a court and a county that is provided for by statute.

(3) ~~The planned, permanent closure of any court location for an entire day or for more than one-third of the hours the court location was previously open for either court sessions or filing of papers. As used in this subdivision, planned closure does not include closure of a location on a temporary basis for reasons including holidays, illness, or other unforeseen lack of personnel, or public safety.~~

~~(4)~~ The cessation of any of the following services at a court location:

(A) The Family Law Facilitator; or

(B) The Family Law Information Center.

(e) * * *

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(f) Information about other trial court administrative matters

A trial court must provide notice, not later than 15 court days after the event, of the following:

(1)–(4) * * *

(5) ~~A significant permanent decrease in the number of hours that a court location is open during any day for either court sessions or filing of papers, except those governed by (d)(3). As used in this paragraph, a significant decrease does not include a decrease in response to an emergency need to close a location on a temporary basis for reasons including illness or other unforeseen lack of personnel or public safety.~~

~~(6)~~ The action taken on any item for which input from the public was required under (d). The notice must show the person or persons who made the decision and a summary of the written and e-mail input received.

(g)–(k) * * *

Advisory Committee Comment

The procedures required under this rule do not apply where statutes specify another procedure for giving public notice and allowing public input. (See, e.g., Gov. Code, § 68106 [notice of reduced court services]; *id.*, § 68511.7 [notice of proposed court budget plan].)

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SPR15-30
Trial Court Management: Public Access to Administrative Decisions of Trial Courts (amend rule 10.620)
All comments are verbatim unless indicated by an asterisk (*). List by alpha.

	Commentator	Position	Comment	Committee Response
1.	Superior Court of Riverside County Marita Ford, Public Information Officer	AM	Agree with modification. Suggested change to section (g) *Notice* (3), "Posted within or about court facilities that are open to the public."	The proposed change to rule 10.620, section (g)(3) regarding the locations where notices are to be posted was intended to make the language of the rule consistent with Government Code section 68106 which sets forth the requirements for public notice when a trial court decides to close court facilities or reduce hours. However, two commentators suggest that the proposed new language is not sufficiently specific. TCPJAC and CEAC note that if the remaining proposed changes to rule 10.620 are adopted, the rule will no longer apply to the decisions covered under Government Code section 68106: the Government Code provisions will apply to court closures and reductions in service, and the rule will apply to other administrative decisions of trial courts, such as budget decisions. The requirements for posting public notice for these decisions governed by the rule therefore need not be identical to the Government Code requirements for posting of notice of court closures or service reductions. TCPJAC and CEAC therefore recommend that the rule be amended as proposed except that section (g)(3) should remain unchanged.
2.	Orange County Bar Association Ashleigh Aitken, President	A	Conforms Cal. Rule of Court, Rule 10.620 where inconsistent with Government Code § 68106; statute will be sole authority as to	The commentator's support for the proposal is noted.

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SPR15-30
Trial Court Management: Public Access to Administrative Decisions of Trial Courts (amend rule 10.620)
All comments are verbatim unless indicated by an asterisk (*). List by alpha.

	Commentator	Position	Comment	Committee Response
			notices where applicable. Inconsistency and confusion will be curtailed.	
3.	Superior Court of San Diego County Michael M. Roddy, Court Executive Officer	A	No additional comments.	The commentator's support for the proposal is noted.
4.	State Bar Standing Committee on the Delivery of Legal Services Maria C. Livingston, Chair	AM	*(Agree with proposal if modified)* The bulk of the proposal is necessary to conform to existing law that expands the notice and comment period for court closures and reduction in hours. The proposal improves the opportunity for litigants and other interested parties to comment on how the changes would impact their ability to access the courts. However, the revised language of Rule 10.620(g)(3) is vague. In practice, this new language could result in notices being posted almost anywhere which could mean the stakeholders this proposal was intended to help failing to receive notices of the administrative changes. **Specific Comments** <u>Does the proposal appropriately address the stated purpose?</u> Generally, yes. This proposal is intended to	The proposed change to rule 10.620, section (g)(3) regarding the locations where notices are to be posted was intended to make the language of the rule consistent with Government Code section 68106 which sets forth the requirements for public notice when a trial court decides to close court facilities or reduce hours. However, two commentators suggest that the proposed new language is not sufficiently specific. TCPJAC and CEAC note that if the remaining proposed changes to rule 10.620 are adopted, the rule will no longer apply to the decisions covered under Government Code section 68106: the Government Code provisions will apply to court closures and reductions in service, and the rule will apply to other administrative decisions of trial courts, such as budget decisions. The requirements for posting public notice for these decisions governed by the rule therefore need not be identical to the Government Code requirements for posting of notice of court closures or service reductions. TCPJAC and

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SPR15-30
Trial Court Management: Public Access to Administrative Decisions of Trial Courts (amend rule 10.620)
All comments are verbatim unless indicated by an asterisk (*). List by alpha.

	Commentator	Position	Comment	Committee Response
			bring Cal. Rules of Court, rule 10.620 regarding advance notice of administrative decisions closing courts or limiting their hours and seeking public comment on those changes into conformity with Government Code section 68106. The change is necessary and beneficial to the public, in that Section 68106 provides more time (60 days) for notice and comments than does Rule 10.620 (15 days). However, the proposed change to Rule 10.620(g)(3) may be counter-productive in part. Section 68106 provides that notices must be "Posted within or about court facilities" in addition to the methods of notice provided for in Rule 10.620(g)(1) and (2). Rule 10.620(g)(3) currently reads that all such notices must be "Posted at all locations of the court that accept papers for filing." SCDLS does not feel that the existing language of Rule 10.620(g)(3) conflicts with Section 68106, so no change to the rule is required. Moreover, compliance with the existing rule seems more likely to result in notices actually being seen by self-represented litigants if the notices are posted where they will file documents. SCDLS also notes that low and moderate income self-represented litigants may be hardest hit by these	CEAC therefore recommend that the rule be amended as proposed except that section (g)(3) should remain unchanged.

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SPR15-30

Trial Court Management: Public Access to Administrative Decisions of Trial Courts (amend rule 10.620)

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

	Commentator	Position	Comment	Committee Response
			changes as they may have to take off multiple days of work, possibly without pay, to file court documents if they are unaware of court closures or reduced hours.	

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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: October 27, 2015

Title

Technology: Modernization of the Rules of Court to Facilitate E-Business, E-Filing, and E-Service

Rules, Forms, Standards, or Statutes Affected

Adopt Cal. Rules of Court, rules 2.10, 7.802, 8.11, and 8.804; renumber and amend rule 8.803; and amend rules 2.3, 2.102–2.108, 2.111, 2.113–2.115, 2.117, 2.130, 2.133, 2.134, 2.150, 2.550, 2.551, 2.577, 2.816, 2.831, 2.1055, 2.1100, 3.254, 3.524, 3.544, 3.815, 3.823, 3.827, 3.931, 3.1010, 3.1109, 3.1110, 3.1113, 3.1202, 3.1300, 3.1302, 3.1304, 3.1320, 3.1326, 3.1327, 3.1330, 3.1340, 3.1346, 3.1347, 3.1350, 3.1351, 3.1354, 3.1590, 3.1700, 3.1900, 3.2107, 4.102, 5.50, 5.83, 5.91, 5.215, 5.242, 5.275, 5.534, 5.906, 8.10, 8.40, 8.42, 8.44–8.47, 8.50, 8.100, 8.104, 8.108, 8.112, 8.123, 8.124, 8.128, 8.130, 8.137, 8.140, 8.144, 8.147, 8.150, 8.204, 8.208, 8.212, 8.220, 8.224, 8.248, 8.252, 8.264, 8.272, 8.278, 8.304, 8.308, 8.336, 8.344, 8.346, 8.360, 8.380, 8.384–8.386, 8.405, 8.406, 8.411, 8.412, 8.474, 8.482, 8.486, 8.488, 8.495, 8.496, 8.498, 8.504, 8.512, 8.540, 8.548, 8.610, 8.616, 8.630, 8.702,8.703, 8.800, 8.806, 8.814, 8.821–8.824, 8.833–8.835, 8.838, 8.840, 8.842, 8.843, 8.852, 8.853, 8.862, 8.864, 8.866, 8.868, 8.870, 8.872, 8.874, 8.881–8.883, 8.888, 8.890, 8.891, 8.901, 8.902, 8.911, 8.915, 8.917, 8.919, 8.921, 8.922, 8.924, 8.926–8.928, 8.931, and 8.1018

Recommended by

Information Technology Advisory Committee
Hon. Terence L. Bruiniers, Chair

Agenda Item Type

Action Required

Effective Date

January 1, 2016

Date of Report

September 16, 2015

Contact

Tara Lundstrom, 415-865-7650
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Executive Summary

The Information Technology Advisory Committee recommends amending various rules in titles 2, 3, 4, 5, 7, and 8 of the California Rules of Court to modernize the rules. The minor, nonsubstantive amendments to the rules facilitate electronic filing, electronic service, and modern business practices. The Civil and Small Claims, Traffic, Family and Juvenile Law, Probate and Mental Health, and Appellate Advisory Committees also recommend the amendments to the rules in their respective subject-matter areas.

Recommendation

The Information Technology Advisory Committee recommends that the Judicial Council, effective January 1, 2016:

1. Adopt rules 2.10, 7.802, 8.11, and 8.804;

2. Renumber and amend rule 8.803; and

3. Amend rules 2.3, 2.102–2.108, 2.111, 2.113–2.115, 2.117, 2.130, 2.133, 2.134, 2.150, 2.550, 2.551, 2.577, 2.816, 2.831, 2.1055, 2.1100, 3.254, 3.524, 3.544, 3.815, 3.823, 3.827, 3.931, 3.1010, 3.1109, 3.1110, 3.1113, 3.1202, 3.1300, 3.1302, 3.1304, 3.1320, 3.1326, 3.1327, 3.1330, 3.1340, 3.1346, 3.1347, 3.1350, 3.1351, 3.1354, 3.1590, 3.1700, 3.1900, 3.2107, 4.102, 5.50, 5.83, 5.91, 5.215, 5.242, 5.275, 5.534, 5.906, 8.10, 8.40, 8.42, 8.44–8.47, 8.50, 8.100, 8.104, 8.108, 8.112, 8.123, 8.124, 8.128, 8.130, 8.137, 8.140, 8.144, 8.147, 8.150, 8.204, 8.208, 8.212, 8.220, 8.224, 8.248, 8.252, 8.264, 8.272, 8.278, 8.304, 8.308, 8.336, 8.344, 8.346, 8.360, 8.380, 8.384–8.386, 8.405, 8.406, 8.411, 8.412, 8.474, 8.482, 8.486, 8.488, 8.495, 8.496, 8.498, 8.504, 8.512, 8.540, 8.548, 8.610, 8.616, 8.630, 8.702, 8.703, 8.800, 8.806, 8.814, 8.821–8.824, 8.833–8.835, 8.838, 8.840, 8.842, 8.843, 8.852, 8.853, 8.862, 8.864, 8.866, 8.868, 8.870, 8.872, 8.874, 8.881–8.883, 8.888, 8.890, 8.891, 8.901, 8.902, 8.911, 8.915, 8.917, 8.919, 8.921, 8.922, 8.924, 8.926–8.928, 8.931, and 8.1018.

The text of the new and amended rules is attached at pages 13–97.

Previous Council Action

Over the past 20 years, the Judicial Council has regularly taken action to facilitate the integration of technology in the work of the courts. For instance, the Judicial Council sponsored legislation in 1999 authorizing electronic filing and service in the trial courts. (Sen. Bill 367; Stats. 1999, ch. 514.) It first adopted implementing rules for the trial courts, effective January 1, 2003. The council expanded those rules in 2013 to address mandatory electronic filing and service in response to the enactment of Assembly Bill 2073 (Stats 2012; ch. 320).

In addition, the Judicial Council has adopted rules extending electronic filing and service to the appellate courts, first as a pilot project in the Court of Appeal, Second Appellate District, in 2010 and then to all appellate courts in 2012.

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Rationale for Recommendation

Recognizing that courts are swiftly proceeding to a paperless world, the Information Technology Advisory Committee (ITAC) is leading the Rules Modernization Project, a collaborative effort to comprehensively review and modernize the California Rules of Court so that they will be consistent with and foster modern e-business practices. To ensure that each title is revised in view of any statutory requirements and policy concerns unique to that area of law, ITAC has coordinated with five other advisory committees with relevant subject-matter expertise.

The Rules Modernization Project is being carried out in two phases. These recommended rule amendments mark the culmination of phase I: an initial round of technical rule amendments to address language in the rules that is incompatible with the current statutes and rules governing electronic filing and service and with e-business practices in general. Next year, ITAC and the other advisory committees will undertake phase II, which will involve a more in-depth examination of any statutes and rules that may hinder e-business practices.

This report recommends various technical amendments to the rules in titles 2–5, 7, and 8.

Amendments to title 2

The amendments to title 2 will:[1]

- Define "papers" as including not only papers in a tangible or physical form, but also in an electronic form (see amended rule 2.3(2));
- Add a new rule defining the scope of the trial court rules to include documents filed both on paper and electronically (see new rule 2.10);
- Amend language to clarify when certain form and formatting rules apply to electronic documents (see amended rules 2.103, 2.104, 2.105, 2.106, 2.107, 2.108(4), 2.111(3), 2.113, 2.114, 2.115, and 2.117), electronic forms (see amended rules 2.133, 2.134(a)–(c), and 2.150), and jury instructions filed electronically (see amended rule 2.1055(b)(4));
- Extend the application of the general rules on forms in chapter 2 to forms filed electronically (see amended rule 2.130);
- Amend the definition of "record" to apply to records filed or lodged electronically (see amended rule 2.550(b)(1));
- Amend the rule for filing records under seal to recognize that records and notices may be transmitted electronically and kept by the court in electronic form (see amended rule 2.551);[2]
- Amend the rule for filing confidential name change records under seal to recognize that petitions may be transmitted electronically (see amended rule 2.577(d) and (f));

[1] These amendments have been recommended by ITAC and the Civil and Small Claims Advisory Committee.

[2] The amendments to rule 2.551 on filing sealed records in the trial courts, unlike most of the other rule amendments, are not solely technical and nonsubstantive. However, they are closely based on the recent amendments to rule 8.46 that changed the appellate rule on sealed records to reflect modern business practices.

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- Amend the rules governing motions to withdraw stipulations to court-appointed temporary judges to allow the moving party to provide copies of the motion to the presiding and temporary judge by electronic means (see amended rules 2.816(e)(3) and 2.831(f)); and
- Allow electronic service on the Attorney General of copies of a judgment and notice of judgment declaring a state statute or regulation unconstitutional (see amended rule 2.1100).

Amendments to title 3

The amendments to title 3 will:[3]

- Insert an electronic service exception to the duties associated with maintaining and updating the list of parties and their addresses (see amended rule 3.254(a) and (b));
- Amend language in the rules to recognize electronic filing and service (see amended rules 3.524(a)(2), 3.544(a), 3.815(b)(2)–(3), 3.823(d), 3.827(b), 3.1010(b)(1), 3.1109(a), 3.1300(a), 3.1302(a), 3.1320(c), 3.1326, 3.1327(a) and (c), 3.1330, 3.1340(b), 3.1346, 3.1347(a) and (c), 3.1350(e), 3.1351(a) and (c), 3.1700(a)(1) and (b)(1), 3.1900, and 3.2107(a)–(b));
- Establish that the times prescribed in the rule governing evidence at arbitration hearings are increased by two days where service is accomplished by electronic means (see amended rule 3.823(d));
- Require that appointed referees provide their e-mail addresses (see amended rule 3.931(b));
- Correct a cross-reference to the appellate court rules (see amended rule 3.1109(c));
- Clarify when certain formatting rules apply to motion papers filed electronically (see amended rules 3.1110(e) and 3.1113(i)(1)–(2) and (m));
- Require that ex parte applications state the e-mail addresses of attorneys or parties (see amended rule 3.1202(a));
- Recognize that rules 2.253(b)(7) and 2.259(c) apply to motion papers that are required to be filed electronically (see amended rule 3.1300(e));
- Require that any materials lodged electronically specify an electronic address to which they may be returned and allow the clerk to return them by electronic means (see amended rule 3.1302(b));
- Require the clerk to post electronically a general schedule for law and motion hearings (see amended rule 3.1304(a));
- Authorize a court to require that a party submitting written objections provide the proposed order accompanying the objections in electronic form (see amended rule 3.1354(c)); and
- Recognize that the court may electronically sign written judgments (see amended rule 3.1590(*l*).

[3] These amendments have been recommended by ITAC and the Civil and Small Claims Advisory Committee.

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Amendment to title 4
The amendment to title 4 will:[4]

- Allow courts to e-mail copies of countywide bail and penalty schedules to the Judicial Council (see amended rule 4.102).

Amendments to title 5
The amendments to title 5 will:[5]

- Delete references to the back side of a summons (see amended rules 5.50(b) and (c)(1)–(2) and 5.91);
- Allow court employees to notify parties of deficiencies in their paperwork by any means approved by the court (see amended rule 5.83(d)(5));
- Replace references to "videotapes" (see amended rules 5.215(d)(5) and 5.242(k)(4)(G)); and
- Add a definition for "software" (see amended rule 5.275(g)).

Amendment to title 7
The amendment to title 7 will:[6]

- Clarify that Code of Civil Procedure section 1010.6 and rules 2.250–2.261 apply in contested probate proceedings (see new rule 7.802).

Amendments to title 8
The amendments to title 8 will:[7]

- Add definitions of "attach or attachment," "copy or copies," "cover," and "written or writing" to clarify their application to electronically filed documents (see renumbered and amended rule 8.803 and amended rule 8.10);
- Add new rule 8.11 and amend rule 8.800(b) to clarify that the rules are intended to apply to documents filed and served electronically;
- Replace references to "mail" with "send" throughout;
- Replace references to "file-stamped" with "filed-endorsed" throughout;
- Clarify that requirements for numbers of copies of documents and for the colors of covers of documents apply only to documents filed on paper (see amended rules 8.40 and 8.44);

[4] This amendment has been recommended by ITAC and the Traffic Advisory Committee.

[5] These amendments have been recommended by ITAC and the Family and Juvenile Law Advisory Committee.

[6] This new rule has been recommended by ITAC and the Probate and Mental Health Advisory Committee.

[7] These amendments have been recommended by ITAC and the Appellate Advisory Committee.

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- Add language requiring that all confidential or sealed documents that are transmitted electronically must be transmitted in a secure manner (see amended rules 8.45(c), 8.46(d), 8.47(b) and (c), and 8.482(g));
- Clarify which requirements about form apply to electronically filed records, briefs, supporting documents, or petitions (see amended rules 8.144, 8.204, 8.486, 8.504, 8.610, 8.824, 8.838, 8.883, 8.928, and 8.931);
- Replace references to "type" with "font" (see amended rules 8.204, 8.883, and 8.928 and the amended advisory committee comment to rule 8.204);
- Expand advisory committee comments to note that the recoverable costs to notarize, serve, mail, and file documents are intended to include fees charged by electronic service providers for filing or service (see amended comments to rules 8. 278 and 8.891);
- Clarify when requirements for multiple copies to be filed or served apply only to paper documents (see amended rules 8.44, 8.144(c), 8.346(c), 8.380(c), 8.385(b), 8.386(b), 8.495(a), 8.540(b), 8.548(d), 8.630(g), 8.843(d), 8.870(d), 8.921(d), and 8.1018(c));
- Correct a typographical error (see amended rule 8.474(b));
- Clarify that the record and exhibits need only be returned to a lower court if they were transmitted in paper form (see amended rules 8.224, 8.512(a), 8.843(e), 8.870(e), 8.890(b), 8.921(e), and 8.1018(d)); and
- Clarify that signatures on electronically filed documents must comply with rule 8.77 (see new rule 8.804 and amended rule 8.882(b)).

Comments, Alternatives Considered, and Policy Implications

Eleven commentators submitted comments in response to the invitation to comment. One provided a response to the proposed amendments after the comment period closed. Most comments responded to the proposed amendments to titles 2 and 3. Several applied generally. Only one commentator made comments specific to title 8. No comments were received specific to titles 4, 5, or 7.

Comments

The advisory committees' responses to all comments received during the comment period are provided in the attached comments chart. In addition, specific responses to certain comments, including the response submitted after the comment period, are addressed further below.

Electronic form and formatting rules. These amended rules clarify that many of the form and formatting rules apply only to documents filed on paper, and not filed electronically. Three commentators—the Trial Court Presiding Judges Advisory Committee (TCPJAC)/Court Executives Advisory Committee (CEAC) Joint Rules Subcommittee and Joint Technology Subcommittee, and the State Bar's Committee on Appellate Courts—submitted comments urging that electronic form and formatting rules be adopted in the near future. The subcommittees specifically recommended future amendments to require bookmarking exhibits and attachments submitted with electronic documents.

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The Superior Court of San Diego County submitted a comment in response to the proposed amendment to rule 3.1110(f), which would limit the requirement that parties tab their motions papers to those filed physically in paper form. The court objected to the amendment unless the council were to add similar language requiring bookmarking or its equivalent for all electronically filed documents. The court explained that it refers to rule 3.1110(f) in requiring litigants to bookmark their electronically filed motions because bookmarking is the electronic equivalent to tabbing. Bookmarking allows the court to easily locate documents and exhibits filed with motions. The court also proposed language for amending rule 3.1110(f) that would expressly authorize the bookmarking of electronic documents.

Electronic form and formatting rules, including any rules governing the bookmarking of electronic documents, will be considered during phase II of the Rules Modernization Project. Meanwhile, in response to the concerns raised by the Superior Court of San Diego County, rule 3.1110(f) has not been amended, so the court may continue to rely on that rule in requiring that parties bookmark electronic documents.

Typewriters. The State Bar's Committee on Administrative Justice (CAJ) submitted comments regarding the proposed amendments to rules 2.3(3), 2.104, and 2.150. CAJ opposed removing references to "typewritten," "typewriting," and "typewriter" from these rules.[8] It explained that typewriters "provide an acceptable method of producing legible written text, and not all litigants have access to computers or word processors." In response to CAJ's concerns, the references to "typewritten," "typewriting," and "typewriter" have been left in these rules.

E-mail addresses. Rule 2.111(1) provides that the top of the first page of papers should list an "e-mail address (if available)," among other identifying information. The Civil Unit Managers of the Superior Court of Orange County submitted comments recommending that the phrase "e-mail address (if available)" be replaced with "e-mail address (if available and/or required if submitted electronically)." The managers explained that their proposal would allow the court to capture accurate data for electronic service because it would require all electronic filers to provide the court with their e-mail adresses. The managers further explained that the rules do not require placing the e-mail address on documents and that there is no mechanism for placing e-mail addresses on documents.

Under rule 2.111(1), an e-mail address may be provided on the first page of papers, if available, as a convenience to the court and parties. However, this e-mail address is not necessarily the electronic service address; the electronic service address might instead be registered with an Electronic Filing Service Provider. As provided in the rule, an attorney or litigant may list his or her work or personal e-mail address on the first page of a paper without consenting to receive

[8] Retaining these references also makes the amendments to the trial court rules consistent with the appellate rules: before circulating the invitation to comment, ITAC and the Appellate Advisory Committee decided against removing these references in the appellate rules because indigent and incarcerated litigants may have access only to typewriters.

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electronic service at that address. (See Cal. Rules of Court, rule 2.111(1) ["The inclusion of a fax number or e-mail address on any document does not constitute consent to service by fax or e-mail unless otherwise provided by law"].)

A party consents to permissive electronic service by filing form EFS-005, *Consent to Electronic Service and Notice of Electronic Service Address,* which requires that the party specify his or her electronic service address.[9] This form captures the electronic service address only where electronic service is permissive. In addition, rule 2.256(a)(4) requires parties to provide "one or more electronic service addresses, in the manner specified by the court, at which the electronic filer agrees to accept electronic service." Because courts already have the ability to require parties to provide their electronic service addresses, rule 2.111(1) has not been amended.

Filing records under seal. Rules 2.551 (governing procedures for filing records under seal) and 2.577 (governing procedures for filing confidential name change records under seal) have been amended. They state specific procedures for filing electronically transmitted records under seal by court order.

As circulated, the rules proposal would have amended rules 2.551(e)(1) and 2.577(f)(3) to require that, when a court grants an order sealing a record, it must replace the cover sheet with a filed-endorsed copy of the court's order. In addition, the rules proposal would have required the court, if the record was in electronic form, to place the record ordered sealed in a secure electronic file, clearly identified as sealed by court order on a specified date.

After the comment period closed, Mr. Alan Carlson—the Court Executive Officer of the Superior Court of Orange County—provided his response to these proposed amendments. He explained that removing the cover sheet and attaching the court's order for records and petitions transmitted electronically is unworkable in his court's electronic case and document management systems. Once these records and petitions have been electronically transmitted by the parties, the court cannot alter these documents; however, the court can change the level of access to these documents and can identify these documents as sealed by court order on a specific date. Mr. Carlson also explained that his document management system does not store electronic documents in a secure electronic "file."

The amendments to rules 2.551(e)(1) and 2.577(f)(3) incorporate Mr. Carlson's recommendations.

Rule 2.551(e)(1) is amended to provide as follows:

> If the court grants an order sealing a record and if the sealed record is in paper format, the clerk must substitute on the envelope or container for the label required by (d)(2) a label prominently stating "SEALED BY ORDER OF THE

[9] Form EFS-005 is available at *www.courts.ca.gov/documents/efs005.pdf*.

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COURT ON *(DATE)*," and must replace the cover sheet required by (d)(3) with a filed-endorsed copy of the court's order. If the sealed record is in an electronic format, the clerk must file the court's order, store the record ordered sealed in a secure manner, and clearly identify the record as sealed by court order on a specified date.

Rule 2.577(f)(3) is amended as follows:

For petitions transmitted in paper form, if the court grants an order sealing a record, the clerk must strike out the notation required by (d)(2) on the *Confidential Cover Sheet* that the matter is filed "CONDITIONALLY UNDER SEAL," ~~and~~ add a notation to that sheet prominently stating "SEALED BY ORDER OF THE COURT ON *(DATE)*," and file the documents under seal. For petitions transmitted electronically, the clerk must file the court's order, store the record ordered sealed in a secure manner, and clearly identify the record as sealed by court order on a specified date.

Electronic submission of documents after close of business. Four commentators submitted comments in response to the proposed amendment to rule 3.1300(e), which governs the filing and service of motion papers.[10] Under the rules proposal, as circulated, subdivision (e) would have been amended as follows:

A paper submitted before the close of the clerk's office to the public on the day the paper is due is deemed timely filed. Under rule 2.259(c), a court may provide by local rule that a paper filed electronically before midnight on a court day is deemed filed on that court day.

Three commentators identified an error in the proposed language in that papers are initially "received," not filed. Ms. Robin Brandes-Gibbs, an employee at the Superior Court of Orange County, proposed replacing the term "filed" with "received by the court." Amended rule 3.1300(e) incorporates Ms. Brandes-Gibbs's suggested language because it corrects the error and tracks the language of rule 2.259(c).[11]

[10] Ms. Robin Brandes-Gibbs referenced subdivision (c) of rule 3.1300, but her comments appear directed toward subdivision (e).

[11] Rule 2.259(c) provides in full:

> A document that is received electronically by the court after the close of business is deemed to have been received on the next court day, unless the court has provided by local rule, with respect to documents filed under the mandatory electronic filing provisions in rule 2.253(b)(7), that documents received electronically before midnight on a court day are deemed to have been filed on that court day, and documents received electronically after midnight are deemed filed on the next court day. This provision concerns only the effective date of filing; any document that is electronically filed must be processed and satisfy all other legal filing requirements to be filed as an official court record.

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In response to the error, the TCPJAC/CEAC Joint Rules Subcommittee and Joint Technology Subcommittee proposed adding the phrase "if, after review by the clerk, it is accepted for filing" to the end of the proposed amendment. Amended rule 3.1300(e) does not incorporate this recommendation because the subcommittee's concern is already addressed by the cross-reference in rule 3.1300(e) to rule 2.259(c), which provides that electronically filed documents must "be processed and satisfy all other legal filing requirements to be filed as an official court record."

In addition, Ms. Brandes-Gibbs questioned whether the proposed amendment to rule 3.1300(e), as well as rules 2.253(b)(7) and 2.259(c),[12] contradict Code of Civil Procedure section 1010.6(b)(3), which provides that "[a]ny document that is electronically filed with the court after the close of business on any day shall be deemed to have been filed on the next court day." It also defines "close of business" as meaning "5 p.m. or the time at which the court would not accept filing at the court's filing counter, whichever is earlier."

Code of Civil Procedure section 1010.6(b)(3) governs only *permissive* electronic filing. Subdivision (g) exempts superior courts from complying with subdivision (b)(3) where electronic filing is *mandatory*. Subdivision (f), in turn, instructs the Judicial Council to adopt uniform rules governing mandatory electronic filing that conform with the conditions in section 1010.6, including the exception in subdivision (g) to subdivision (b)(3). Thus, Code of Civil Procedure section 1010.6 provides an exception to the close-of-business rule where electronic filing is mandatory.

The amendment to rule 3.1300(e) tracks this legislative scheme. By its cross-reference to rule 2.259(c), which in turn references rule 2.253(b)(7), the amendment to rule 3.1300(e) applies only to papers that are required to be filed electronically. Even though the amendment to rule 3.1300(e) is authorized under Code of Civil Procedure section 1010.6, it includes additional language to clarify that it applies only to mandatory filing. In response to Ms. Brandes-Gibbs's comments, rule 3.1300(e) is amended to provide:

> A paper submitted before the close of the clerk's office to the public on the day the paper is due is deemed timely filed. Under rule*s 2.253(b)(7) and* 2.259(c), a court may provide by local rule that a paper *that is required to be filed electronically and that is received electronically by the court* before midnight on a court day is deemed filed on that court day.

In its comments to the proposed amendment to rule 3.1300(e), the Superior Court of Sacramento County recommended against "encouraging inconsistencies throughout the State." Currently, the Code of Civil Procedure and trial court rules allow for electronic filing deadlines to vary

[12] Rule 2.253(b)(7) addresses mandatory electronic filing and is cross-referenced in rule 2.259(c). It recognizes that courts may provide by local rule that electronically filed documents received before midnight will be deemed to have been filed by that court day.

depending on whether electronic filing is permissive or mandatory and depending on the court's local rules. Addressing the court's concern about inconsistencies is beyond the scope of the present rules proposal because it would require a substantive amendment to the rules and possibly to the Code of Civil Procedure. The advisory committees may address the court's concern during phase II of the Rules Modernization Project.

Use of an electronic record on appeal. CAJ expressed concern about the impact of the proposed amendments to rules 8.122, 8.144, 8.336, and 8.838 on indigent appellate litigants, particularly incarcerated appellants and others who do not have access to computers. The proposed amendments to these rules would have expressly allowed all or part of the record on appeal to be in electronic form where authorized by local rule of the appellate court or division. In addition, the proposed amendments to rule 8.832, not specifically mentioned by CAJ, would have added language to the rule's advisory committee comment parallel to the language proposed for the comment to rule 8.122, but applying to appeals to an appellate division of a superior court.

Recognizing that the exceptions for self-represented litigants in the electronic filing and service rules do not apply to the form of the record on appeal, the proposed amendments to 8.122, 8.144, 8.832, and 8.838—which would have expressly allowed use of an electronic record on appeal—have been withdrawn from phase I for further consideration in phase II of the Rules Modernization Project. Other amendments to rules 8.144 and 8.838, as well as the amendment to rule 8.336, remain part of this phase. These amendments clarify application of the rules where the clerk's or reporter's transcript is in electronic form.

At least one of the courts of appeal is currently receiving the clerk's transcripts in electronic form from one of the superior courts within the district. This practice, already in effect under the existing rules of court, should be able to continue unchanged while further consideration is given to how best to address this issue in the rules of court.

Alternatives

As an alternative to making technical changes at this time, ITAC considered deferring action and proposing a single rules proposal that would have included both substantive and technical changes to the rules at a later date. One benefit of this approach would have been to increase the project's overall efficiency by reviewing and ultimately implementing all changes at the same time. By dividing the work into technical and substantive phases, however, the council will modernize the rules, to the extent possible, on a more responsive timeline for those courts that are already implementing electronic filing and service and adopting modern business practices.

Implementation Requirements, Costs, and Operational Impacts

Because the recommended rule changes are not substantive, they are not expected to generate any new costs or require implementation. To the extent that the changes clarify existing law, they will facilitate electronic filing and service in the trial and appellate courts and provide cost efficiencies.

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Only minimal costs are associated with amending the rules.

Attachments and Links

1. Cal. Rules of Court, title 2 rules, at pages 13–22
2. Cal. Rules of Court, title 3 rules, at pages 23–34
3. Cal. Rules of Court, title 4 rules, at page 35
4. Cal. Rules of Court, title 5 rules, at pages 36–39
5. Cal. Rules of Court, title 7 rules, at pages 40
6. Cal. Rules of Court, title 8 rules, at pages 41–96
7. Comments chart, at pages 97–107

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Rule 2.10 of the California Rules of Court is adopted and rules 2.3, 2.102, 2.103, 2.104, 2.105, 2.106, 2.107, 2.108, 2.111, 2.113, 2.114, 2.115, 2.117, 2.130, 2.133, 2.134, 2.150, 2.550, 2.551, 2.577, 2.816, 2.831, 2.1055, and 2.1100 are amended, effective January 1, 2016, to read:

Title 2. Trial Court Rules

Rule 2.3. Definitions

As used in the Trial Court Rules, unless the context or subject matter otherwise requires:

(1) "Court" means the superior court~~;~~.

(2) "Papers" includes all documents, except exhibits and copies of exhibits, that are offered for filing in any case, but does not include Judicial Council and local court forms, records on appeal in limited civil cases, or briefs filed in appellate divisions. ~~; and~~ Unless the context clearly provides otherwise, "papers" need not be in a tangible or physical form but may be in an electronic form.

(3) "Written," "writing," "typewritten," and "typewriting" include other methods of printing letters and words equivalent in legibility to typewriting or printing from a word processor.

Rule 2.10. Scope of rules ~~[Reserved]~~

These rules apply to documents filed and served electronically as well as in paper form, unless otherwise provided.

Rule 2.102. One-sided paper

When papers are not filed electronically, ~~On papers,~~ only one side of each page may be used.

Rule 2.103. Size, quality, and color~~, and size~~ of paper

All papers filed must be 8½ by 11 inches. All papers not filed electronically must be on opaque, unglazed paper, white or unbleached, of standard quality not less than 20-pound weight~~, 8½ by 11 inches~~.

Rule 2.104. Printing; ~~type~~ font size

All papers not filed electronically must be printed or typewritten or be prepared by a photocopying or other duplication process that will produce clear and permanent copies equally as legible as printing in ~~type~~ a font not smaller than 12 points.

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Rule 2.105. ~~Type~~ Font style

The ~~typeface~~ font must be essentially equivalent to Courier, Times New Roman, or Arial.

Rule 2.106. Font color ~~of print~~

The font color ~~of print~~ must be black or blue-black.

Rule 2.107. Margins

The left margin of each page must be at least one inch from the left edge ~~of the paper~~ and the right margin at least 1/2 inch from the right edge ~~of the paper~~.

Rule 2.108. Spacing and numbering of lines

The spacing and numbering of lines on a page must be as follows:

(1)–(3) * * *

(4) Line numbers must be placed at the left margin and separated from the text ~~of the paper~~ by a vertical column of space at least 1/5 inch wide or a single or double vertical line. Each line number must be aligned with a line of type, or the line numbers must be evenly spaced vertically on the page. Line numbers must be consecutively numbered, beginning with the number 1 on each page. There must be at least three line numbers for every vertical inch on the page.

Rule 2.111. Format of first page

The first page of each paper must be in the following form:

(1)–(2) * * *

(3) On line 8, at or below 3 1/3 inches from the top of the ~~paper~~ page, the title of the court.

(4)–(11) * * *

Rule 2.113. Binding

Each paper not filed electronically must consist entirely of original pages without riders and must be firmly bound together at the top.

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Rule 2.114. Exhibits

Exhibits submitted with papers not filed electronically may be fastened to pages of the specified size and, when prepared by a machine copying process, must be equal to ~~typewritten~~ computer-processed materials in legibility and permanency of image.

Rule 2.115. Hole punching

When papers are not filed electronically, each paper presented for filing must contain two prepunched normal-sized holes, centered 2½ inches apart and 5/8 inch from the top of the paper.

Rule 2.117. Conformed copies of papers

All copies of papers served must conform to the original papers filed, including the numbering of lines, pagination, additions, deletions, and interlineations except that, with the agreement of the other party, a party serving papers by nonelectronic means may serve that other party with papers printed on both sides of the page.

Rule 2.130. Application

The rules in this chapter apply to Judicial Council forms, local court forms, and all other official forms to be filed in the trial courts. The rules apply to forms filed both in paper form and electronically, unless otherwise specified.

Rule 2.133. Hole punching

All forms not filed electronically must contain two prepunched normal-sized holes, centered 2½ inches apart and ⅝ inch from the top of the form.

Rule 2.134. Forms longer than one page

(a) Single side may be used

If a form not filed electronically is longer than one page, the form may be printed on sheets printed only on one side even if the original has two sides to a sheet.

(b) Two-sided forms must be tumbled

If a form not filed electronically is filed on a sheet printed on two sides, the reverse side must be rotated 180 degrees (printed head to foot).

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(c) Multiple-page forms must be bound

If a form not filed electronically is longer than one page, it must be firmly bound at the top.

Rule 2.150. Authorization for computer-generated or typewritten forms for proof of service of summons and complaint

(a) Computer-generated or typewritten forms; conditions

Notwithstanding the adoption of mandatory form *Proof of Service of Summons* (form POS-010), a form for proof of service of a summons and complaint prepared entirely by word processor, typewriter, or similar process may be used for proof of service in any applicable action or proceeding if the following conditions are met:

(1)–(4) * * *

(5) The text of form POS-010 must be copied in the same order as it appears on ~~the printed~~ form POS-010 using the same item numbers. A declaration of diligence may be attached to the proof of service or inserted as item 5b(5).

(6) Areas marked "For Court Use" must be copied in the same general locations and occupy approximately the same amount of space as on ~~the printed~~ form POS-010.

(7)–(8) * * *

(9) Material that would have been ~~typed~~ entered onto ~~the printed~~ form POS-010 must be ~~typed~~ entered with each line indented 3 inches from the left margin.

(b) * * *

Advisory Committee Comment

This rule is intended to permit process servers and others to prepare their own shortened versions of *Proof of Service of Summons* (form POS-010) containing only the information that is relevant to show the method of service used.

Rule 2.550. Sealed records

(a) * * *

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(b) Definitions

As used in this chapter:

(1) "Record." Unless the context indicates otherwise, "record" means all or a portion of any document, paper, exhibit, transcript, or other thing filed or lodged with the court, by electronic means or otherwise.

(2)–(3) * * *

(c)–(e) * * *

Rule 2.551. Procedures for filing records under seal

(a) * * *

(b) Motion or application to seal a record

(1) * * *

(2) *Service of motion or application*

A copy of the motion or application must be served on all parties that have appeared in the case. Unless the court orders otherwise, any party that already ~~possesses copies of~~ has access to the records to be placed under seal must be served with a complete, unredacted version of all papers as well as a redacted version. Other parties must be served with only the public redacted version. If a party's attorney but not the party has access to the record, only the party's attorney may be served with the complete, unredacted version.

(3) *Procedure for party not intending to file motion or application*

(A) * * *

(B) If the party that produced the documents and was served with the notice under (A)(iii) fails to file a motion or an application to seal the records within 10 days or to obtain a court order extending the time to file such a motion or an application, the clerk must promptly remove all the documents in (A)(i) from the envelope, ~~or~~ container, or secure electronic file where they are located and place them in the public file. If the party files a motion or an application to seal within 10 days or such later time as the court has ordered, these documents are to remain

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conditionally under seal until the court rules on the motion or application and thereafter are to be filed as ordered by the court.

(4) * * *

(5) *Redacted and unredacted versions*

If necessary to prevent disclosure, any motion or application, any opposition, and any supporting documents must be filed in a public redacted version and lodged in a complete, unredacted version conditionally under seal. The cover of the redacted version must identify it as "Public—Redacts materials from conditionally sealed record." The cover of the unredacted version must identify it as "May Not Be Examined Without Court Order—Contains material from conditionally sealed record."

(6) *Return of lodged record*

If the court denies the motion or application to seal, the clerk must return the lodged record to the submitting party and must not place it in the case file unless that party notifies the clerk in writing ~~within 10 days after the order denying the motion or application~~ that the record is to be filed. Unless otherwise ordered by the court, the submitting party must notify the clerk within 10 days after the order denying the motion or application.

(c) * * *

(d) Procedure for lodging of records

(1) A record that may be filed under seal must be transmitted to the court in a secure manner that preserves the confidentiality of the records to be lodged. If the record is transmitted in paper form, it must be put in an envelope or other appropriate container, sealed in the envelope or container, and lodged with the court.

(2) The materials to be lodged under seal must be clearly identified as "CONDITIONALLY UNDER SEAL." If the materials are transmitted in paper form, the envelope or container lodged with the court must be labeled "CONDITIONALLY UNDER SEAL."

(3) The party submitting the lodged record must affix to the electronic transmission, the envelope, or the container a cover sheet that:

(A)–(B) * * *

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(4) * * *

(e) Order

(1) If the court grants an order sealing a record and if the sealed record is in paper format, the clerk must substitute on the envelope or container for the label required by (d)(2) a label prominently stating "SEALED BY ORDER OF THE COURT ON *(DATE),*" and must replace the cover sheet required by (d)(3) with a filed-endorsed copy of the court's order. If the sealed record is in an electronic format, the clerk must file the court's order, store the record ordered sealed in a secure manner, and clearly identify the record as sealed by court order on a specified date.

(2) The order must state whether—in addition to the sealed records ~~in the envelope or container~~ —the order itself, the register of actions, any other court records, or any other records relating to the case are to be sealed.

(3) * * *

(4) Unless the sealing order provides otherwise, it prohibits the parties from disclosing the contents of any materials that have been sealed in anything that is subsequently publicly filed ~~records or papers~~.

**(f)–(g) * * *

(h) Motion, application, or petition to unseal records

(1)–(2) * * *

(3) If the court proposes to order a record unsealed on its own motion, the court must ~~mail~~ give notice to the parties stating the reason for unsealing the record ~~therefor~~. Unless otherwise ordered by the court, any party may serve and file an opposition within 10 days after the notice is provided ~~mailed or within such time as the court specifies.~~ and any other party may file a response within 5 days after the filing of an opposition.

(4) * * *

(5) The order unsealing a record must state whether the record is unsealed entirely or in part. If the court's order unseals only part of the record or unseals the record only as to certain persons, the order must specify the particular records that are unsealed, the particular persons who may have access to the record, or

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both. If, in addition to the records in the envelope, ~~or~~ container, or secure electronic file, the court has previously ordered the sealing order, the register of actions, or any other court records relating to the case to be sealed, the unsealing order must state whether these additional records are unsealed.

Rule 2.577. Procedures for filing confidential name change records under seal

(a)–(c) * * *

(d) Procedure for lodging of petition for name change

(1) The records that may be filed under seal must be lodged with the court. If they are transmitted on paper, they must be placed in a sealed envelope. If they are transmitted electronically, they must be transmitted to the court in a secure manner that preserves the confidentiality of the documents to be lodged.

(2) If the petitioner is transmitting the petition on paper, the petitioner must complete and affix to the envelope a completed *Confidential Cover Sheet—Name Change Proceeding Under Address Confidentiality Program* (*Safe at Home)* (form NC-400) and in the space under the title and case number mark it "CONDITIONALLY UNDER SEAL." If the petitioner is transmitting the petition electronically, the first page of the electronic transmission must be a completed *Confidential Cover Sheet—Name Change Proceeding Under Address Confidentiality Program* (*Safe at Home)* (form NC-400) with the space under the title and case number marked "CONDITIONALLY UNDER SEAL."

(3) On receipt of a petition lodged under this rule, the clerk must endorse the ~~affixed~~ cover sheet with the date of its receipt and must retain but not file the record unless the court orders it filed.

(4) * * *

(e) * * *

(f) Order

(1)–(2) * * *

(3) For petitions transmitted in paper form, if the court grants an order sealing a record, the clerk must strike out the notation required by (d)(2) on the *Confidential Cover Sheet* that the matter is filed "CONDITIONALLY

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UNDER SEAL," ~~and~~ add a notation to that sheet prominently stating "SEALED BY ORDER OF THE COURT ON *(DATE)*." and file the documents under seal. For petitions transmitted electronically, the clerk must file the court's order, store the record ordered sealed in a secure manner, and clearly identify the record as sealed by court order on a specified date.

(4)–(5) * * *

(g)–(h) * * *

Rule 2.816. Stipulation to court-appointed temporary judge

(a)–(d) * * *

(e) Application or motion to withdraw stipulation

An application or motion to withdraw a stipulation for the appointment of a temporary judge must be supported by a declaration of facts establishing good cause for permitting the party to withdraw the stipulation. In addition:

(1)–(2) * * *

(3) The application or motion must be served and filed, and the moving party must ~~mail or deliver~~ provide a copy to the presiding judge.

(4) * * *

Rule 2.831. Temporary judge—stipulation, order, oath, assignment, disclosure, and disqualification

(a)–(e) * * *

(f) Motion to withdraw stipulation

A motion to withdraw a stipulation for the appointment of a temporary judge must be supported by a declaration of facts establishing good cause for permitting the party to withdraw the stipulation, and must be heard by the presiding judge or a judge designated by the presiding judge. A declaration that a ruling is based on error of fact or law does not establish good cause for withdrawing a stipulation. Notice of the motion must be served and filed, and the moving party must ~~mail or deliver~~ provide a copy to the temporary judge. If the motion to withdraw the stipulation is based on grounds for the disqualification of the temporary judge first learned or arising after the temporary judge has made one or more rulings, but

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before the temporary judge has completed judicial action in the proceeding, the provisions of rule 2.816(e)(4) apply. If a motion to withdraw a stipulation is granted, the presiding judge must assign the case for hearing or trial as promptly as possible.

Rule 2.1055. Proposed jury instructions

(a) * * *

(b) Form and format of proposed instructions

(1)–(3) * * *

(4) Each set of proposed jury instructions filed on paper must be bound loosely.

(c)–(e) * * *

Rule 2.1100. Notice when statute or regulation declared unconstitutional

Within 10 days after a court has entered judgment in a contested action or special proceeding in which the court has declared unconstitutional a state statute or regulation, the prevailing party, or as otherwise ordered by the court, must ~~mail~~ serve a copy of the judgment and a notice of entry of judgment ~~to~~ on the Attorney General and file a proof of service with the court.

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Rules 3.254, 3.524, 3.544, 3.815, 3.823, 3.827, 3.931, 3.1010, 3.1109, 3.1110, 3.1113, 3.1202, 3.1300, 3.1302, 3.1304, 3.1320, 3.1326, 3.1327, 3.1330, 3.1340, 3.1346, 3.1347, 3.1350, 3.1351, 3.1354, 3.1590, 3.1700, 3.1900, and 3.2107 of the California Rules of Court are amended, effective January 1, 2016, to read:

Title 3. Civil Rules

Rule 3.254. List of parties

(a) Duties of first-named plaintiff or petitioner

Except as provided under rule 2.251 for electronic service, if more than two parties have appeared in a case and are represented by different counsel, the plaintiff or petitioner named first in the complaint or petition must:

(1)–(2) * * *

(b) Duties of each party

Except as provided under rule 2.251 for electronic service, each party must:

(1)–(3) * * *

Rule 3.524. Order assigning coordination motion judge

(a) Contents of order

An order by the Chair of the Judicial Council assigning a coordination motion judge to determine whether coordination is appropriate, or authorizing the presiding judge of a court to assign the matter to judicial officers of the court to make the determination in the same manner as assignments are made in other civil cases, must include the following:

(1) The special title and number assigned to the coordination proceeding; and

(2) The court's address or electronic service address for submitting all subsequent documents to be considered by the coordination motion judge.

(b) * * *

Rule 3.544. Add-on cases

(a) Request to coordinate add-on case

A request to coordinate an add-on case must comply with the requirements of rules 3.520 through 3.523, except that the request must be submitted to the coordination

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trial judge under Code of Civil Procedure section 404.4, with proof of ~~mailing~~ service of one copy ~~to~~ on the Chair of the Judicial Council and proof of service as required by rule 3.510.

(b)–(d) * * *

Rule 3.815. Selection of the arbitrator

(a) * * *

(b) Selection absent stipulation or local procedures

If the arbitrator has not been selected by stipulation and the court has not adopted local rules or procedures for the selection of the arbitrator as permitted under (c), the arbitrator will be selected as follows:

(1) * * *

(2) The administrator must select at random a number of names equal to the number of sides, plus one, and ~~mail~~ send the list of randomly selected names to counsel for the parties.

(3) Each side has 10 days from the date ~~of mailing~~ on which the list was sent to file a rejection, in writing, of no more than one name on the list; if there are two or more parties on a side, they must join in the rejection of a single name.

(4)–(5) * * *

(c)–(f) * * *

Rule 3.823. Rules of evidence at arbitration hearing

(a)–(c) * * *

(d) Delivery of documents

For purposes of this rule, "delivery" of a document or notice may be accomplished manually, by electronic means under Code of Civil Procedure section 1010.6 and rule 2.251, or by mail in the manner provided by Code of Civil Procedure section 1013. If service is by electronic means, the times prescribed in this rule for delivery of documents, notices, and demands are increased by two days. If service is by mail, the times prescribed in this rule ~~for delivery of documents, notices, and demands~~ are increased by five days.

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Rule 3.827. Entry of award as judgment

(a) * * *

(b) Notice of entry of judgment

Promptly upon entry of the award as a judgment, the clerk must ~~mail~~ serve notice of entry of judgment ~~to~~ on all parties who have appeared in the case and must execute a certificate of ~~mailing~~ service and place it in the court's file in the case.

(c) * * *

Rule 3.931. Open proceedings, notice of proceedings, and order for hearing site

(a) * * *

(b) Notice regarding proceedings before referee

(1) In each case in which he or she is appointed, a referee must file a statement that provides the name, telephone number, e-mail address, and mailing address of a person who may be contacted to obtain information about the date, time, location, and general nature of all hearings scheduled in matters pending before the referee that would be open to the public if held before a judge. This statement must be filed at the same time as the referee's certification under rule 3.904(a) or 3.924(a). If there is any change in this contact information, the referee must promptly file a revised statement with the court.

(2) In addition to providing the information required under (1), the statement filed by a referee may also provide the address of a publicly accessible ~~Web site~~ website at which the referee will maintain a current calendar setting forth the date, time, location, and general nature of any hearings scheduled in the matter that would be open to the public if held before a judge.

(3) * * *

(c) * * *

Rule 3.1010. Oral depositions by telephone, videoconference, or other remote electronic means

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(a) * * *

(b) Appearing and participating in depositions

Any party may appear and participate in an oral deposition by telephone, videoconference, or other remote electronic means, provided:

(1) Written notice of such appearance is served by personal delivery, e-mail, or fax at least three court days before the deposition;

(2) The party so appearing makes all arrangements and pays all expenses incurred for the appearance.

(c)–(e) * * *

Rule 3.1109. Notice of determination of submitted matters

(a) Notice by clerk

When the court rules on a motion or makes an order or renders a judgment in a matter it has taken under submission, the clerk must immediately notify the parties of the ruling, order, or judgment. The notification, which must specifically identify the matter ruled on, may be given by serving electronically or mailing the parties a copy of the ruling, order, or judgment, and it constitutes service of notice only if the clerk is required to give notice under Code of Civil Procedure section 664.5.

(b) * * *

(c) Time not extended by failure of clerk to give notice

The failure of the clerk to give the notice required by this rule does not extend the time provided by law for performing any act except as provided in rules 8.104(a) or ~~8.824~~ 8.822(a).

Rule 3.1110. General format

(a)–(d) * * *

(e) Binding

For motions filed on paper, all pages of each document and exhibit must be attached together at the top by a method that permits pages to be easily turned and the entire content of each page to be read.

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(f)–(g) * * *

Rule 3.1113. Memorandum

(a)–(h) * * *

(i) Copies of authorities

(1) A judge may require that if any authority other than California cases, statutes, constitutional provisions, or state or local rules is cited, a copy of the authority must be lodged with the papers that cite the authority and tabbed or separated as required by rule 3.1110(f).

(2) If a California case is cited before the time it is published in the advance sheets of the Official Reports, the party must include the title, case number, date of decision, and, if from the Court of Appeal, district of the Court of Appeal in which the case was decided. A judge may require that a copy of that case must be lodged and tabbed or separated as required by rule 3.1110(f).

(3) * * *

(j)–(*l*) * * *

(m) Proposed orders or judgments

If a proposed order or judgment is submitted, it must be lodged and served with the moving papers but must not be attached to them. The requirements for proposed orders, including the requirements for submitting proposed orders by electronic means, are stated in rule 3.1312.

Rule 3.1202. Contents of application

(a) Identification of attorney or party

An ex parte application must state the name, address, e-mail address, and telephone number of any attorney known to the applicant to be an attorney for any party or, if no such attorney is known, the name, address, e-mail address, and telephone number of the party if known to the applicant.

(b)–(c) * * *

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Rule 3.1300. Time for filing and service of motion papers

(a) In general

Unless otherwise ordered or specifically provided by law, all moving and supporting papers must be served and filed in accordance with Code of Civil Procedure section 1005 and, when applicable, the statutes and rules providing for electronic filing and service.

(b)–(d) * * *

(e) Computation of time

A paper submitted before the close of the clerk's office to the public on the day the paper is due is deemed timely filed. Under rules 2.253(b)(7) and 2.259(c), a court may provide by local rule that a paper that is required to be filed electronically and that is received electronically by the court before midnight on a court day is deemed filed on that court day.

Rule 3.1302. Place and manner of filing

(a) Papers filed in clerk's office

Unless otherwise provided by local rule or specified in a court's protocol for electronic filing, all papers relating to a law and motion proceeding must be filed in the clerk's office.

(b) Requirements for lodged material

Material lodged physically with the clerk must be accompanied by an addressed envelope with sufficient postage for mailing the material. Material lodged electronically must clearly specify the electronic address to which the materials may be returned. After determination of the matter, the clerk may mail or send the material back to the party lodging it.

Rule 3.1304. Time of hearing

(a) General schedule

The clerk must post electronically and at the courthouse a general schedule showing the days and departments for holding each type of law and motion hearing.

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(b)–(d) * * *

Rule 3.1320. Demurrers

(a)–(b) * * *

(c) Notice of hearing

A party filing a demurrer must serve and file therewith a notice of hearing that must specify a hearing date in accordance with the provisions of Code of Civil Procedure section 1005 and, if service is by electronic means, in accordance with the requirements of Code of Civil Procedure section 1010.6(a)(4) and rule 2.251(h)(2).

(d)–(j) * * *

Rule 3.1326. Motions for change of venue

Following denial of a motion to transfer under Code of Civil Procedure section 396b, unless otherwise ordered, 30 calendar days are deemed granted defendant to move to strike, demur, or otherwise plead if the defendant has not previously filed a response. If a motion to transfer is granted, 30 calendar days are deemed granted from the date the receiving court ~~mails~~ sends notice of receipt of the case and its new case number.

Rule 3.1327. Motions to quash or to stay action in summary proceeding involving possession of real property

(a) Notice

In an unlawful detainer action or other action brought under chapter 4 of title 3 of part 3 of the Code of Civil Procedure (commencing with section 1159), notice of a motion to quash service of summons on the ground of lack of jurisdiction or to stay or dismiss the action on the ground of inconvenient forum must be given in compliance with Code of Civil Procedure sections 1010.6 or 1013 and 1167.4.

(b) * * *

(c) Written opposition in advance of hearing

If a party seeks to have a written opposition considered in advance of the hearing, the written opposition must be filed and served on or before the court day before the hearing. Service must be by personal delivery, electronic service, fax ~~facsimile~~ transmission, express mail, or other means consistent with Code of Civil Procedure sections 1010, 1010.6, 1011, 1012, and 1013, and reasonably calculated to ensure

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delivery to the other party or parties no later than the close of business on the court day before the hearing. The court, in its discretion, may consider written opposition filed later.

Rule 3.1330. Motion concerning arbitration

A petition to compel arbitration or to stay proceedings pursuant to Code of Civil Procedure sections 1281.2 and 1281.4 must state, in addition to other required allegations, the provisions of the written agreement and the paragraph that provides for arbitration. The provisions must be stated verbatim or a copy must be physically or electronically attached to the petition and incorporated by reference.

Rule 3.1340. Motion for discretionary dismissal after two years for delay in prosecution

(a) * * *

(b) Notice of court's intention to dismiss

If the court intends to dismiss an action on its own motion, the clerk must set a hearing on the dismissal and ~~mail~~ send notice to all parties at least 20 days before the hearing date.

(c) * * *

Rule 3.1346. Service of motion papers on nonparty deponent

A written notice and all moving papers supporting a motion to compel an answer to a deposition question or to compel production of a document or tangible thing from a nonparty deponent must be personally served on the nonparty deponent unless the nonparty deponent agrees to accept service by mail or electronic service at an address or electronic service address specified on the deposition record.

Rule 3.1347. Discovery motions in summary proceeding involving possession of real property

(a) Notice

In an unlawful detainer action or other action brought under chapter 4 of title 3 of part 3 of the Code of Civil Procedure (commencing with section 1159), notice of a discovery motion must be given in compliance with Code of Civil Procedure sections 1010.6 or 1013 and 1170.8.

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(b) * * *

(c) Written opposition in advance of hearing

If a party seeks to have a written opposition considered in advance of the hearing, the written opposition must be served and filed on or before the court day before the hearing. Service must be by personal delivery, electronic service, fax ~~facsimile~~ transmission, express mail, or other means consistent with Code of Civil Procedure sections 1010, 1010.6, 1011, 1012, and 1013, and reasonably calculated to ensure delivery to the other party or parties no later than the close of business on the court day before the hearing. The court, in its discretion, may consider written opposition filed later.

Rule 3.1350. Motion for summary judgment or summary adjudication

(a)–(d) * * *

(e) Documents in opposition to motion

Except as provided in Code of Civil Procedure section 437c(r) and rule 3.1351, the opposition to a motion must consist of the following separate documents, ~~separately stapled and~~ titled as shown:

(1)–(4) * * *

(f)–(i) * * *

Rule 3.1351. Motions for summary judgment in summary proceeding involving possession of real property

(a) Notice

In an unlawful detainer action or other action brought under chapter 4 of title 3 of part 3 of the Code of Civil Procedure (commencing with section 1159), notice of a motion for summary judgment must be given in compliance with Code of Civil Procedure sections 1010.6 or 1013 and 1170.7.

(b) * * *

(c) Written opposition in advance of hearing

If a party seeks to have a written opposition considered in advance of the hearing, the written opposition must be filed and served on or before the court day before

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the hearing. Service must be by personal delivery, electronic service, fax ~~facsimile~~ transmission, express mail, or other means consistent with Code of Civil Procedure sections 1010, 1010.6, 1011, 1012, and 1013, and reasonably calculated to ensure delivery to the other party or parties no later than the close of business on the court day before the hearing. The court, in its discretion, may consider written opposition filed later.

Rule 3.1354. Written objections to evidence

(a)–(b) * * *

(c) Proposed order

A party submitting written objections to evidence must submit with the objections a proposed order. The proposed order must include places for the court to indicate whether it has sustained or overruled each objection. It must also include a place for the signature of the judge. The court may require that the proposed order be provided in electronic form. The proposed order must be in one of the following two formats:

* * *

Rule 3.1590. Announcement of tentative decision, statement of decision, and judgment

(a)–(k) * * *

(*l*) Signature and filing of judgment

If a written judgment is required, the court must sign and file the judgment within 50 days after the announcement or service of the tentative decision, whichever is later, or, if a hearing was held under (k), within 10 days after the hearing. An electronic signature by the court is as effective as an original signature. The judgment constitutes the decision on which judgment is to be entered under Code of Civil Procedure section 664.

(m)–(n) * * *

Rule 3.1700. Prejudgment costs

(a) Claiming costs

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(1) *Trial costs*

A prevailing party who claims costs must serve and file a memorandum of costs within 15 days after the date of ~~mailing~~ service of the notice of entry of judgment or dismissal by the clerk under Code of Civil Procedure section 664.5 or the date of service of written notice of entry of judgment or dismissal, or within 180 days after entry of judgment, whichever is first. The memorandum of costs must be verified by a statement of the party, attorney, or agent that to the best of his or her knowledge the items of cost are correct and were necessarily incurred in the case.

(2) * * *

(b) Contesting costs

(1) *Striking and taxing costs*

Any notice of motion to strike or to tax costs must be served and filed 15 days after service of the cost memorandum. If the cost memorandum was served by mail, the period is extended as provided in Code of Civil Procedure section 1013. If the cost memorandum was served electronically, the period is extended as provided in Code of Civil Procedure section 1010.6(a)(4).

(2)–(4) * * *

Rule 3.1900. Notice of renewal of judgment

A copy of the application for renewal of judgment must be physically or electronically attached to the notice of renewal of judgment required by Code of Civil Procedure section 683.160.

Rule 3.2107. Request for court order

(a) Request before trial

If a party files a written request for a court order before the hearing on the claim, the requesting party must mail, ~~or~~ personally deliver, or if agreed on by the parties electronically serve a copy to all other parties in the case. The other parties must be given an opportunity to answer or respond to the request before or at the hearing. This subdivision does not apply to a request to postpone the hearing date if the plaintiff's claim has not been served.

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(b) Request after trial

If a party files a written request for a court order after notice of entry of judgment, the clerk must ~~mail~~ send a copy of the request to all other parties in the action. A party has 10 calendar days from the date on which the clerk ~~mailed~~ sent the request to file a response before the court makes an order. The court may schedule a hearing on the request, except that if the request is to vacate the judgment for lack of appearance by the plaintiff, the court must hold a hearing. The court may give notice of any scheduled hearing with notice of the request, but the hearing must be scheduled at least 11 calendar days after the clerk has ~~mailed~~ sent the request.

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Rule 4.102 of the California Rules of Court is amended, effective January 1. 2016, to read:

Title 4. Criminal Rules

Rule 4.102. Uniform bail and penalty schedules—traffic, boating, fish and game, forestry, public utilities, parks and recreation, business licensing

The Judicial Council of California has established the policy of promulgating uniform bail and penalty schedules for certain offenses in order to achieve a standard of uniformity in the handling of these offenses.

In general, bail is used to ensure the presence of the defendant before the court. Under Vehicle Code sections 40512 and 13103, bail may also be forfeited and forfeiture may be ordered without the necessity of any further court proceedings and be treated as a conviction for specified Vehicle Code offenses. A penalty in the form of a monetary sum is a fine imposed as all or a portion of a sentence imposed.

To achieve substantial uniformity of bail and penalties throughout the state in traffic, boating, fish and game, forestry, public utilities, parks and recreation, and business licensing cases, the trial court judges, in performing their duty under Penal Code section 1269b to annually revise and adopt a schedule of bail and penalties for all misdemeanor and infraction offenses except Vehicle Code infractions, must give consideration to the Uniform Bail and Penalty Schedules approved by the Judicial Council. The Uniform Bail and Penalty Schedule for infraction violations of the Vehicle Code will be established by the Judicial Council in accordance with Vehicle Code section 40310. Judges must give consideration to requiring additional bail for aggravating or enhancing factors.

After a court adopts a countywide bail and penalty schedule, under Penal Code section 1269b, the court must, as soon as practicable, mail or e-mail a copy of the schedule to the Judicial Council with a report stating how the revised schedule differs from the council's uniform traffic bail and penalty schedule, uniform boating bail and penalty schedule, uniform fish and game bail and penalty schedule, uniform forestry bail and penalty schedule, uniform public utilities bail and penalty schedule, uniform parks and recreation bail and penalty schedule, or uniform business licensing bail and penalty schedule.

The purpose of this uniform bail and penalty schedule is to:

(1)–(2) * * *

* * *

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Rules 5.50, 5.83, 5.91, 5.215, 5.242, 5.275, 5.534 and 5.906 of the California Rules of Court are amended, effective January 1, 2016, to read:

Title 5. Family and Juvenile Rules

Rule 5.50. Papers issued by the court

(a) * * *

(b) Automatic temporary family law restraining order in summons; handling by clerk

Under Family Code section 233, in proceedings for dissolution, legal separation, or nullity of a marriage or domestic partnership and in parentage proceedings, the clerk of the court must issue a summons that includes automatic temporary (standard) restraining orders ~~on the reverse side of the summons~~.

(1)–(2) * * *

(c) Individual restraining order

(1) On application of a party and as provided in the Family Code, a court may issue any individual restraining order that appears to be reasonable or necessary, including those automatic temporary restraining orders in (b) included ~~on the back of~~ in the family law summons under Family Code section 233.

(2) Individual restraining orders supersede the standard family law restraining orders ~~on the back of~~ in the Family Law and Uniform Parentage Act summonses.

Rule 5.83. Family centered case resolution

(a)–(c) * * *

(d) Family centered case resolution conferences

(1)–(4) * * *

(5) Nothing in this rule prohibits an employee of the court from reviewing the file and notifying the parties of any deficiencies in their paperwork before the parties appear in front of a judicial officer at a family centered case resolution conference. This type of assistance can occur by telephone, in person, ~~or~~ in writing, or by other means approved by the court, on or before each scheduled family centered case resolution conference. However, this type of procedural assistance is not intended to replace family centered case resolution plan management or to create a barrier to litigants' access to a judicial officer.

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(e)–(g) * * *

Rule 5.91. Individual restraining order

On a party's request for order and as provided in the Family Code, a court may issue any individual restraining order that appears to be reasonable or necessary, including those automatic temporary restraining orders included ~~on the back of~~ in the family law summons. Individual orders supersede the standard family law restraining orders ~~on the back of~~ in the Family Law and Uniform Parentage Act summonses.

Rule 5.215. Domestic violence protocol for Family Court Services

(a)–(c) * * *

(d) Family Court Services: Description and duties

(1)–(4) * * *

(5) *Providing information*

Family Court Services staff must provide information to families accessing their services about the effects of domestic violence on adults and children. Family Court Services programs, including but not limited to orientation programs, must provide information and materials that describe Family Court Services policy and procedures with respect to domestic violence. ~~Where~~ Whenever possible, ~~the videotapes provided~~ information delivered in video or audiovisual format should be closed-captioned.

(6)–(8) * * *

(e)–(j) * * *

Rule 5.242. Qualifications, rights, and responsibilities of counsel appointed to represent a child in family law proceedings

(a)–(j) * * *

(k) Other considerations

Counsel is not required to assume the responsibilities of a social worker, probation officer, child custody evaluator, or mediator and is not expected to provide nonlegal services to the child. Subject to the terms of the court's order of appointment, counsel for a child may take the following actions to implement his or her statutory duties in representing a child in a family law proceeding:

(1)–(3) * * *

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(4) Conduct thorough, continuing, and independent investigations and discovery to protect the child's interest, which may include:

(A)–(F) * * *

(G) Reviewing relevant photographs, video- or audio~~tapes~~ recordings, and other evidence;

(H)–(L) * * *

(5) * * *

Rule 5.275. Standards for computer software to assist in determining support

**(a)–(f) * * *

(g) Definitions

As used in this ~~rule~~ chapter:

(1) "Software" refers to any program or digital application used to calculate the appropriate amount of child or spousal support.

~~(1)~~(2) "Default settings" refers to the status in which the software first starts when it is installed on a computer system. The software may permit the default settings to be changed by the user, either on a temporary or a permanent basis, if (1) the user is permitted to change the settings back to the default without reinstalling the software, (2) the computer screen prominently indicates whether the software is set to the default settings, and (3) any printout from the software prominently indicates whether the software is set to the default settings.

~~(2)~~(3) "Contains" means, with reference to software, that the material is either displayed by the program code itself or is found in written documents supplied with the software.

**(h)–(j) * * *

Rule 5.534. General provisions—all proceedings

**(a)–(m) * * *

(n) Caregiver notice and right to be heard (§§ 290.1–297, 366.21)

For cases filed under section 300 et seq.:

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(1)–(5) * * *

(6) When form JV-290 or a caregiver letter is filed, the court clerk must provide the social worker, all unrepresented parties, and all attorneys with a copy of the completed form or letter immediately upon receipt. The clerk also must complete, file, and distribute *Proof of Service—Juvenile* (form JV-510). The clerk may use any technology designed to speed the distribution process, including drop boxes in the courthouse, e-mail ~~or,~~ fax, or other electronic transmission, as defined in rule 2.250, to distribute the JV-290 form or letter and proof of service form.

(o)–(p) * * *

Rule 5.906. Request by nonminor for the juvenile court to resume jurisdiction (§§ 224.1(b), 303, 388(e))

(a)–(b) * * *

(c) Filing the request

(1) * * *

(2) For the convenience of the nonminor, the form JV-466 and, if the nonminor wishes to keep his or her contact information confidential, the *Confidential Information—Request to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-468) may be:

(A) Filed with the juvenile court that maintained general jurisdiction; or

(B) Submitted to the juvenile court in the county in which the nonminor currently resides, after which:

(i) The court clerk must record the date and time received on the face of the originals submitted and provide a copy of the originals marked as received to the nonminor at no cost to ~~the~~ him or her.

(ii)–(v) * * *

(C) * * *

(3)–(5) * * *

(d)–(i) * * *

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Rule 7.802 of the California Rules of Court is adopted, effective January 1, 2016, to read:

Title 7. Probate Rules

Chapter 17. Contested Hearings and Trials

Rule 7.802. Electronic filing and service in contested probate proceedings

The provisions of Code of Civil Procedure section 1010.6 and rules 2.250–2.261 of the California Rules of Court concerning filing and service by electronic means apply to contested proceedings under the Probate Code and the Probate Rules to the same extent as they apply to other contested civil proceedings in each superior court in this state.

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Rules 8.11 and 8.804 of the California Rules of Court are adopted; rule 8.803 is renumbered and amended; and rules 8.10, 8.40, 8.42, 8.44, 8.45, 8.46, 8.47, 8.50, 8.100, 8.104, 8.108, 8.112, , 8.123, 8.124, 8.128, 8.130, 8.137, 8.140, 8.144, 8.147, 8.150, 8.204, 8.208, 8.212, 8.220, 8.224, 8.248, 8.252, 8.264, 8.272, 8.278, 8.304, 8.308, 8.336, 8.344, 8.346, 8.360, 8.380, 8.384, 8.385, 8.386, 8.405, 8.406, 8.411, 8.412, 8.474, 8.482, 8.486, 8.488, 8.495, 8.496, 8.498, 8.504, 8.512, 8.540, 8.548, 8.610, 8.616, 8.630, 8.702, 8.703, 8.800, 8.806, 8.814, 8.821, 8.822, 8.823, 8.824, , 8.833, 8.834, 8.835, 8.838, 8.840, 8.842, 8.843, 8.852, 8.853, 8.862, 8.864, 8.866, 8.868, 8.870, 8.872, 8.874, 8.881, 8.882, 8.883, 8.888, 8.890, 8.891, 8.901, 8.902, 8.911, 8.915, 8.917, 8.919, 8.921, 8.922, 8.924, 8.926, 8.927, 8.928, 8.931, and 8.1018 are amended, effective January 1. 2016, to read:

Title 8. Appellate Rules

Rule 8.10. Definitions and use of terms

Unless the context or subject matter requires otherwise, the definitions and use of terms in rule 1.6 apply to these rules. In addition, the following apply:

(1)–(7) * * *

(8) "Attach" or "attachment" may refer to either physical attachment or electronic attachment, as appropriate.

(9) "Copy" or "copies" may refer to electronic copies, as appropriate.

(10) "Cover" includes the cover page of a document filed electronically.

(11) "Written" and "writing" include electronically created written materials, whether or not those materials are printed on paper.

Rule 8.11. Scope of rules

These rules apply to documents filed and served electronically as well as in paper form, unless otherwise provided.

Rule 8.40. Form of filed documents

(a) * * *

(b) Cover color

(1) As far as practicable, the covers of briefs and petitions filed in paper form must be in the following colors:

Appellant's opening brief or appendix	green
Respondent's brief or appendix	yellow
Appellant's reply brief or appendix	tan
Joint appendix	white
Amicus curiae brief	gray

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Answer to amicus curiae brief	blue
Petition for rehearing	orange
Answer to petition for rehearing	blue
Petition for original writ	red
Answer (or opposition) to petition for original writ	red
Reply to answer (or opposition) to petition for original writ	red
Petition for transfer of appellate division case to Court of Appeal	white
Answer to petition for transfer of appellate division case to Court of Appeal	blue
Petition for review	white
Answer to petition for review	blue
Reply to answer to petition for review	white
Opening brief on the merits	white
Answer brief on the merits	blue
Reply brief on the merits	white

(2) In appeals under rule 8.216, the cover of a combined respondent's brief and appellant's opening brief filed in paper form must be yellow, and the cover of a combined reply brief and respondent's brief filed in paper form must be tan.

(3) * * *

(c) * * *

Rule 8.42. Requirements for signatures of multiple parties on filed documents

When a document to be filed~~,~~ in paper form, such as a stipulation, requires the signatures of multiple parties, the original signature of at least one party must appear on the document filed in the reviewing court; the other signatures may be in the form of copies of the signed signature page of the document. Electronically filed documents must comply with the relevant provisions of rule 8.77.

~~**Advisory Committee Comment**~~

~~Please note that rule 8.77 establishes different requirements for documents that are electronically filed.~~

Rule 8.44. Number of copies of filed documents

~~Except as these rules provide otherwise, the number of copies of every brief, petition, motion, application, or other document that must be filed in a reviewing court is as follows:~~

(a) Documents filed in the Supreme Court

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Except as these rules provide otherwise, the number of copies of every brief, petition, motion, application, or other document that must be filed in the Supreme Court and that is filed in paper form is as follows:

(1)–(6) * * *

(b) Documents filed in a Court of Appeal

Except as these rules provide otherwise, the number of copies of every brief, petition, motion, application, or other document that must be filed in a Court of Appeal and that is filed in paper form is as follows:

(1)–(7) * * *

(c) Electronic copies

A court that permits electronic filing will specify any requirements regarding electronically filed documents in the electronic filing requirements published under rule 8.74. In addition, a court may provide by local rule for the submission of an electronic copy of a document that is not electronically filed either in addition to the copies of a document required to be filed under (a) or (b) or as a substitute for one or more of these copies. The local rule must specify the format of the electronic copy and provide for an exception if it would cause undue hardship for a party to submit an electronic copy.

Rule 8.45. General provisions

(a) * * *

(b) Definitions

As used in this article:

(1) "Record" means all or part of a document, paper, exhibit, transcript, or other thing filed or lodged with the court by electronic means or otherwise.

(2)–(7) * * *

(c) Format of sealed and confidential records

(1) Unless otherwise provided by law or court order, sealed or confidential records that are part of the record on appeal or the supporting documents or other records accompanying a motion, petition for a writ of habeas corpus, other writ petition, or other filing in the reviewing court must be kept separate from the rest of a clerk's or reporter's transcript, appendix, supporting documents, or other records sent to the reviewing court and in a secure manner that preserves their confidentiality.

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(A)–(D) * * *

(2) * * *

(3) Records relating to a request for funds under Penal Code section 987.9 or other proceedings the occurrence of which is not to be disclosed under the court order or applicable law must not be bound together with, or electronically transmitted as a single document with, other sealed or confidential records and must not be listed in the index required under (1)(D) or the alphabetical or chronological indexes to a clerk's or reporter's transcript, appendix, supporting documents to a petition, or other records sent to the reviewing court.

(d) * * *

Rule 8.46. Sealed records

(a)–(c) * * *

(d) Record not filed in the trial court; motion or application to file under seal

(1)–(2) * * *

(3) To lodge a record, the party must transmit the record to the court in a secure manner that preserves the confidentiality of the record to be lodged. The record must be transmitted separate from the rest of a clerk's or reporter's transcript, appendix, supporting documents, or other records sent to the reviewing court with a cover sheet that complies with rule 8.40(c) and labels the contents as "CONDITIONALLY UNDER SEAL." If the record is in paper format, it must be placed in a sealed envelope or other appropriate sealed container.

(4)–(9) * * *

(e) Unsealing a record in the reviewing court

(1)–(2) * * *

(3) If the reviewing court proposes to order a record unsealed on its own motion, the court must send ~~mail~~ notice to the parties. Unless otherwise ordered by the court, any party may serve and file an opposition within 10 days after the notice is sent ~~mailed~~, and any other party may serve and file a response within 5 days after an opposition is filed.

(4)–(7) * * *

(f) * * *

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Rule 8.47. Confidential records

(a) * * *

(b) Records of *Marsden* hearings and other in-camera proceedings

(1)–(2) * * *

(3) A defendant may serve and file a motion or application in the reviewing court requesting permission to file under seal a brief, petition, or other filing that raises a *Marsden* issue or an issue related to another in-camera hearing covered by this subdivision and requesting an order maintaining the confidentiality of the relevant material from the reporter's transcript of or documents filed or lodged in connection with the in-camera hearing.

(A)–(B) * * *

(C) At the time the motion or application is filed, the defendant must:

(i) * * *

(ii) Lodge an unredacted version of the brief, petition, or other filing that he or she is requesting be filed under seal. The filing must be transmitted in a secure manner that preserves the confidentiality of the filing being lodged. If this version is in paper format, it must be placed in a sealed envelope or other appropriate sealed container. The cover of the unredacted version of the document, and if applicable the envelope or other container, must identify it as "May Not Be Examined Without Court Order—Contains material from conditionally sealed record."

(D) * * *

(c) Other confidential records

Except as otherwise provided by law or order of the reviewing court:

(1) * * *

(2) To maintain the confidentiality of material contained in a confidential record, if it is necessary to disclose such material in a filing in the reviewing court, a party may serve and file a motion or application in the reviewing court requesting permission for the filing to be under seal.

(A)–(B) * * *

(C) At the time the motion or application is filed, the party must:

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(i) * * *

(ii) Lodge an unredacted version of the brief, petition, or other filing that he or she is requesting be filed under seal. The filing must be transmitted in a secure manner that preserves the confidentiality of the filing being lodged. If this version is in paper format, it must be placed in a sealed envelope or other appropriate sealed container. The cover of the unredacted version of the document, and if applicable the envelope or other container, must identify it as "May Not Be Examined Without Court Order—Contains material from conditionally sealed record." Material from a confidential record disclosed in this version must be identified and accompanied by a citation to the statute, rule of court, case, or other authority establishing that the record is required by law to be closed to inspection in the reviewing court.

(D) * * *

Rule 8.50. Applications

(a)–(b) * * *

~~**(c) Envelopes**~~

~~An application to a Court of Appeal must be accompanied by addressed, postage-prepaid envelopes for the clerk's use in mailing copies of the order on the application to all parties.~~

**~~(d)~~(c) Disposition * * *

Rule 8.100. Filing the appeal

(a) * * *

(b) Fee and deposit

(1) Unless otherwise provided by law, the notice of appeal must be accompanied by the $775 filing fee under Government Code sections 68926 and 68926.1(b), an application for a waiver of court fees and costs on appeal under rule 8.26, or an order granting such an application. The fee ~~should~~ may be paid by check or money order payable to "Clerk, Court of Appeal"; if the fee is paid in cash, the clerk must give a receipt. The fee may also be paid by any method permitted by the court pursuant to rules 2.258 and 8.78.

(2)–(3) * * *

DRAFT

(c)–(d) * * *

(e) Superior court clerk's duties

(1) The superior court clerk must promptly ~~mail~~ send a notification of the filing of the notice of appeal to the attorney of record for each party, to any unrepresented party, and to the reviewing court clerk.

(2) The notification must show the date it was ~~mailed~~ sent and must state the number and title of the case and the date the notice of appeal was filed. If the information is available, the notification must include:

(A) The name, address, telephone number, e-mail address, and California State Bar number of each attorney of record in the case;

(B) * * *

(C) The name, address, ~~and~~ telephone number and e-mail address of any unrepresented party.

(3) * * *

(4) The ~~mailing~~ sending of a notification under (1) is a sufficient performance of the clerk's duty despite the death of the party or the discharge, disqualification, suspension, disbarment, or death of the attorney.

(5)–(6) * * *

(f) * * *

(g) Civil case information statement

(1) Within 15 days after the superior court clerk ~~mails~~ sends the notification of the filing of the notice of appeal required by (e)(1), the appellant must serve and file in the reviewing court a completed *Civil Case Information Statement* (form APP-004), attaching a copy of the judgment or appealed order that shows the date it was entered.

(2) If the appellant fails to timely file a case information statement under (1), the reviewing court clerk must notify the appellant ~~by mail~~ in writing that the appellant must file the statement within 15 days after the clerk's notice is ~~mailed~~ sent and that if the appellant fails to comply, the court may either impose monetary sanctions or dismiss the appeal. If the appellant fails to file the statement as specified in the notice, the court may impose the sanctions specified in the notice.

Advisory Committee Comment

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Subdivision (a). * * *

Subdivision (b). * * *

Subdivision (c)(2). * * *

Subdivision (e). Under subdivision (e)(2), a notification of the filing of a notice of appeal must show the date that the clerk ~~mailed~~ sent the document. This provision is intended to establish the date when the 20-day extension of the time to file a cross-appeal under rule 8.108(e) begins to run.

Subdivision (e)(1) requires the clerk to ~~mail~~ send a notification of the filing of the notice of appeal to the appellant's attorney or to the appellant if unrepresented. Knowledge of the date of that notification allows the appellant's attorney or the appellant to track the running of the 20-day extension of time to file a cross-appeal under rule 8.108(e).

Rule 8.104. Time to appeal

(a) Normal time

(1) Unless a statute, rule 8.108, or rule 8.702 provides otherwise, a notice of appeal must be filed on or before the earliest of:

(A) 60 days after the superior court clerk serves on the party filing the notice of appeal a document entitled "Notice of Entry" of judgment or a file~~d-stamped~~endorsed copy of the judgment, showing the date either was served;

(B) 60 days after the party filing the notice of appeal serves or is served by a party with a document entitled "Notice of Entry" of judgment or a file~~d-stamped~~endorsed copy of the judgment, accompanied by proof of service; or

(C) * * *

(2) * * *

(3) If the parties stipulated in the trial court under Code of Civil Procedure section 1019.5 to waive notice of the court order being appealed, the time to appeal under (1)(C) applies unless the court or a party serves notice of entry of judgment or a file~~d-stamped~~endorsed copy of the judgment to start the time period under (1)(A) or (B).

(b)–(e) * * *

Rule 8.108. Extending the time to appeal

(a)–(e) * * *

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(f) Public entity actions under Government Code section 962, 984, or 985

If a public entity defendant serves and files a valid request for a mandatory settlement conference on methods of satisfying a judgment under Government Code section 962, an election to pay a judgment in periodic payments under Government Code section 984 and rule 3.1804, or a motion for a posttrial hearing on reducing a judgment under Government Code section 985, the time to appeal from the judgment is extended for all parties until the earliest of:

(1) 90 days after the superior court clerk serves the party filing the notice of appeal with a document entitled "Notice of Entry" of judgment, or a filed ~~-stamped~~endorsed copy of the judgment, showing the date either was served;

(2) 90 days after the party filing the notice of appeal serves or is served by a party with a document entitled "Notice of Entry" of judgment or a filed ~~-stamped~~endorsed copy of the judgment, accompanied by proof of service; or

(3) * * *

(g)–(h) * * *

Rule 8.112. Petition for writ of supersedeas

(a) Petition

(1)–(3) * * *

(4) If the record has not been filed in the reviewing court:

(A)–(B) * * *

(C) The documents listed in (B) must comply with the following requirements:

(i) If filed in paper form, they must be bound together at the end of the petition or in separate volumes not exceeding 300 pages each. The pages must be consecutively numbered;

(ii) If filed in paper form, they must be index-tabbed by number or letter, and

(iii) They must begin with a table of contents listing each document by its title and its index ~~-tab~~ number or letter.

(5) * * *

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(b)–(d) * * *

Rule 8.123. Record of administrative proceedings

(a)–(b) * * *

(c) Transmittal to the reviewing court

Except as provided in (d), if any administrative record is designated by a party, the superior court clerk must transmit the original administrative record, or electronic administrative record, with any clerk's or reporter's transcript sent to the reviewing court under rule 8.150. If the appellant has elected under rule 8.121 to use neither a clerk's transcript nor a reporter's transcript, the superior court clerk must transmit any administrative record designated by a party to the reviewing court no later than 45 days after the respondent files a designation under (b)(2) or the time for filing it expires, whichever first occurs.

(d)–(e) * * *

Rule 8.124. Appendixes

(a)–(b) * * *

(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)–(2) * * *

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

(4) * * *

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

(d) Form of appendix

(1) An appendix must comply with the requirements of rule 8.144(~~a~~b)–(~~c~~d) for a clerk's transcript.

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(2) * * *

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

(e)–(g) * * *

Rule 8.128. Superior court file instead of clerk's transcript

(a) * * *

(b) Cost estimate; preparation of file; transmittal

(1) Within 10 days after a stipulation under (a) is filed, the superior court clerk must send ~~mail~~ the appellant an estimate of the cost to prepare the file, including the cost of sending the index under (3). The appellant must deposit the cost or file an application for, or an order granting, a waiver of the cost within 10 days after the clerk sends ~~mails~~ the estimate.

(2)–(4) * * *

Rule 8.130. Reporter's transcript

(a) * * *

(b) Deposit or substitute for cost of transcript

(1) * * *

(2) If the reporter believes the deposit is inadequate, within 15 days after the clerk ~~mails~~ sends the notice under (d)(1) the reporter may file with the clerk and send ~~mail~~ to the designating party an estimate of the transcript's total cost at the statutory rate, showing the additional deposit required. The party must deposit the additional sum within 10 days after the reporter ~~mails~~ sends the estimate.

(3) * * *

(c) * * *

(d) Superior court clerk's duties

(1) * * *

(2) The clerk must promptly ~~mail~~ send the reporter notice of the designation and of the deposit or substitute and notice to prepare the transcript, showing the date the notice was sent ~~mailed~~ to the reporter, when the court receives:

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(A)–(C) * * *

(3) If the appellant does not present the deposit under (b)(1) or a substitute under (b)(3) with its notice of designation or does not present an additional deposit required under (b)(2):

(A) The clerk must promptly notify the appellant in writing ~~by mail~~ that, within 15 days after the notice is sent ~~mailed~~, the appellant must take one of the following actions or the court may dismiss the appeal:

(i)–(v) * * *

(B) * * *

.

(4)–(5) * * *

**(e) * * *

(f) Filing the transcript; copies; payment

(1) Within 30 days after notice is ~~mailed~~ sent under (d)(2), the reporter must prepare and certify an original of the transcript and file it in superior court. The reporter must also file one copy of the original transcript, or more than one copy if multiple appellants equally share the cost of preparing the record (see rule 8.147(a)(2)). Only the reviewing court can extend the time to prepare the reporter's transcript (see rule 8.60).

(2)–(4) * * *

**(g) * * *

(h) Agreed or settled statement when proceedings cannot be transcribed

(1) If any portion of the designated proceedings cannot be transcribed, the superior court clerk must so notify the designating party in writing ~~by mail~~; the notice must show the date it was sent ~~mailed~~. The party may then substitute an agreed or settled statement for that portion of the designated proceedings by complying with either (A) or (B):

(A) Within 10 days after the notice is sent ~~mailed~~, the party may file in superior court, under rule 8.134, an agreed statement or a stipulation that the parties are attempting to agree on a statement. If the party files a stipulation, within 30 days thereafter the party must file the agreed statement, move to use a settled statement under rule 8.137, or proceed without such a statement; or

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(B) Within 10 days after the notice is sent ~~mailed~~, the party may move in superior court to use a settled statement. If the court grants the motion, the statement must be served, filed, and settled as rule 8.137 provides, but the order granting the motion must fix the times for doing so.

(2)–(3) * * *

Advisory Committee Comment

Subdivision (a). * * *

Subdivision (b). * * *

Subdivision (c). * * *

Subdivision (d). Under subdivision (d)(2), the clerk's notice to the reporter must show the date on which the clerk sent ~~mailed~~ the notice. This provision is intended to establish the date when the period for preparing the reporter's transcript under subdivision (f)(1) begins to run.

Subdivision (e). * * *

Subdivision (f). * * *

Rule 8.137. Settled statement

(a) Motion to use settled statement

(1)–(2) * * *

(3) If the court denies the motion, the appellant must file a new notice designating the record on appeal under rule 8.121 within 10 days after the superior court clerk sends ~~mails~~, or a party serves, the order of denial.

(b) Time to file; contents of statement

(1) Within 30 days after the superior court clerk sends ~~mails~~, or a party serves, an order granting a motion to use a settled statement, the appellant must serve and file in superior court a condensed narrative of the oral proceedings that the appellant believes necessary for the appeal. Subject to the court's approval in settling the statement, the appellant may present some or all of the evidence by question and answer.

(2)–(5) * * *

(c) * * *

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Rule 8.140. Failure to procure the record

(a) Notice of default

Except as otherwise provided by these rules, if a party fails to timely do an act required to procure the record, the superior court clerk must promptly notify the party in writing ~~by mail~~ that it must do the act specified in the notice within 15 days after the notice is sent ~~mailed~~, and that if it fails to comply, the reviewing court may impose one of the following sanctions:

(1)–(2) * * *

(b)–(c) * * *

Rule 8.144. Form of the record

(a) Paper and format

(1) In the clerk's and reporter's transcripts:

(A) All documents filed must have a page size of 8½ by 11 inches. If filed in paper form, the paper must be white or unbleached~~, 81/2 by 11 inches,~~ and of at least 20-pound weight;

(B)–(D) * * *

(E) The margin must be at least 1¼ inches from the left edge ~~on the bound side of the page~~.

(2) If filed in paper form, in the clerk's transcript only one side of the paper may be used; in the reporter's transcript both sides may be used, but the margins must then be 1¼ inches on each edge.

(3) In the reporter's transcript the lines on each page must be consecutively numbered, and must be double-spaced or one-and-a-half-spaced; double-spaced means three lines to a vertical inch.

(4) The clerk's and reporter's transcripts must comply with rules 8.45–8.47 relating to sealed and confidential records.

(b) Indexes

Except as provided in rule 8.45, at the beginning of the first volume of each:

(1) The clerk's transcript must contain alphabetical and chronological indexes listing each document and the volume, where applicable, and page where it first appears;

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(2) The reporter's transcript must contain alphabetical and chronological indexes listing the volume, where applicable, and page where each witness's direct, cross, and any other examination, begins; and

(3) The reporter's transcript must contain an index listing the volume, where applicable, and page where any exhibit is marked for identification and where it is admitted or refused. The index must identify each exhibit by number or letter and a brief description of the exhibit.

(c) Binding and cover

(1) If filed in paper form, clerk's and reporter's transcripts must be bound on the left margin in volumes of no more than 300 sheets.

(2)–(3) * * *

(d)–(f) * * *

Advisory Committee Comment

Subdivisions (a) and (b). Subdivisions (a)(4) and (b)~~(1)~~ refer to special requirements concerning sealed and confidential records established by rules 8.45–8.47. Rule 8.45(c)(2) and (3) establish special requirements regarding references to sealed and confidential records in the alphabetical and chronological indexes to clerk's and reporter's transcripts.

Rule 8.147. Record in multiple or later appeals in same case

(a) * * *

(b) Later appeal

In an appeal in which the parties are using either a clerk's transcript under rule 8.122 or a reporter's transcript under rule 8.130:

(1) A party wanting to incorporate by reference all or parts of a record in a prior appeal in the same case must specify those parts in its designation of the record.

(A) The prior 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, where applicable, 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 in a separate section at the end of the designation of the record.

(B)–(C) * * *

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(2) * * *

Rule 8.150. Filing the record

(a) * * *

(b) Reviewing court clerk's duties

On receiving the record, the reviewing court clerk must promptly file the original and send ~~mail~~ notice of the filing date to the parties.

Rule 8.204. Contents and form of briefs

(a) * * *

(b) Form

(1) A brief may be reproduced by any process that produces a clear, black image of letter quality. All documents filed must have a page size of 8½ by 11 inches. If filed in paper form, the paper must be white or unbleached~~, 81/2 by 11 inches,~~ and of at least 20-pound weight.

(2) Any conventional font ~~typeface~~ may be used. The font ~~typeface~~ may be either proportionally spaced or monospaced.

(3) The font ~~type~~ style must be roman; but for emphasis, italics or boldface may be used or the text may be underscored. Case names must be italicized or underscored. Headings may be in uppercase letters.

(4) Except as provided in (11), the font ~~type~~ size, including footnotes, must not be smaller than 13-point, and both sides of the paper may be used.

(5)–(7) * * *

(8) If filed in paper form, the brief must be bound on the left margin. If the brief is stapled, the bound edge and staples must be covered with tape.

(9) * * *

(10) If filed in paper form, the cover must be in the color prescribed by rule 8.40(b). ~~and, in~~ In addition to providing the cover information required by rule 8.40(c), the cover must state:

(A)–(D) * * *

(11) * * *

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(c)–(e) * * *

Advisory Committee Comment

Subdivision (b). The first sentence of subdivision (b)(1) confirms that any method of reproduction is acceptable provided it results in a clear black image of letter quality. The provision is derived from subdivision (a)(1) of rule 32 of the Federal Rules of Appellate Procedure (28 U.S.C.) (FRAP 32).

Paragraphs (2), (3), and (4) of subdivision (b) state requirements of *font* ~~*typeface,*~~ *font* ~~*type*~~ *style,* and *font*~~*type*~~ *size* (see also subd. (b)(11)(C)). ~~The first two terms are defined in *The Chicago Manual of Style* (15th ed., 2003) p. 839. Note that computer programs often refer to typeface as "font."~~

Subdivision (b)(2) allows the use of any conventional font ~~typeface—~~e.g., Times New Roman, Courier, Arial, Helvetica, etc.—and permits the font ~~typeface~~ to be either proportionally spaced or monospaced.

Subdivision (b)(3) requires the font ~~type~~ style to be roman, but permits the use of italics, boldface, or underscoring for emphasis; it also requires case names to be italicized or underscored. These provisions are derived from FRAP 32(a)(6).

Subdivision (b)(5) allows headings to be single-spaced; it is derived from FRAP 32(a)(4). The provision also permits quotations of any length to be block-indented and single-spaced at the discretion of the brief writer.

See also rule 1.200 concerning the format of citations. Brief writers are encouraged to follow the citation form of the *California Style Manual* (4th ed., 2000).

Subdivision (c). * * *

Subdivision (d). * * *

Subdivision (e). * * *

Rule 8.208. Certificate of Interested Entities or Persons

(a)–(c) * * *

(d) Serving and filing a certificate

(1)–(2) * * *

(3) If a party fails to file a certificate as required under (1), the clerk must notify the party in writing ~~by mail~~ that the party must file the certificate within 15 days after the clerk's notice is sent ~~mailed~~ and that if the party fails to comply, the court may impose one of the following sanctions:

(A)–(B) * * *

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(4) * * *

(e)–(f) * * *

Rule 8.212. Service and filing of briefs * * *

Advisory Committee Comment

Subdivision (a). * * *

Subdivision (b). Extensions of briefing time are limited by statute in some cases. For example, under Public Resources Code section 21167.6(h) in cases under section 21167, extensions are limited to one 30-day extension for the opening brief and one 30-day extension for "preparation of responding brief."

Under rule 8.42, the original signature of only one party is required on the stipulation filed with the court; the signatures of the other parties may be in the form of copies of the signed signature page of the document. Signatures on electronically filed documents are subject to the requirements of rule 8.77.

Subdivision (b)(2) clarifies that a party seeking an extension of time from the presiding justice must proceed by application under rule 8.50 rather than by motion under rule 8.54.

Subdivision (c). * * *

Rule 8.220. Failure to file a brief

(a) Notice to file

If a party fails to timely file an appellant's opening brief or a respondent's brief, the reviewing court clerk must promptly notify the party in writing ~~by mail~~ that the brief must be filed within 15 days after the notice is sent ~~mailed~~ and that if the party fails to comply, the court may impose one of the following sanctions:

(1)–(2) * * *

(b)–(d) * * *

Rule 8.224. Transmitting exhibits

(a) * * *

(b) Transmittal

Unless the reviewing court orders otherwise, within 20 days after the first notice under (a) is filed:

(1) The superior court clerk must put any designated exhibits in the clerk's possession into numerical or alphabetical order and send them to the reviewing court ~~with two~~

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~~copies of a list of the exhibits sent~~. The superior court clerk must also send a list of the exhibits sent. If the exhibits are not transmitted electronically, the superior court clerk must send two copies of the list. If the reviewing court clerk finds the list correct, the clerk must sign and return ~~one~~ a copy to the superior court clerk.

(2) Any party in possession of designated exhibits returned by the superior court must put them into numerical or alphabetical order and send them to the reviewing court ~~with two copies of a list of the exhibits sent.~~ The party must also send a list of the exhibits sent. If the exhibits are not transmitted electronically, the party must send two copies of the list. If the reviewing court clerk finds the list correct, the clerk must sign and return ~~one~~ a copy to the party.

(c) * * *

(d) Request and return by reviewing court

At any time the reviewing court may direct the superior court or a party to send it an exhibit. On request, the reviewing court may return an exhibit to the superior court or to the party that sent it. When the remittitur issues, the reviewing court must return all exhibits not transmitted electronically to the superior court or to the party that sent them.

Rule 8.248. Prehearing conference

(a)–(c) * * *

(d) Time to file brief

The time to file a party's brief under rule 8.212(a) is tolled from the date the Court of Appeal sends ~~mails~~ notice of the conference until the date it sends ~~mails~~ notice that the conference is concluded.

Advisory Committee Comment

Subdivision (a). * * *

Subdivision (d). If a prehearing conference is ordered before the due date of the appellant's opening brief, the time to file the brief is not *extended* but *tolled,* in order to avoid unwarranted lengthening of the briefing process. For example, if the conference is ordered 15 days after the start of the normal 30-day briefing period, the rule simply *suspends* the running of that period; when the period resumes, the party will not receive an automatic extension of a full 30 days but rather the remaining 15 days of the original briefing period, unless the period is otherwise extended.

Under subdivision (d) the tolling period continues "until the date [the Court of Appeal] sends ~~mails~~ notice that the conference is *concluded"* (italics added). This provision is intended to accommodate the possibility that the conference may not conclude on the date it begins.

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Whether or not the conference concludes on the date it begins, subdivision (d) requires the Court of Appeal clerk to send ~~mail~~ the parties a notice that the conference is concluded. This provision is intended to facilitate the calculation of the new briefing due dates.

Rule 8.252. Judicial notice; findings and evidence on appeal

(a)–(b) * * *

(c) Evidence on appeal

(1)–(2) * * *

(3) For documentary evidence, a party may offer the original, a certified copy, ~~or~~ a photocopy, or, in a case in which electronic filing is permitted, an electronic copy. The court may admit the document in evidence without a hearing.

Rule 8.264. Filing, finality, and modification of decision

(a)–(c) * * *

(d) Consent to increase or decrease in amount of judgment

If a Court of Appeal decision conditions the affirmance of a money judgment on a party's consent to an increase or decrease in the amount, the judgment is reversed unless, before the decision is final under (b), the party serves and files ~~two copies~~ a copy of a consent in the Court of Appeal. If a consent is filed, the finality period runs from the filing date of the consent. The clerk must send one filed ~~stamped~~endorsed copy of the consent to the superior court with the remittitur.

Rule 8.272. Remittitur

(a) * * *

(b) Clerk's duties

(1) If a Court of Appeal decision is not reviewed by the Supreme Court:

(A) * * *

(B) The clerk must send the lower court or tribunal the Court of Appeal remittitur and a filed ~~stamped~~endorsed copy of the opinion or order.

(2) After Supreme Court review of a Court of Appeal decision:

(A) * * *

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(B) The clerk must send the lower court or tribunal the Court of Appeal remittitur, a copy of the Supreme Court remittitur, and a filed ~~-stamped~~endorsed copy of the Supreme Court opinion or order.

(c)–(d) * * *

Rule 8.278. Costs on appeal

(a)–(d) * * *

Advisory Committee Comment

This rule is not intended to expand the categories of appeals subject to the award of costs. See rule 8.493 for provisions addressing costs in writ proceedings.

Subdivision (c). * * *

Subdivision (d). Subdivision (d)(1)(B) is intended to refer not only to a normal record prepared by the clerk and the reporter under rules 8.122 and 8.130 but also, for example, to an appendix prepared by a party under rule 8.124 and to a superior court file to which the parties stipulate under rule 8.128.

Subdivision (d)(1)(D), allowing recovery of the "costs to notarize, serve, mail, and file the record, briefs, and other papers," is intended to include fees charged by electronic filing service providers for electronic filing and service of documents.

"Net interest expenses" in subdivisions (d)(1)(F) and (G) means the interest expenses incurred to borrow the funds that are deposited minus any interest earned by the borrower on those funds while they are on deposit.

Rule 8.304. Filing the appeal; certificate of probable cause

(a)–(b) * * *

(c) Notification of the appeal

(1) When a notice of appeal is filed, the superior court clerk must promptly send ~~mail~~ a notification of the filing to the attorney of record for each party, to any unrepresented defendant, to the reviewing court clerk, to each court reporter, and to any primary reporter or reporting supervisor. If the defendant also files a statement under (b)(1), the clerk must not send ~~mail~~ the notification unless the superior court files a certificate under (b)(2).

(2) The notification must show the date it was sent ~~mailed~~, the number and title of the case, and the dates the notice of appeal and any certificate under (b)(2) were filed. If the information is available, the notification must also include:

(A) The name, address, telephone number, e-mail address, and California State Bar number of each attorney of record in the case;

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(B) * * *

(C) The name, address, ~~and~~ telephone number and e-mail address of any unrepresented defendant.

(3)–(4) * * *

(5) The sending ~~mailing~~ of a notification under (1) is a sufficient performance of the clerk's duty despite the discharge, disqualification, suspension, disbarment, or death of the attorney.

(6) * * *

Rule 8.308. Time to appeal

(a) * * *

(b) Cross-appeal

If the defendant or the People timely appeals from a judgment or appealable order, the time for any other party to appeal from the same judgment or order is either the time specified in (a) or 30 days after the superior court clerk sends ~~mails~~ notification of the first appeal, whichever is later.

(c)–(d) * * *

Rule 8.336. Preparing, certifying, and sending the record

(a)–(c) * * *

(d) Reporter's transcript

(1)–(3) * * *

(4) Any portion of the transcript transcribed during trial must not be retyped unless necessary to correct errors, but must be repaginated and combined ~~bound~~ with any portion of the transcript not previously transcribed. Any additional copies needed must not be retyped but, if the transcript is in paper form, must be prepared by photocopying or an equivalent process.

(5) * * *

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(e)–(h) * * *

Rule 8.344. Agreed statement

If the parties present the appeal on an agreed statement, they must comply with the relevant provisions of rule 8.134, but the appellant must file an original and, if the statement is filed in paper form, three copies of the statement in superior court within 25 days after filing the notice of appeal.

Rule 8.346. Settled statement

(a)–(b) * * *

(c) Serving and filing the settled statement

The applicant must prepare, serve, and file in superior court an original and, if the statement is filed in paper form, three copies of the settled statement.

Rule 8.360. Briefs by parties and amici curiae

(a)–(b) * * *

(c) Time to file

(1)–(4) * * *

(5) If a party fails to timely file an appellant's opening brief or a respondent's brief, the reviewing court clerk must promptly notify the party in writing ~~by mail~~ that the brief must be filed within 30 days after the notice is sent ~~mailed~~, and that failure to comply may result in one of the following sanctions:

(A)–(B) * * *

(6) * * *

(d)–(f) * * *

Rule 8.380. Petition for writ of habeas corpus filed by petitioner not represented by an attorney

(a)–(b) * * *

(c) Number of copies

In the Court of Appeal, the petitioner must file the original of the petition under (a) and one set of any supporting documents. In the Supreme Court the petitioner must file an

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original and, if the petition is filed in paper form, 10 copies of the petition and an original and, if the document is filed in paper form, 2 copies of any supporting document accompanying the petition unless the court orders otherwise.

Rule 8.384. Petition for writ of habeas corpus filed by an attorney for a party

(a) Form and content of petition and memorandum

(1)–(2) * * *

(3) The petition and any memorandum must support any reference to a matter in the supporting documents by a citation to its index number or letter ~~tab~~ and page.

(b)–(d) * * *

Rule 8.385. Proceedings after the petition is filed

(a) * * *

(b) Informal response

(1) * * *

(2) The response must be served and filed within 15 days or as the court specifies. If the petitioner is not represented by counsel in the habeas corpus proceeding, one copy of the informal response and any supporting documents must be served on the petitioner. If the petitioner is represented by counsel in the habeas corpus proceeding, ~~two copies~~ the response must be served on the petitioner's counsel. If the response is served in paper form, two copies must be served on the petitioner's counsel. If the petitioner is represented by court-appointed counsel other than the State Public Defender's Office or Habeas Corpus Resource Center, one copy must also be served on the applicable appellate project.

(3) * * *

(c)–(f) * * *

Rule 8.386. Proceedings if the return is ordered to be filed in the reviewing court

(a) * * *

(b) Serving and filing return

(1)–(2) * * *

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(3) ~~Two copies of the~~ The return and any supporting documents must be served on the petitioner's counsel~~, and if~~. If the return is served in paper form, two copies must be served on the petitioner's counsel. If the petitioner is represented for the habeas corpus proceeding by court-appointed counsel other than the State Public Defender's Office or Habeas Corpus Resource Center, one copy must be served on the applicable appellate project.

(c) Form and content of return

(1) * * *

(2) Rule 8.486(c)(1) and (2) govern the form of any supporting documents accompanying the return. The return must support any reference to a matter in the supporting documents by a citation to its index ~~tab~~ number or letter and page.

(3) * * *

(d)–(g) * * *

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) ~~Mail~~ Send a notification of the filing to:

(i)–(vi) * * *

(B) * * *

(2) The notification must show the name of the appellant, the date it was ~~mailed~~ sent, the number and title of the case, and the date the notice of appeal was filed. If the information is available, the notification must also include:

(A) The name, address, telephone number, e-mail address, and California State Bar number of each attorney of record in the case;

(B) * * *

(C) The name, address, ~~and~~ telephone number and e-mail address of any unrepresented party.

(3)–(4) * * *

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(5) The sending ~~mailing~~ of a notification is a sufficient performance of the clerk's duty despite the discharge, disqualification, suspension, disbarment, or death of the attorney.

(6) * * *

Advisory Committee Comment

Subdivision (a). *Notice of Appeal—Juvenile (California Rules of Court, Rule 8.400)* (form JV-800) may be used to file the notice of appeal required under this rule. This form is available at any courthouse or county law library or online at ~~*www.courtinfo.ca.gov/forms*~~ www.courts.ca.gov/forms.

Rule 8.406. Time to appeal

(a) * * *

(b) Cross-appeal

If an appellant timely appeals from a judgment or appealable order, the time for any other party to appeal from the same judgment or order is either the time specified in (a) or 20 days after the superior court clerk sends ~~mails~~ notification of the first appeal, whichever is later.

(c)–(d) * * *

Rule 8.411. Abandoning the appeal

(a)–(b) * * *

(c) Clerk's duties

(1) If the abandonment is filed in the superior court, the clerk must immediately send ~~mail~~ a notification of the abandonment to:

(A)–(C) * * *

(2) If the abandonment is filed in the reviewing court and the reviewing court orders the appeal dismissed, the clerk must immediately send ~~mail~~ a notification of the order of dismissal to every party.

Rule 8.412. Briefs by parties and amici curiae

(a)–(c) * * *

(d) Failure to file a brief

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(1) Except in appeals governed by rule 8.416, if a party fails to timely file an appellant's opening brief or a respondent's brief, the reviewing court clerk must promptly notify the party's counsel or the party, if not represented, in writing ~~by mail~~ that the brief must be filed within 30 days after the notice is sent ~~mailed~~ and that failure to comply may result in one of the following sanctions:

(A)–(B) * * *

(2)–(3) * * *

**(e) * * *

Rule 8.474. Procedures and data

**(a) * * *

(b) Data

The clerks of the superior courts and the reviewing courts must ~~the~~ provide the data required to assist the Judicial Council in evaluating the effectiveness of the rules governing appeals and writs in juvenile cases.

Rule 8.482. Appeal from judgment authorizing conservator to consent to sterilization of conservatee

(a)–(b) * * *

(c) Superior court clerk's duties

After entering the judgment, the clerk must immediately:

(1) * * *

(2) Send ~~Mail~~ certified copies of the judgment to the Court of Appeal and the Attorney General.

(d)–(f) * * *

(g) Confidential material

(1) * * *

(2) Material under (1) must be sent to the reviewing court in a secure manner that preserves its confidentiality. If the material is in paper format, it must be sent to the reviewing court in a sealed envelope marked "CONFIDENTIAL—MAY NOT BE EXAMINED WITHOUT A COURT ORDER."

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(h)–(i) * * *

Rule 8.486. Petitions

(a)–(b) * * *

(c) Form of supporting documents

(1) Documents submitted under (b) must comply with the following requirements:

(A) If submitted in paper form, they must be bound together at the end of the petition or in separate volumes not exceeding 300 pages each. The pages must be consecutively numbered.

(B) If submitted in paper form, t~~T~~hey must be index-tabbed by number or letter.

(C) They must begin with a table of contents listing each document by its title and its index ~~tab~~ number or letter. If a document has attachments, the table of contents must give the title of each attachment and a brief description of its contents.

(2) The clerk must file any supporting documents not complying with (1), but the court may notify the petitioner that it may strike or summarily deny the petition if the documents are not brought into compliance within a stated reasonable time of not less than 5 days.

(3) Rule 8.44(a) governs the number of copies of supporting documents to be filed in the Supreme Court. Rule 8.44(b) governs the number of supporting documents to be filed in the Court of Appeal.

(d)–(e) * * *

Rule 8.488. Certificate of Interested Entities or Persons

(a)–(c) * * *

(d) Failure to file a certificate

(1) If a party fails to file a certificate as required under (b) and (c), the clerk must notify the party in writing ~~by mail~~ that the party must file the certificate within 10 days after the clerk's notice is sent ~~mailed~~ and that if the party fails to comply, the court may impose one of the following sanctions:

(A)–(B) * * *

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(2) * * *

Rule 8.495. Review of Workers' Compensation Appeals Board cases

(a) Petition

(1)–(2) * * *

(3) The petition must be accompanied by proof of service of ~~two copies~~ a copy of the petition on the Secretary of the Workers' Compensation Appeals Board in San Francisco, or two copies if the petition is served in paper form, and one copy on each party who appeared in the action and whose interest is adverse to the petitioner. Service on the board's local district office is not required.

**(b) * * *

(c) Certificate of Interested Entities or Persons

(1)–(2) * * *

(3) If a party fails to file a certificate as required under (1) and (2), the clerk must notify the party in writing ~~by mail~~ that the party must file the certificate within 10 days after the clerk's notice is ~~mailed~~ sent and that failure to comply will result in one of the following sanctions:

(A)–(B) * * *

(4) * * *

Rule 8.496. Review of Public Utilities Commission cases

**(a)–(b) * * *

(c) Certificate of Interested Entities or Persons

(1)–(2) * * *

(3) If a party fails to file a certificate as required under (1) and (2), the clerk must notify the party ~~by mail~~ in writing that the party must file the certificate within 10 days after the clerk's notice is ~~mailed~~ sent and that failure to comply will result in one of the following sanctions:

(A)–(B) * * *

(4) * * *

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Rule 8.498. Review of Agricultural Labor Relations Board and Public Employment Relations Board cases

(a)–(c) * * *

(d) Certificate of Interested Entities or Persons

(1)–(2) * * *

(3) If a party fails to file a certificate as required under (1) and (2), the clerk must notify the party ~~by mail~~ in writing that the party must file the certificate within 10 days after the clerk's notice is ~~mailed~~ sent and that failure to comply will result in one of the following sanctions:

(A)–(B) * * *

(4) * * *

Rule 8.504. Form and contents of petition, answer, and reply

(a) * * *

(b) Contents of a petition

(1)–(3) * * *

(4) If the petition seeks review of a Court of Appeal opinion, a copy of the opinion showing its filing date and a copy of any order modifying the opinion or directing its publication must be bound at the back of the original petition and each copy filed in the Supreme Court or, if the petition is not filed in paper form, attached.

(5) If the petition seeks review of a Court of Appeal order, a copy of the order showing the date it was entered must be bound at the back of the original petition and each copy filed in the Supreme Court or, if the petition is not filed in paper form, attached.

(6)–(7) * * *

(c)–(e) * * *

Rule 8.512. Ordering review

(a) Transmittal of record

On receiving a copy of a petition for review or on request of the Supreme Court, whichever is earlier, the Court of Appeal clerk must promptly send the record to the Supreme Court.

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If the petition is denied, the Supreme Court clerk must promptly return the record to the Court of Appeal if the record was transmitted in paper form.

(b)–(d) * * *

Rule 8.540. Remittitur

(a) * * *

(b) Clerk's duties

(1) * * *

(2) After review of a Court of Appeal decision, the Supreme Court clerk must address the remittitur to the Court of Appeal and send that court ~~two copies~~ a copy of the remittitur and ~~two~~ a filed~~-stamped~~endorsed ~~copies~~ copy of the Supreme Court opinion or order. The clerk must send two copies of any document sent in paper form.

(3) After a decision in an appeal from a judgment of death or in a cause transferred to the court under rule 8.552, the clerk must send the remittitur and a filed~~-stamped~~endorsed copy of the Supreme Court opinion or order to the lower court or tribunal.

(4) * * *

(c) * * *

Rule 8.548. Decision on request of a court of another jurisdiction

(a)–(c) * * *

(d) Serving and filing the request

The requesting court clerk must file an original, and if the request is filed in paper form, 10 copies, of the request in the Supreme Court with a certificate of service on the parties.

(e) * * *

(f) Proceedings in the Supreme Court

(1)–(5) * * *

(6) After filing the opinion, the clerk must promptly send filed~~-stamped~~endorsed copies to the requesting court and the parties and must notify that court and the parties when the decision is final.

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(7) * * *

Rule 8.610. Contents and form of the record

(a)–(b) * * *

(c) Juror-identifying information

Any document in the record containing juror-identifying information must be edited in compliance with rule 8.332. Unedited copies of all such documents and a copy of the table required by the rule, under seal and bound together if filed in paper form, must be included in the record sent to the Supreme Court.

(d) * * *

Rule 8.616. Preparing the trial record

(a) * * *

(b) Reporter's duties

(1) * * *

(2) Any portion of the transcript transcribed during trial must not be retyped unless necessary to correct errors, but must be repaginated and ~~bound~~ combined with any portion of the transcript not previously transcribed. Any additional copies needed must not be retyped but, if the transcript is in paper form, must be prepared by photocopying or an equivalent process.

(3) * * *

(c)–(d) * * *

Rule 8.630. Briefs by parties and amicus curiae

(a)–(f) * * *

(g) Service

(1) * * *

(2) The Attorney General must serve two paper copies or one electronic copy of the respondent's brief on each defendant's appellate counsel and, for each defendant sentenced to death, one copy on the California Appellate Project in San Francisco.

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(3) * * *

**(h) * * *

Rule 8.702. Appeals

**(a) * * *

(b) Notice of appeal

(1) *Time to appeal*

The notice of appeal must be served and filed on or before the earlier of:

(A) Five court days after the superior court clerk serves on the party filing the notice of appeal a document entitled "Notice of Entry" of judgment or a file~~d-stamped~~endorsed copy of the judgment, showing the date either was served; or

(B) Five court days after the party filing the notice of appeal serves or is served by a party with a document entitled "Notice of Entry" of judgment or a file~~d-stamped~~endorsed copy of the judgment, accompanied by proof of service.

(2) * * *

(c)–(g) * * *

Rule 8.703. Writ proceedings

(a) * * *

(b) Petition

(1) *Time for filing petition*

A petition for a writ challenging a superior court judgment or order governed by the rules in this chapter must be served and filed on or before the earliest of:

(A) Thirty days after the superior court clerk serves on the party filing the petition a document entitled "Notice of Entry" of judgment or order, or a file~~d-stamped~~endorsed copy of the judgment or order, showing the date either was served; or

(B) Thirty days after the party filing the petition serves or is served by a party with a document entitled "Notice of Entry" of judgment or order, or a file~~d-stamped~~endorsed copy of the judgment or order, accompanied by proof of service.

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(2) * * *

Rule 8.800. Application of division and scope of rules

(a) Application

The rules in this division apply to:

(1)–(2) * * *

(b) Scope of rules

The rules in this division apply to documents filed and served electronically as well as in paper form, unless otherwise provided.

Rule ~~8.804~~ 8.803. Definitions

As used in this division, unless the context or subject matter otherwise requires:

(1)–(22) * * *

(23) "Attach" or "attachment" may refer to either physical attachment or electronic attachment, as appropriate.

(24) "Copy" or "copies" may refer to electronic copies, as appropriate.

(25) "Cover" includes the cover page of a document filed electronically.

(26) "Written" and "writing" include electronically created written materials, whether or not those materials are printed on paper.

Rule 8.804. Requirements for signatures on documents

Except as otherwise provided, or required by order of the court, signatures on electronically filed documents must comply with the requirements of rule 8.77.

Rule 8.806. Applications

(a)–(b) * * *

(c) Envelopes

If any party or parties in the case are served in paper form, a~~A~~n application must be accompanied by addressed, postage-prepaid envelopes for the clerk's use in mailing copies of the order on the application to ~~all~~ those parties.

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(d) * * *

Rule 8.814. Substituting parties; substituting or withdrawing attorneys

(a)–(b) * * *

(c) Withdrawing attorney

(1) * * *

(2) The proof of service need not include the address of the party represented. But if the court grants the motion, the withdrawing attorney must promptly provide the court and the opposing party with the party's current or last known address, e-mail address, and telephone number.

(3) * * *

Rule 8.821. Notice of appeal

(a)–(c) * * *

(d) Notification of the appeal

(1) When the notice of appeal is filed, the trial court clerk must promptly ~~mail~~ send a notification of the filing of the notice of appeal to the attorney of record for each party and to any unrepresented party. The clerk must also ~~mail~~ send or deliver this notification to the appellate division clerk.

(2) The notification must show the date it was ~~mailed~~ sent and must state the number and title of the case and the date the notice of appeal was filed.

(3) * * *

(4) The ~~mailing~~ sending of a notification under (1) is a sufficient performance of the clerk's duty despite the death of the party or the discharge, disqualification, suspension, disbarment, or death of the attorney.

(5) * * *

(e) * * *

Rule 8.822. Time to appeal

(a) Normal time

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(1) Unless a statute or rule 8.823 provides otherwise, a notice of appeal must be filed on or before the earliest of:

(A) 30 days after the trial court clerk serves the party filing the notice of appeal a document entitled "Notice of Entry" of judgment or a filed ~~-stamped~~endorsed copy of the judgment, showing the date it was served;

(B) 30 days after the party filing the notice of appeal serves or is served by a party with a document entitled "Notice of Entry" of judgment or a filed ~~-stamped~~endorsed copy of the judgment, accompanied by proof of service; or

(C) * * *

(2) * * *

(3) If the parties stipulated in the trial court under Code of Civil Procedure section 1019.5 to waive notice of the court order being appealed, the time to appeal under (1)(C) applies unless the court or a party serves notice of entry of judgment or a filed ~~-stamped~~endorsed copy of the judgment to start the time period under (1)(A) or (B).

(b)–(d) * * *

Rule 8.823. Extending the time to appeal

(a)–(e) * * *

(f) Public entity actions under Government Code section 962, 984, or 985

If a public entity defendant serves and files a valid request for a mandatory settlement conference on methods of satisfying a judgment under Government Code section 962, an election to pay a judgment in periodic payments under Government Code section 984 and rule 3.1804, or a motion for a posttrial hearing on reducing a judgment under Government Code section 985, the time to appeal from the judgment is extended for all parties until the earliest of:

(1) 60 days after the superior court clerk serves the party filing the notice of appeal with a document entitled "Notice of Entry" of judgment or a filed ~~-stamped~~endorsed copy of the judgment, showing the date either was served;

(2) 60 days after the party filing the notice of appeal serves or is served by a party with a document entitled "Notice of Entry" of judgment or a filed ~~-stamped~~endorsed copy of the judgment, accompanied by proof of service; or

(3) * * *

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(g)–(h) * * *

Rule 8.824. Writ of supersedeas

(a) Petition

(1)–(3) * * *

(4) If the record has not been filed in the reviewing court:

(A)–(B) * * *

(C) The documents listed in (B) must comply with the following requirements:

(i) If filed in paper form, they must be bound together at the end of the petition or in separate volumes not exceeding 300 pages each. The pages must be consecutively numbered;

(ii) If filed in paper form, they must be index-tabbed by number or letter; and

(iii) They must begin with a table of contents listing each document by its title and its index ~~tab~~ number or letter.

(5) * * *

(b)–(d) * * *

Rule 8.833. Trial court file instead of clerk's transcript

(a) * * *

(b) Cost estimate; preparation of file; transmittal

(1) Within 10 days after the appellant serves a notice under rule 8.831 indicating that the appellant elects to use a clerk's transcript, the trial court clerk may ~~mail~~ send the appellant a notice indicating that the appellate division for that court has elected by local court rule to use the original trial court file instead of a clerk's transcript and providing the appellant with an estimate of the cost to prepare the file, including the cost of sending the index under (4).

(2) Within 10 days after the clerk ~~mails~~ sends the estimate under (1), the appellant must deposit the estimated cost with the clerk, unless otherwise provided by law or the party submits an application for a waiver of the cost under rule 8.818 or an order granting a waiver of this cost.

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(3)–(5) * * *

Rule 8.834. Reporter's transcript

(a) Notice

(1)–(3) * * *

(4) Except when a party deposits a certified transcript of all the designated proceedings under (b)(2)(D) with the notice of designation, the clerk must promptly ~~mail~~ send a copy of each notice to the reporter. The copy must show the date it was ~~mailed~~ sent.

(b) Deposit or substitute for cost of transcript

(1) Within 10 days after the clerk ~~mails~~ sends a notice under (a)(4), the reporter must file the estimate with the clerk—or notify the clerk in writing of the date that he or she notified the appellant directly—of the estimated cost of preparing the reporter's transcript at the statutory rate.

(2) * * *

(3) With its notice of designation, a party may serve and file a copy of its application to the Court Reporters Board for payment or reimbursement from the Transcript Reimbursement Fund under Business and Professions Code section 8030.2 et seq.

(A)–(C) * * *

(D) If the Court Reporters Board provisionally approves the application, the reporter's time to prepare the transcript under (d)(1) begins when the clerk ~~mails~~ sends notice of the provisional approval under (4).

(4) * * *

**(c)–(e) * * *

(f) Notice when proceedings cannot be transcribed

(1) If any portion of the designated proceedings were not reported or cannot be transcribed, the trial court clerk must so notify the designating party ~~by mail~~ in writing; the notice must:

(A) * * *

(B) Show the date it was ~~mailed~~ sent.

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(2) Within 10 days after the notice under (1) is ~~mailed~~ sent, the designating party must file a new election notifying the court whether the party elects to proceed with or without a record of the identified oral proceedings. If the party elects to proceed with a record of these oral proceedings, the notice must specify which form of the record listed in rule 8.830(a)(2) the party elects to use.

(A)–(C) * * *

(3) * * *

Rule 8.835. Record when trial proceedings were officially electronically recorded

(a)–(c) * * *

(d) Notice when proceedings were not officially electronically recorded or cannot be transcribed

(1) If the appellant elects under rule 8.831 to use a transcript prepared from an official electronic recording or the recording itself, the trial court clerk must notify the appellant ~~by mail~~ in writing if any portion of the designated proceedings was not officially electronically recorded or cannot be transcribed. The notice must:

(A) * * *

(B) Show the date it was ~~mailed~~ sent.

(2) Within 10 days after the notice under (1) is ~~mailed~~ sent, the appellant must file a new election notifying the court whether the appellant elects to proceed with or without a record of the oral proceedings that were not recorded or cannot be transcribed. If the appellant elects to proceed with a record of these oral proceedings, the notice must specify which form of the record listed in rule 8.830(a)(2) the appellant elects to use.

(A)–(C) * * *

Rule 8.838. Form of the record

(a) * * *

(b) Indexes

At the beginning of the first volume of each:

(1) The clerk's transcript must contain alphabetical and chronological indexes listing each document and the volume, where applicable, and page where it first appears;

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(2) The reporter's transcript must contain alphabetical and chronological indexes listing the volume, where applicable, and page where each witness's direct, cross, and any other examination, begins; and

(3) The reporter's transcript must contain an index listing the volume, where applicable, and page where any exhibit is marked for identification and where it is admitted or refused.

(c) Binding and cover

(1) If filed in paper form, clerk's and reporter's transcripts must be bound on the left margin in volumes of no more than 300 sheets, except that transcripts may be bound at the top if required by a local rule of the appellate division.

(2)–(3) * * *

Rule 8.840. Completion and filing of the record

(a) * * * *

(b) Filing the record

When the record is complete, the trial court clerk must promptly send the original to the appellate division and send to the appellant and respondent copies of any certified statement on appeal and any copies of transcripts or official electronic recordings that they have purchased. The appellate division clerk must promptly file the original and ~~mail~~ send notice of the filing date to the parties.

Rule 8.842. Failure to procure the record

(a) Notice of default

Except as otherwise provided by these rules, if a party fails to do any act required to procure the record, the trial court clerk must promptly notify that party ~~by mail~~ in writing that it must do the act specified in the notice within 15 days after the notice is ~~mailed~~ sent and that, if it fails to comply, the reviewing court may impose the following sanctions:

(1)–(2) * * *

(b) * * *

Rule 8.843. Transmitting exhibits

(a)–(c) * * *

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(d) Transmittal

Unless the appellate division orders otherwise, within 20 days after notice under (a) is filed or after the appellate division directs that an exhibit be sent:

(1) The trial court clerk must put any designated exhibits in the clerk's possession into numerical or alphabetical order and send them to the appellate division ~~with two copies of a list of the exhibits sent~~. The trial court clerk must also send a list of the exhibits sent. If the exhibits are not transmitted electronically, the trial court clerk must send two copies of the list. If the appellate division clerk finds the list correct, the clerk must sign and return ~~one~~ a copy to the trial court clerk.

(2) Any party in possession of designated exhibits returned by the trial court must put them into numerical or alphabetical order and send them to the appellate division ~~with two copies of a list of the exhibits sent.~~ The party must also send a list of the exhibits sent. If the exhibits are not transmitted electronically, the party must send two copies of the list. If the appellate division clerk finds the list correct, the clerk must sign and return ~~one~~ a copy to the party.

(e) Return by appellate division

On request, the appellate division may return an exhibit to the trial court or to the party that sent it. When the remittitur issues, the appellate division must return all exhibits not transmitted electronically to the trial court or to the party that sent them.

Rule 8.852. Notice of appeal

(a) * * *

(b) Notification of the appeal

(1) When a notice of appeal is filed, the trial court clerk must promptly ~~mail~~ send a notification of the filing to the attorney of record for each party and to any unrepresented defendant. The clerk must also ~~mail~~ send or deliver this notification to the appellate division clerk.

(2) The notification must show the date it was ~~mailed~~ sent or delivered, the number and title of the case, the date the notice of appeal was filed, and whether the defendant was represented by appointed counsel.

(3)–(4) * * *

(5) The ~~mailing~~ sending of a notification under (1) is a sufficient performance of the clerk's duty despite the discharge, disqualification, suspension, disbarment, or death of the attorney.

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(6) * * *

Advisory Committee Comment

Notice of Appeal (Misdemeanor) (form CR-132) may be used to file the notice of appeal required under this rule. This form is available at any courthouse or county law library or online at ~~*www.courtinfo.ca.gov/forms*~~ *www.courts.ca.gov/forms*.

Subdivision (a). The only orders that a defendant can appeal in a misdemeanor case are (1) orders granting or denying a motion to suppress evidence (Penal Code section 1538.5(j)); and (2) orders made after the final judgment that affects the substantial rights of the defendant (Penal Code section 1466).

Rule 8.853. Time to appeal

(a) * * *

(b) Cross-appeal

If the defendant or the People timely appeal from a judgment or appealable order, the time for any other party to appeal from the same judgment or order is either the time specified in (a) or 15 days after the trial court clerk ~~mails~~ sends notification of the first appeal, whichever is later.

(c)–(d) * * *

Rule 8.862. Preparation of clerk's transcript

(a)–(b) * * *

(c) Probation officer's reports

A probation officer's report included in the clerk's transcript under rule 8.861(12)(D) must appear in only the copies of the appellate record that are sent to the reviewing court, to appellate counsel for the People, and to appellate counsel for the defendant who was the subject of the report or to the defendant if he or she is self-represented. If the report is in paper form, it must placed in a sealed envelope. The reviewing court's copy of the report, and if applicable, the envelope, must be ~~placed in a sealed envelope~~ marked "CONFIDENTIAL—MAY NOT BE EXAMINED WITHOUT COURT ORDER—PROBATION OFFICER REPORT."

(d)–(e) * * *

Rule 8.864. Record of oral proceedings

(a) Appellant's election

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The appellant must notify the trial court whether he or she elects to proceed with or without a record of the oral proceedings in the trial court. If the appellant elects to proceed with a record of the oral proceedings in the trial court, the notice must specify which form of the record of the oral proceedings in the trial court the appellant elects to use:

(1) A reporter's transcript under rules 8.865–8.867 or a transcript prepared from an official electronic recording of the proceedings under rule 8.868(b). If the appellant elects to use a reporter's transcript, the clerk must promptly ~~mail~~ send a copy of appellant's notice making this election and the notice of appeal to each court reporter;

(2)–(3) * * *

(b)–(c) * * *

Rule 8.866. Preparation of reporter's transcript

(a) When preparation begins

(1) * * *

(2) If the notice sent to the reporter by the clerk under rule 8.864(a)(1) indicates that the appellant is the defendant and that the defendant was not represented by appointed counsel at trial:

(A) Within 10 days after the date the clerk ~~mailed~~ sent the notice under rule 8.864(a)(1), the reporter must file with the clerk the estimated cost of preparing the reporter's transcript.

(B) The clerk must promptly notify the appellant and his or her counsel of the estimated cost of preparing the reporter's transcript. The notification must show the date it was ~~mailed~~ sent.

(C) Within 10 days after the date the clerk ~~mailed~~ sent the notice under (B), the appellant must do one of the following:

(i)–(vii) * * *

(D) If the trial court determines that the appellant is not indigent, within 10 days after the date the clerk ~~mails~~ sends notice of this determination to the appellant, the appellant must do one of the following:

(i)–(vi) * * *

(E) * * *

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(b)–(e) * * *

(f) Notice when proceedings were not reported or cannot be transcribed

(1) If any portion of the oral proceedings to be included in the reporter's transcript was not reported or cannot be transcribed, the trial court clerk must so notify the parties ~~by mail~~ in writing. The notice must:

(A) * * *

(B) Show the date it was ~~mailed~~ sent.

(2) Within 15 days after this notice is ~~mailed~~ sent by the clerk, the appellant must serve and file a notice with the court stating whether the appellant elects to proceed with or without a record of the identified proceedings. When the party elects to proceed with a record of these oral proceedings:

(A)–(B) * * *

Rule 8.868. Record when trial proceedings were officially electronically recorded

(a)–(d) * * *

(e) When preparation begins

(1) * * *

(2) If the appellant is the defendant and the defendant was not represented by appointed counsel at trial:

(A) Within 10 days after the date the defendant files the election under rule 8.864(a)(1), the clerk must notify the appellant and his or her counsel of the estimated cost of preparing the transcript or the copy of the recording. The notification must show the date it was ~~mailed~~ sent.

(B) Within 10 days after the date the clerk ~~mailed~~ sent the notice under (A), the appellant must do one of the following:
(i)–(v) * * *

(C) If the trial court determines that the appellant is not indigent, within 10 days after the date the clerk ~~mails~~ sends notice of this determination to the appellant, the appellant must do one of the following:

(i)–(iv) * * *

(D) * * *

DRAFT

(f) Notice when proceedings were not officially electronically recorded or cannot be transcribed

(1) If any portion of the oral proceedings to be included in the transcript was not officially electronically recorded under Government Code section 69957 or cannot be transcribed, the trial court clerk must so notify the parties ~~by mail~~ in writing. The notice must:

(A) * * *

(B) Show the date it was ~~mailed~~ sent.

(2) Within 15 days after this notice is ~~mailed~~ sent by the clerk, the appellant must serve and file a notice with the court stating whether the appellant elects to proceed with or without a record of the identified oral proceedings. When the party elects to proceed with a record of these oral proceedings:

(A)–(B) * * *

Rule 8.870. Exhibits

(a)–(c) * * *

(d) Transmittal

Unless the appellate division orders otherwise, within 20 days after the first notice under (b) is filed or after the appellate division directs that an exhibit be sent:

(1) The trial court clerk must put any designated exhibits in the clerk's possession into numerical or alphabetical order and send them to the appellate division ~~with two copies of a list of the exhibits~~. The trial court clerk must also send a list of the exhibits sent. If the exhibits are not transmitted electronically, the trial court clerk must send two copies of the list. If the appellate division clerk finds the list correct, the clerk must sign and return ~~one~~ a copy to the trial court clerk.

(2) Any party in possession of designated exhibits returned by the trial court must put them into numerical or alphabetical order and send them to the appellate division ~~with two copies of a list of the exhibits sent.~~ The party must also send a list of the exhibits sent. If the exhibits are not transmitted electronically, the party must send two copies of the list. If the appellate division clerk finds the list correct, the clerk must sign and return ~~one~~ a copy to the party.

(e) Return by appellate division

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On request, the appellate division may return an exhibit to the trial court or to the party that sent it. When the remittitur issues, the appellate division must return all exhibits not transmitted electronically to the trial court or to the party that sent them.

Rule 8.872. Sending and filing the record in the appellate division

(a)–(b) * * *

(c) Filing the record

On receipt, the appellate division clerk must promptly file the original record and ~~mail~~ send notice of the filing date to the parties.

Rule 8.874. Failure to procure the record

(a) Notice of default

If a party fails to do any act required to procure the record, the trial court clerk must promptly notify that party ~~by mail~~ in writing that it must do the act specified in the notice within 15 days after the notice is ~~mailed~~ sent and that, if it fails to comply, the appellate division may impose the following sanctions:

(1)–(2) * * *

(b) * * *

Rule 8.881. Notice of briefing schedule

When the record is filed, the clerk of the appellate division must promptly ~~mail~~ send a notice to each appellate counsel or unrepresented party giving the dates the briefs are due.

Rule 8.882. Briefs by parties and amici curiae

(a) * * *

(b) Extensions of time

(1) Except as otherwise provided by statute, in a civil case, the parties may extend each period under (a) by up to 30 days by filing one or more stipulations in the appellate division before the brief is due. Stipulations must be signed by and served on all parties. If the stipulation is filed in paper form, the original signature of at least one party must appear on the stipulation filed in the appellate division; the signatures of the other parties may be in the form of fax copies of the signed signature page of the stipulation. If the stipulation is electronically filed, the signatures must comply with the requirements of rule 8.77.

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(2)–(4) * * *

(c) Failure to file a brief

(1) If a party in a civil appeal fails to timely file an appellant's opening brief or a respondent's brief, the appellate division clerk must promptly notify the party ~~by mail~~ in writing that the brief must be filed within 15 days after the notice is ~~mailed~~ sent and that if the party fails to comply, the court may impose one of the following sanctions:

(A)–(B) * * *

(2) If the appellant in a misdemeanor appeal fails to timely file an opening brief, the appellate division clerk must promptly notify the appellant ~~by mail~~ in writing that the brief must be filed within 30 days after the notice is ~~mailed~~ sent and that if the appellant fails to comply, the court may impose one of the following sanctions:

(A)–(B) * * *

(3) If the respondent in a misdemeanor appeal fails to timely file a brief, the appellate division clerk must promptly notify the respondent ~~by mail~~ in writing that the brief must be filed within 30 days after the notice is ~~mailed~~ sent and that if the respondent fails to comply, the court may impose one of the following sanctions:

(A)–(B) * * *

(4) * * *

**(d)–(e) * * *

Rule 8.883. Contents and form of briefs

**(a)–(b) * * *

(c) Form

(1) A brief may be reproduced by any process that produces a clear, black image of letter quality. All documents filed must have a page size of 8 1/2 by 11 inches. If filed in paper form, the paper must be white or unbleached~~, 81/2 by 11 inches,~~ and of at least 20-pound weight. Both sides of the paper may be used if the brief is not bound at the top.

(2) Any conventional ~~typeface~~ font may be used. The ~~typeface~~ font may be either proportionally spaced or monospaced.

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(3) The ~~type~~ font style must be roman; but for emphasis, italics or boldface may be used or the text may be underscored. Case names must be italicized or underscored. Headings may be in uppercase letters.

(4) Except as provided in (11), the ~~type~~ font size, including footnotes, must not be smaller than 13-point.

(5)–(8) * * *

(9) If filed in paper form, the brief must be bound on the left margin, except that briefs may be bound at the top if required by a local rule of the appellate division. If the brief is stapled, the bound edge and staples must be covered with tape.

(10)–(11)

(d) * * *

Rule 8.888. Finality and modification of decision

(a)–(b) * * *

(c) Consent to increase or decrease in amount of judgment

If an appellate division decision conditions the affirmance of a money judgment on a party's consent to an increase or decrease in the amount, the judgment is reversed unless, before the decision is final under (a), the party serves and files ~~two copies~~ a copy of a consent in the appellate division. If a consent is filed, the finality period runs from the filing date of the consent. The clerk must send one filed ~~stamped~~endorsed copy of the consent to the trial court with the remittitur.

Rule 8.890. Remittitur

(a) * * *

(b) Clerk's duties

(1) If an appellate division case is not transferred to the Court of Appeal under rule 8.1000 et seq., the appellate division clerk must:

(A) * * *

(B) Send the remittitur to the trial court with a filed ~~stamped~~endorsed copy of the opinion or order; and

(C) Return to the trial court with the remittitur all original records, exhibits, and documents sent nonelectronically to the appellate division in connection with

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the appeal, except any certification for transfer under rule 8.1005, the transcripts or statement on appeal, briefs, and the notice of appeal.

(2) * * *

**(c)–(d) * * *

Rule 8.891. Costs and sanctions in civil appeals

**(a)–(e) * * *

Advisory Committee Comment

Subdivision (d). "Net interest expenses" in subdivisions (d)(1)(F) and (G) means the interest expenses incurred to borrow the funds that are deposited minus any interest earned by the borrower on those funds while they are on deposit.

Subdivision (d)(1)(D), allowing recovery of the "costs to notarize, serve, mail, and file the record, briefs, and other papers," is intended to include fees charged by electronic filing service providers for electronic filing and service of documents.

Rule 8.901. Notice of appeal

**(a) * * *

(b) Notification of the appeal

(1) When a notice of appeal is filed, the trial court clerk must promptly ~~mail~~ send a notification of the filing to the attorney of record for each party and to any unrepresented defendant. The clerk must also ~~mail~~ send or deliver this notification to the appellate division clerk.

(2) The notification must show the date it was ~~mailed~~ sent or delivered, the number and title of the case, and the date the notice of appeal was filed.

(3)–(4) * * *

(5) The ~~mailing~~ sending of a notification under (1) is a sufficient performance of the clerk's duty despite the discharge, disqualification, suspension, disbarment, or death of the attorney.

(6) * * *

Rule 8.902. Time to appeal

**(a) * * *

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(b) Cross-appeal

If the defendant or the People timely appeals from a judgment or appealable order, the time for any other party to appeal from the same judgment or order is either the time specified in (a) or 30 days after the trial court clerk ~~mails~~ sends notification of the first appeal, whichever is later.

(c)–(d) * * *

Rule 8.911. Prosecuting attorney's notice regarding the record

If the prosecuting attorney does not want to receive a copy of the record on appeal, within 10 days after the notification of the appeal under rule 8.901(b) is ~~mailed~~ sent to the prosecuting attorney, the prosecuting attorney must serve and file a notice indicating that he or she does not want to receive the record.

Rule 8.915. Record of oral proceedings

(a) Appellant's election

The appellant must notify the trial court whether he or she elects to proceed with or without a record of the oral proceedings in the trial court. If the appellant elects to proceed with a record of the oral proceedings in the trial court, the notice must specify which form of the record of the oral proceedings in the trial court the appellant elects to use:

(1)–(2) * * *

(3) A reporter's transcript under rules 8.918–8.920 or a transcript prepared from an official electronic recording of the proceedings under rule 8.917(b). If the appellant elects to use a reporter's transcript, the clerk must promptly ~~mail~~ send a copy of appellant's notice making this election and the notice of appeal to each court reporter.

(b)–(c) * * *

Rule 8.917. Record when trial proceedings were officially electronically recorded

(a)–(d) * * *

(e) When preparation begins

(1) * * *

(2) If the appellant is the defendant:

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(A) Within 10 days after the date the appellant files the election under rule 8.915(a), the clerk must notify the appellant and his or her counsel of the estimated cost of preparing the transcript or the copy of the recording. The notification must show the date it was ~~mailed~~ sent.

(B) Within 10 days after the date the clerk ~~mailed~~ sent the notice under (A), the appellant must do one of the following:

(i)–(v) * * *

(C) If the trial court determines that the appellant is not indigent, within 10 days after the date the clerk ~~mails~~ sends notice of this determination to the appellant, the appellant must do one of the following:

(i)–(iv) * * *

(D) * * *

(f) Notice when proceedings were not officially electronically recorded or cannot be transcribed

(1) If any portion of the oral proceedings to be included in the transcript were not officially electronically recorded under Government Code section 69957 or cannot be transcribed, the trial court clerk must so notify the parties ~~by mail~~ in writing. The notice must:

(A) * * *

(B) Show the date it was ~~mailed~~ sent.

(2) Within 15 days after this notice is ~~mailed~~ sent by the clerk, the appellant must serve and file a notice with the court stating whether the appellant elects to proceed with or without a record of the identified proceedings. When the party elects to proceed with a record of these oral proceedings:

(A)–(B) * * *

Rule 8.919. Preparation of reporter's transcript

(a) When preparation begins

(1) * * *

(2) If the notice sent to the reporter by the clerk under rule 8.915(a)(3) indicates that the appellant is the defendant:

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(A) Within 10 days after the date the clerk ~~mailed~~ sent the notice under rule 8.915(a)(3), the reporter must file with the clerk the estimated cost of preparing the reporter's transcript; and

(B) The clerk must promptly notify the appellant and his or her counsel of the estimated cost of preparing the reporter's transcript. The notification must show the date it was ~~mailed~~ sent.

(C) Within 10 days after the date the clerk ~~mailed~~ sent the notice under (B), the appellant must do one of the following:

(i)–(vii) * * *

(D) If the trial court determines that the appellant is not indigent, within 10 days after the date the clerk ~~mails~~ sends notice of this determination to the appellant, the appellant must do one of the following:

(i)–(vi) * * *

(E) * * *

**(b)–(e) * * *

(f) Notice when proceedings cannot be transcribed

(1) If any portion of the oral proceedings to be included in the reporter's transcript was not reported or cannot be transcribed, the trial court clerk must so notify the parties ~~by mail~~ in writing. The notice must:

(A) * * *

(B) Show the date it was ~~mailed~~ sent.

(2) Within 15 days after this notice is ~~mailed~~ sent by the clerk, the appellant must serve and file a notice with the court stating whether the appellant elects to proceed with or without a record of the identified proceedings. When the party elects to proceed with a record of these oral proceedings:

(A)–(B) * * *

Rule 8.921. Exhibits

**(a)–(c) * * *

(d) Transmittal

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Unless the appellate division orders otherwise, within 20 days after notice under (b) is filed or after the appellate division directs that an exhibit be sent:

(1) The trial court clerk must put any designated exhibits in the clerk's possession into numerical or alphabetical order and send them to the appellate division ~~with two copies of a list of the exhibits sent~~. The trial court clerk must also send a list of the exhibits sent. If the exhibits are not transmitted electronically, the trial court clerk must send two copies of the list. If the appellate division clerk finds the list correct, the clerk must sign and return ~~one~~ a copy to the trial court clerk.

(2) Any party in possession of designated exhibits returned by the trial court must put them into numerical or alphabetical order and send them to the appellate division ~~with two copies of a list of the exhibits sent.~~ The party must also send a list of the exhibits sent. If the exhibits are not transmitted electronically, the party must send two copies of the list. If the appellate division clerk finds the list correct, the clerk must sign and return ~~one~~ a copy to the party.

(e) Return by appellate division

On request, the appellate division may return an exhibit to the trial court or to the party that sent it. When the remittitur issues, the appellate division must return all exhibits not transmitted electronically to the trial court or to the party that sent them.

Rule 8.922. Sending and filing the record in the appellate division

(a)–(b) * * *

(c) Filing the record

On receipt, the appellate division clerk must promptly file the original record and ~~mail~~ send notice of the filing date to the parties.

Rule 8.924. Failure to procure the record

(a) Notice of default

If a party fails to do any act required to procure the record, the trial court clerk must promptly notify that party ~~by mail~~ in writing that it must do the act specified in the notice within 15 days after the notice is ~~mailed~~ sent and that, if it fails to comply, the reviewing court may impose the following sanctions:

(1)–(2) * * *

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(b) * * *

Rule 8.926. Notice of briefing schedule

When the record is filed, the clerk of the appellate division must promptly ~~mail~~ send, to each appellate counsel or unrepresented party, a notice giving the dates the briefs are due.

Rule 8.927. Briefs

(a) * * *

(b) Failure to file a brief

(1) If the appellant fails to timely file an opening brief, the appellate division clerk must promptly notify the appellant ~~by mail~~ in writing that the brief must be filed within 20 days after the notice is ~~mailed~~ sent and that if the appellant fails to comply, the court may dismiss the appeal.

(2) If the respondent fails to timely file a brief, the appellate division clerk must promptly notify the respondent ~~by mail~~ in writing that the brief must be filed within 20 days after the notice is ~~mailed~~ sent and that if the respondent fails to comply, the court will decide the appeal on the record, the appellant's opening brief, and any oral argument by the appellant.

(3) * * *

(c) * * *

Rule 8.928. Contents and form of briefs

(a)–(b) * * *

(c) Form

(1) A brief may be reproduced by any process that produces a clear, black image of letter quality. All documents filed must have a page size of 8 1/2 by 11 inches. If filed in paper form, the paper must be white or unbleached~~, 81/2 by 11 inches,~~ and of at least 20-pound weight. Both sides of the paper may be used if the brief is not bound at the top.

(2) Any conventional ~~typeface~~ font may be used. The ~~typeface~~ font may be either proportionally spaced or monospaced.

(3) The ~~type~~ font style must be roman; but for emphasis, italics or boldface may be used or the text may be underscored. Case names must be italicized or underscored. Headings may be in uppercase letters.

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(4) Except as provided in (11), the ~~type~~ font size, including footnotes, must not be smaller than 13-point.

(5)–(8) * * *

(9) If filed in paper form, the brief must be bound on the left margin, except that briefs may be bound at the top if required by a local rule of the appellate division. If the brief is stapled, the bound edge and staples must be covered with tape.

(10)–(11) * * *

**(d) * * *

Rule 8.931. Petitions filed by persons not represented by an attorney

(a)–(b) * * *

(c) Form of supporting documents

(1) Documents submitted under (b) must comply with the following requirements:

(A) If submitted in paper form, they must be bound together at the end of the petition or in separate volumes not exceeding 300 pages each. The pages must be consecutively numbered.

(B) If submitted in paper form, they must be index-tabbed by number or letter.

(C) They must begin with a table of contents listing each document by its title and its index ~~tab~~ number or letter. If a document has attachments, the table of contents must give the title of each attachment and a brief description of its contents.

(2) * * *

(3) Unless the court provides otherwise by local rule or order, only one set of ~~any separately bound~~ the supporting documents needs to be filed in support of a petition, an answer, an opposition, or a reply.

(d) * * *

Rule 8.1018. Finality and remittitur

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(a)–(b) * * *

(c) When the Court of Appeal issues a decision

If the Court of Appeal issues a decision on a case it has ordered transferred from the appellate division of the superior court, filing, finality, and modification of that decision are governed by rule 8.264 and remittitur is governed by rule 8.272, except that the clerk must address the remittitur to the appellate division and send that court ~~two copies~~ a copy of the remittitur and ~~two file-stamped copies~~ a filed-endorsed copy of the Court of Appeal opinion or order. If the remittitur and opinion are sent in paper format, two copies must be sent. On receipt of the Court of Appeal remittitur, the appellate division clerk must promptly issue a remittitur if there will be no further proceedings in that court.

(d) Documents to be returned

When the Court of Appeal denies or vacates transfer or issues a remittitur under (c), the Court of Appeal clerk must return to the appellate division any part of the record sent nonelectronically to the Court of Appeal under rule 8.1007 and any exhibits that were sent nonelectronically.

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SPR15-32
Rules Modernization Project: Modernize the Rules of Court to Facilitate E-Business, E-Filing, and E-Service Executive Summary and Origin

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

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	**Position**	**Comment**	**Committee Response**
1.	Robin Brandes-Gibbs Superior Court of Orange County Santa Ana	AM	See comments on specific provisions below.	See responses to comments below.
2.	California Department of Child Support Services by Alisha A. Griffin, Director Rancho Cordova	A	DCSS supports modernizing and increasing efficiencies with our justice partners including the proposed technical amendments to address language in the rules that is incompatible with the current statutes and rules governing e-filing, e-service, and e-business processes in general. Overall, the proposed changes meet the business needs of DCSS. See comments on specific provisions below.	DCSS's support is noted.
3.	Civil Unit Managers Superior Court of Orange County by Deborah Coel, Operations Analyst	AM	Position on proposal: Agree with the proposed changes with the following recommendation noted below.	See responses to comments below.
4.	Law Office of Azar Elihu by Azar Elihu, Attorney Los Angeles	A	No specific comment.	No response required.
5.	The State Bar of California Committee on Administrative Justice by Saul Bercovitch, Legislative Counsel	AM	CAJ supports this proposal in general, but has the following comments. See comments on specific provisions below.	CAJ's support is noted.
6.	The State Bar of California Committee on Appellate Courts by John Derrick, Chair	NI	See comments on specific provisions below.	See responses to comments below.

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

SPR15-32
Rules Modernization Project: Modernize the Rules of Court to Facilitate E-Business, E-Filing, and E-Service Executive Summary and Origin
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List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	**Position**	**Comment**	**Committee Response**
7.	Superior Court of Los Angeles County by Janet Garcia, Court Operations Manager	A	No specific comment.	No response required.
8.	Superior Court of Riverside County by Marita Ford	A	No specific comment.	No response required.
9.	Superior Court of Sacramento County by Elaine Flores, Administrative Services Officer II, Communications – Court Executive Office	NI	See comments on specific provisions below.	See responses to comments below.
10.	Superior Court of San Diego County by Michael M. Roddy, Executive Officer	AM	See comments on specific provisions below.	See responses to comments below.
11.	Trial Court Presiding Judges Advisory Committee (TCPJAC)/Court Executives Advisory Committees (CEAC), Joint Rules Subcommittee and Joint Technology Subcommittee	A	The subcommittees agree that the proposed rule changes are necessary to begin facilitating an e-business environment in the trial courts. The subcommittees determined that the proposal will result in additional training, which requires the commitment of staff time and court resources.	The TCPJAC/CEAC Joint Rules Subcommittee and Joint Technology Subcommittee's support is noted. The TCPJAC/CEAC Joint Rules Subcommittee and Joint Technology Subcommittee's comment is noted. To the extent that this rules proposal, as circulated, recommends only technical, non-substantive changes to the rules, ITAC and CSCAC anticipate that training should not be too burdensome for the courts and would be otherwise necessary as courts modernize by adopting e-filing, e-service, and e-business practices already authorized by relevant statutes and rules.

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SPR15-32
Rules Modernization Project: Modernize the Rules of Court to Facilitate E-Business, E-Filing, and E-Service Executive Summary and Origin

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

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	**Position**	**Comment**	**Committee Response**
			The subcommittees would like to note that it would be helpful if ITAC would, in the future, consider whether filing parties should be required to bookmark electronic exhibits or attachments submitted with electronic documents filed with the courts. See comments on specific provisions below.	The TCPJAC/CEAC Joint Rules Subcommittee and Joint Technology Subcommittee's recommendation is noted. It will be considered next year during phase II of the Rules Modernization Project.

	Comments Applicable to Multiple Rules		
	Commentator	**Comment**	**Committee Response**
12.	The State Bar of California Committee on Administrative Justice by Saul Bercovitch, Legislative Counsel	This proposal would replace references to "file-stamped" with "filed-endorsed" throughout the rules. CAJ recommends retaining the term "file-stamped." The term "filed-endorsed" is unclear, and does not correspond to the way documents are actually file-stamped by clerks in various California courts, which do not appear to use the terminology "filed-endorsed."	ITAC, CSCAC, and AAC note CAJ's objection. However, they recommend retaining the proposal to change all references to "file-stamped" to "filed-endorsed" because the term "filed-endorsed" is used in relation to both paper and electronic documents and is generally understood and used by the courts, including those that have not converted to a paperless case management system.
13.	The State Bar of California Committee on Appellate Courts by John Derrick, Chair	The Committee notes that "electronic form" and "electronic format" are used in the appellate rules as well as other rules. The Committee believes that more experience by both litigants and the courts may be needed before those terms are defined, but recommends that consideration be given to defining those terms sooner rather than later.	ITAC and CSCAC note the CAC's recommendation to define electronic form and formatting in the trial and appellate rules in the future. This recommendation will be considered next year during phase II of the Rules Modernization Project.

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SPR15-32
Rules Modernization Project: Modernize the Rules of Court to Facilitate E-Business, E-Filing, and E-Service Executive Summary and Origin

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

	Comments Applicable to Multiple Rules		
	Commentator	**Comment**	**Committee Response**
14.	Superior Court of Sacramento County by Elaine Flores, Administrative Services Officer II, Communications – Court Executive Office	Please note that many of the comments on SPR15-16 are "global": • Consistency with the use of singular v. plural – i.e., we prefer "party" to "parties" • Over use of the word "also" • Consistency when identifying JC forms – i.e., we prefer stating "form FL-xxx" v. "FL-xxx" • Use of old language "child visitation" or "visitation" v. new language "parenting time" [*General comment made in response to three Invitations to Comment, including SPR15-32]	ITAC and CSCAC decline to pursue the general suggestions regarding the use of the words "also" and "parties," which appear to be directed beyond the rules covered in this proposal. The comments referring to Judicial Council forms and to the terms "visitation" and "parenting time" do not apply to SPR15-32.

	Title Two—Trial Court Rules		
	Commentator	**Comment**	**Committee Response**
15.	California Department of Child Support Services by Alisha A. Griffin, Director Rancho Cordova	That said, DCSS would encourage the Judicial Council to review California Rules of Court, Rule 2.257 as part of its ongoing modernization effort. The current retention requirements of Rule 2.257 pose three problems, two of which may require statutory changes to California Code of Civil Procedure section 1010.6. First, the absence of directions regarding the amount of time original signatures must be retained encourages divergent practices. Second, the rule imposes burdens on individuals in excess of that imposed on the court since the court need not maintain originals indefinitely under Government Code section 68152. Third, the rule does not provide parties with the option to electronically store signed documents as the	ITAC and CSAC decline to pursue DCSS's recommendation; it is outside the scope of this rules proposal, as circulated, because it involves substantive, non-technical changes to the rules. It may be considered by the committees during phase II of the Rules Modernization Project. ITAC and CSCAC agree that changing the retention requirements in rule 2.257(a) may require amending Code of Civil Procedure section 1010.6(b)(2)(B), which requires maintaining "the printed form of the document bearing the original signatures" where any electronically filed

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

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	Title Two—Trial Court Rules		
	Commentator	**Comment**	**Committee Response**
		court is permitted to do under Government Code section 68150.	documents are signed under penalty of perjury.
16.	Civil Unit Managers Superior Court of Orange County by Deborah Coel, Operations Analyst	Recommendation: Amend California Rule of Court rule 2.111(1) Format of First Page In addition to the proposed rule 2.111(3) change, the Court respectfully requests that the Judicial Council amend California Rule of Court 2.111(1) by deleting the words "if available" in the first sentence and replacing them with "if available and / or required if submitting electronically". Thus, the sentence would read as follows: "In the space commencing 1 inch from the top of the page with line 1, to the left of the center of the page, the name, office address or, if none, residence address or mailing address (if different), telephone number, fax number and e-mail address (if available and / or required if submitting electronically), and State Bar membership number of the attorney for the party in whose behalf the paper is presented, or of the party if he or she is appearing in person." The Court believes that this change would result in the Court's ability to capture accurate data for eService because it would require every e-filer to provide the Court with its email address. Currently, there is no requirement to have email addresses placed on the document. Further, there is no mechanism to have email addresses placed on the document. Modifying the language in this rule falls in line with the Judicial Council's objective of modernizing rules to facilitate e-business practices as well as e-filing.	Recommendation: Amend California Rule of Court rule 2.111(1) Format of First Page ITAC and CSCAC decline to pursue this recommendation. Under rule 2.111(1), an e-mail address may be provided on the first page, if available, as a convenience to the court and parties. However, this email address is not necessarily the electronic service address. Parties consent to permissive electronic service by filing form EFS-500, *Consent to Electronic Service and Notice of Electronic Service Address*, which requires that the party specify his or her electronic service address. In addition, rule 2.256(a)(4) requires parties to provide one or more electronic service addresses, in the manner specified by the court, at which the filer agrees to accept service. So courts already have the ability to require parties to provide their electronic service addresses.

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

	Title Two—Trial Court Rules		
	Commentator	**Comment**	**Committee Response**
17.	The State Bar of California Committee on Administrative Justice by Saul Bercovitch, Legislative Counsel	<u>Rule 2.3(3)</u> CAJ opposes removing references to "typewritten" and "typewriting" from rule 2.3(3), rule 2.104, and 2.150, and the word "typewriter" from rule 2.150. Typewriters provide an acceptable method of producing legible written text, and not all litigants have access to computers or word processors. CAJ also recommends that "printing on a word processor" be changed in this rule to "printing from a word processor." As amended, rule 2.3(3) would state: "Written," "writing," "typewritten," and "typewriting" include other methods of printing letters and words equivalent in legibility to typewriting or printing from a word processor. <u>Rule 2.105</u> CAJ recommends that the rule be edited to state: "The font must be essentially equivalent in terms of its simplicity and legibility to Courier, Times New Roman, or Arial."	<u>Rule 2.3(3)</u> ITAC and CSCAC agree. Both of CAJ's suggestions are incorporated into the proposed amendment of rule 2.3(3). <u>Rule 2.105</u> ITAC and CSCAC decline to follow this suggested language as it is outside the scope of this rules proposal, as circulated. They note that the language in rule 2.105 specifying that the font be "essentially equivalent" was included to allow for use of Helvetica, as well as Arial, which are virtually identical, but named differently for proprietary reasons.

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	Title Three—Civil Rules		
	Commentator	**Comment**	**Committee Response**
18.	Robin Brandes-Gibbs Superior Court of Orange County Santa Ana	The wording of the proposed modification to California Rule of Court, rule 3.1300(c) should track the language of rules 2.253(b)(7) and 2.259(c) to refer to the document as being "received by the court" instead of "filed." In addition, do all three of these rules contradict the language of Code of Civil Procedure section 1010.6 subdivision (b)(3)? "Any document that is electronically filed with the court after the close of business on any day shall be deemed to have been filed on the next court day. "Close of business," as used in this paragraph, shall mean 5 p.m. or the time at which the court would not accept filing at the court's filing counter, whichever is earlier." (Id.) The statute does not authorize a local court rule to allow a later filing.	This rules proposal, as circulated, does not contemplate modifying subdivision (c) of rule 3.1300. However, ITAC and CSCAC agree that the proposed language in subdivision (e) of rule 3.1300 should be modified by replacing "filed" with "received by the court." Code of Civil Procedure section 1010.6(b)(3) governs for cases involving *permissive* electronic filing. Under subdivisions (f) and (g) of section 1010.6, *mandatory* electronic filing rules are exempt from complying with subdivision (b)(3). ITAC and CSCAC recommend additional language to clarify that the proposed amendment to rule 3.1300(e) only applies to mandatory electronic filing. To address the concerns of Ms. Brandes-Gibbs, the proposed amendment to rule 3.1300(e) would be revised as follows: (e). "A paper submitted before the close of the clerk's office to the public on the day the paper is due is deemed timely filed. Under rules *2.253(b)(7)* and 2.259(c), a court may provide by local rule that a paper *that is required to be filed electronically and that is received* electronically *by the court* before midnight on a court day is deemed filed on that court day."

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19.	The State Bar of California Committee on Administrative Justice by Saul Bercovitch, Legislative Counsel	Rule 3.1302 As proposed, this rule would create an unnecessary procedure for a clerk to "return" a digital copy of lodged material. The rule should be edited to state: "Material lodged physically with the clerk must be accompanied by an addressed envelope with sufficient postage for mailing the material. After determination of the matter, the clerk may mail the material back to the party lodging it. If the material was lodged electronically, the clerk may delete it." Rule 3.1304 CAJ recommends that this rule be edited to state: "The clerk must post both on the court's website and at the courthouse a general schedule showing the days and departments for holding each type of law and motion hearing."	Rule 3.1302 ITAC and CSCAC decline to pursue CAJ's recommendation at this time. The group foresees that potential issues may arise by instructing clerks only to delete the materials. Having clerks return the materials would provide the parties with notice. The committees will give further consideration to this rule during phase II of the Rules Modernization Project. Rule 3.1304 ITAC and CSCAC decline to pursue this recommendation because it would narrow the scope of the proposed rule amendment. By requiring courts to post the schedules "electronically," the proposed amendment is intended to encompass posting the schedules not only on court websites, but also by other electronic means.
20.	Superior Court of Sacramento County by Elaine Flores, Administrative Services Officer II, Communications – Court Executive Office	We would recommend not encouraging inconsistency throughout the State. [*Comment provided in response to proposed amendment to rule 3.1300(e): "A paper submitted before the close of the clerk's office to the public on the day the paper is due is deemed timely filed. Under rule 2.259(c), a court may provide by local rule that a paper filed electronically before midnight on a court day is deemed filed on that court day."]	ITAC and CSCAC decline to pursue this recommendation at this time because it falls outside of the scope of this rules proposal, as circulated. The proposed amendment to rule 3.1300(e) is a technical, non-substantive amendment that brings this rule into line with rule 2.259(c). The committees may consider the court's suggestion during phase II of the Rules Modernization Project.

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21.	Superior Court of San Diego County by Michael M. Roddy, Executive Officer	Our court objects to the amendment that seeks to limit application of the tabbing requirement contained in California Rule of Court 3.1110 (f) to motions filed in paper unless a similar requirement can be added that would apply bookmarking, or something similar, to electronically filed documents. Our court utilizes that rule to require litigants to bookmark their e-file motions, which is the equivalent to tabbing, so that documents filed with a motion are able to be located easily. We have found without the ability to require bookmarking to locate documents and exhibits filed within a motion, attempting to navigate a 100+ page summary judgment filing or anything similar thereto can be almost impossible. We recommend language be added to subsection (f) of the rule that states: "For motions filed electronically, court's may adopt, via there E-file procedures, a requirement that exhibits be bookmarked or similarly identified in place of physically tabbing the documents."	ITAC and CSCAC note the court's objection and agree that it is prudent to wait until phase II to amend rule 3.1110(f). Postponing this amendment for further consideration during phase II will allow the court to continue relying on this rule in requiring that parties bookmark electronic documents. The court's specific recommendation for an electronic bookmarking rule will be considered next year during phase II of the Rules Modernization Project.
22.	TCPJAC/CEAC Joint Rules Subcommittee and Joint Technology Subcommittee	<u>Suggested modification</u> The subcommittees propose one amendment to the proposal. Given the extensive nature of the changes in this proposal, the subcommittee members solicited input from a number of court executive officers whose courts could be impacted by the proposed changes. This input is a contributing factor to the modification that is proposed here. The subcommittees recommend that the new provisions contained in Rule 3.1300(e) should read as follows (see highlighted text): **(e) Computation of time**	<u>Suggested modification</u> ITAC and CSCAC agree that the proposed amendment to rule 3.1300(e) should be revised to clarify that electronically filed papers are initially "received," not "filed." As discussed above in response to Ms. Brandes-Gibbs comment, the proposed amendment has been changed to track the language in rule 2.259(c). ITAC and CSCAC decline the suggested language as unnecessary. The proposed amendment to rule 3.1300(e) cross-references rule 2.259(c), which provides in relevant part: "This provision concerns only the effective date of filing. Any document that is electronically filed must be processed and satisfy

		A paper submitted before the close of the clerk's office to the public on the day the paper is due is deemed timely filed. Under rule 2.259(c), a court may provide by local rule that a paper filed electronically before midnight on a court day is deemed filed on that court day if, after review by the clerk, it is accepted for filing.	all other legal filing requirements to be filed as an official court record." **(e) Computation of time** A paper submitted before the close of the clerk's office to the public on the day the paper is due is deemed timely filed. Under rules *2.253(b)(7)* and 2.259(c), a court may provide by local rule that a paper *that is required to be filed electronically and that is received* electronically *by the court* before midnight on a court day is deemed filed on that court day."

	Title Eight—Appellate Rules		
	Commentator	**Comment**	**Committee Response**
23	The State Bar of California Committee on Administrative Justice by Saul Bercovitch, Legislative Counsel	Rules 8.122, 8.144 and 8.336, and 8.838 CAJ urges consideration regarding the potential impact of these proposed changes on indigent appellate litigants, including, in particular, incarcerated appellants and individuals who do not have access to computers.	ITAC and AAC agree with CAJ regarding the importance of considering the potential impact on indigent litigants of authorizing use of a trial court record in electronic form. Where the appellate rules authorize the appellate courts to require parties to file or serve documents electronically, they include protections for self-represented litigants. (See Cal. Rules of Court, rule 8.73(a)(2)(A).) The committees agree that, where express authorization for the record to be in electronic form is included in the rules, consideration should be given to including include similar protections. The amendments expressly authorizing use of a record in electronic form have been withdrawn from this rules proposal. ITAC and

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	Title Eight—Appellate Rules		
	Commentator	**Comment**	**Committee Response**
			AAC may consider amendments to these rules, including protections for self-represented litigants, during phase II of the Rules Modernization Project. While this process continues, those appellate courts that accept part or all of the record in electronic form will be able to continue their practices, as they have under the existing rules. However, ITAC and AAC do not propose modifying those parts of the proposed amendments to rules 8.144, 8.336, and 8.838 that clarify application of those rules to documents in electronic format.

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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: October 27, 2015

Title
Probate Conservatorship: Judicial Council forms to implement the California Conservatorship Jurisdiction Act

Rules, Forms, Standards, or Statutes Affected
Adopt forms GC-360, GC-361, and GC-362; revise form GC-310

Recommended by
Probate and Mental Health Advisory Committee
Hon. John H. Sugiyama, Chair
Douglas C. Miller
SeniorAttorney
Judicial Council Legal Services Office

Agenda Item Type
Action Required

Effective Date
January 1, 2016

Date of Report
August 12, 2015

Contact
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Executive Summary

Legislation enacted in 2014 added the California Conservatorship Jurisdiction Act (CCJA) to the Probate Code. This legislation requires the Judicial Council to revise an existing form and adopt new forms to implement the act. To comply with this mandate, the Probate and Mental Health Advisory Committee proposes revision of the existing form and adoption of three new forms.

Recommendation

The Probate and Mental Health Advisory Committee recommends that, effective January 1, 2016, the Judicial Council:

1. Adopt three new forms required by the CCJA to implement the foreign conservatorship registration provisions of the law, the *Conservatorship Registration Cover Sheet and Attestation of Conservatee's Non-Residence in California* (form GC-360); the *Notice of*

Intent to Register Conservatorship (form GC-361), and the *Conservatorship Registrant's Acknowledgment of Receipt of* Handbook For Conservators (form GC-362); and

2. Revise the *Petition for Appointment of Probate Conservator* (form GC-310) to add an inquiry, required by the CCJA, about the proposed conservatee's possible connections to a federally-recognized Indian tribe and also to inquire about the petitioner's state of knowledge about conservatorship or similar proceedings filed concerning the proposed conservatee in jurisdictions other than California.

The new and revised forms are attached at pages 7–22.

Previous Council Action

The CCJA[1] is California's version of a uniform law, the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. This law was recommended to the Legislature for adoption in California by the California Law Revision Commission. During the progress of development of the commission's final recommendations to the Legislature in 2013, the Judicial Council, through its Policy Coordination and Liaison Committee, authorized the Probate and Mental Health Advisory Committee and the State Court and Tribal Court Forum to make recommendations to the Commission for modification of portions of the proposed law affecting California Indian tribal courts, tribal-member conservatees, and their relations with California state courts. A significant portion of these recommendations were accepted by the Law Revision Commission and became part of the CCJA.

The Judicial Council adopted the *Petition for Appointment of Probate Conservator* (form GC-310), effective July 1, 1979; which was also the effective date of the entire Guardianship-Conservatorship Law, commencing at Probate Code section 1400. The form has been revised seven times since then, the last revision effective on July 1, 2009.

Rationale for Recommendation

The CCJA addresses, among many other things, jurisdictional disputes between states and between states and tribal courts of federally-recognized Indian tribes, concerning what in California are conservatorship proceedings under the Probate Code. The law authorizes a conservator appointed in one jurisdiction to transfer the case to another jurisdiction and the latter jurisdiction to accept the transfer, without requiring the conservator to close the original case and seek appointment as conservator in the receiving jurisdiction. The law also permits a conservator appointed in another jurisdiction to register with a California state court if the conservatee is not

[1] Unless otherwise stated, all code references are to the Probate Code.

The CCJA was enacted by Senate Bill 940 (Stats. 2014, ch. 553). It is located in a new chapter 8 of part 3 of division 4 of the Probate Code, commencing with section 1980. The entire law was effective on January 1, 2015, but it will not become operative until January 1, 2016, except Probate Code section 2023, which became operative this year (see Sen. Bill 940, §§ 20 and 23). A link to the legislation is provided at the end of this report.

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a resident of California[2] and thereafter to act in California, for example, handling a real property transaction involving the conservatee's California property or making placement or medical decisions for a conservatee temporarily here, without court appointment in California.

Registration of foreign conservatorships

The three new forms recommended in this report are required with considerable specificity by the CCJA.[3] They are to be used by foreign conservators to register their conservatorships in this state. Form GC-360 is the basic registration document, referred to as a cover sheet because it must be filed together with documents required by the law.[4]

Notice of intent to register must be given at least 15 days before registration to the foreign appointing court and to the persons entitled to notice of an appointment petition under the laws of that state and of California. Proposed form GC-361 is the form of the notice required by sections 2014 and 2023(b)(3). The contents of the notice in item two on page one of the form is required by section 2014(b). Perhaps the most significant portion of that notice is items 2a and 2b, which advise that a registrant may not act in ways not authorized for domestic conservators in this state and California law applies to all actions taken by a registrant here, including the same court approval of the action and notice of the application for that approval that would be required for the action in a domestic conservatorship. Pages 3 and 4 of form GC-361 contain instructions for delivery of the notice and a proof of delivery by mailing that is modeled after similar proofs of mailing commonly used in probate proceedings.[5]

Form GC-362 is the registrant's acknowledgment of receipt of the information about the duties and responsibilities of conservators that section 1834 requires of domestic conservators. Delivery of that information to the registrant and the registrant's receipt of it are required by sections 2015 and 2023(b)(4).

Revision of form GC-310

The proposal also recommends revision of the *Petition for Appointment of Probate Conservator* (form GC-310) to include an inquiry, also required by the CCJA, about the proposed conservatee's relationship with an "Indian tribe with jurisdiction."[6] Finally, in response to a

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[2] Excepting a conservator appointed by a court of a California Indian tribe, who may register the conservatorship with a California state court despite the conservatee's residence in the state. See sections 2023(b)(1) and (c), and 2019.

[3] See sections 2011–2013, concerning, respectively, registration of conservatorships of the person, the estate, and the person and estate; and section 2023. A copy of the latter section follows this report as Attachment A.

[4] The documents are required by sections 2011–2013 and are listed on page two of the new form. They are (1) certified copies of the foreign court's appointment order and Letters of Conservatorship or other letters of office and of any bond, and (2) proof of the notice required by section 2014.

[5] See *Attachment to Notice of Hearing Proof of Service by Mail* (form GC-020(MA)).

[6] An "Indian tribe with jurisdiction" is defined in section 2031(b) as a federally-recognized Indian tribe with a court system that exercises jurisdiction over proceedings that are substantially equivalent to conservatorships.

comment of the Judicial Council's State Court-Tribal Court Forum, the proposal includes a revision of form GC-310 to ask the petitioner if he or she has knowledge of the filing of a conservatorship or equivalent proceeding concerning the proposed conservatee in another jurisdiction, including a court of an Indian tribe with jurisdiction. Disclosure of a potential competing petition for appointment of a conservator in another jurisdiction before a California appointment is made should serve to identify potential jurisdictional disputes addressed by the CCJA at the earliest possible time.

Comments, Alternatives Considered, and Policy Implications

External comments

This proposal was circulated for public comment in the regular spring 2015 comment cycle. Possibly because of the very specific and detailed requirements for the new and revised forms enacted in the CCJA, only six comments were received. All commentators approved the proposal, three without specific comments. One commentator, the Superior Court of Los Angeles County, responded only to the questions in the Invitation to Comment directed to courts concerning the effect of the proposal on court operations and expenses.

Two commentators, the State Court-Tribal Court Forum, and the Joint Rules Subcommittee of the Trial Court Presiding Judges and Court Executives Advisory Committees recommended changes.

The Forum requested that the conservatorship petition, form GC-310, be revised to inquire of the petitioner whether there is a conservatorship proceeding pending for the proposed conservatee in a tribal court. The advisory committee accepted this recommendation in a modified form. The committee added a new item 3g at the top of page four of the form, part of the section that addresses jurisdictional issues. The item would provide:

> So far as known to petitioner, a conservatorship or equivalent proceeding concerning the proposed conservatee [ ] has not [ ] has been filed in another jurisdiction, including a court of an Indian tribe with jurisdiction (see Prob. Code 2031(b)).
> *(If you answered "has," identify the jurisdiction and state the date the case was filed):*

The reference to an "equivalent proceeding" reflects the fact that in many jurisdictions, the matters that would be probate conservatorships in this state are identified by other names, such as guardianships or protective proceedings.

The Joint Rules Subcommittee requested that the contents of one of the forms recommended in this report, the *Conservatorship Registrant's Acknowledgment of Receipt of* Handbook for Conservators (form GC-362) be folded into one of the other two new forms, to reduce the number of new forms. The committee regretfully concluded that this could not be done for the following reasons:

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1. Combination of the contents of form GC-362 with the *Notice of Intent to Register Conservatorship* (form GC-361) is not appropriate because the latter form is not filed, except perhaps as an exhibit, and it must be prepared and delivered to the persons entitled to notice before the basic registration form, form GC-360, is filed with the registering court (see § 2014(a)).

2. The CCJA expressly permits combination of the *Conservator's Attestation of Conservatee's Non-Residence in California* with the basic registration form, form GC-360, an invitation that was accepted by the committee (see page 3 of form GC-360 and §§ 2017(a)(3) and 2023(b)(2)). No such permission was given for the required acknowledgment of receipt proposed here as form GC-362.

3. Probate Code section 2015 requires the court, upon registration, to provide the foreign conservator with the information about a conservator's rights, duties, limitations, and responsibilities in California identified in section 1835. The *Handbook for Conservators,* published by the Judicial Council, is that information. This would mean, if the contents of form GC-362 were placed in form GC-360, a foreign conservator would apply for registration by presenting a form to the court that includes a signed receipt for material the court is not to deliver to him until after completion of registration.

The advisory committee will, however, consider making a recommendation for council sponsorship of legislation to amend section 2015 to permit moving the contents of form GC-362 to form GC-360 in the future.

Internal comments

The advisory committee reviewed the proposed new and revised forms upon their return from public circulation. In addition to the changes noted above in response to comments received, the committee unanimously made the following additional revisions of the forms circulated for comment:

1. The committee added a list of the attachments required by section 2013 to be filed with the *Conservatorship Registration Cover Sheet and Attestation of Conservatee's Non-Residence in California* (form 360), on page 2 of the form.

This change should inform registrants what documents are to be attached to and filed with the cover sheet and reduce inadvertent failures to attach them.

2. The committee changed the attestation of receipt required by sections 2015 and 2023(b)(4) to read: "I acknowledge that I have received or accessed electronically the *Handbook for Conservators* adopted by the California Judicial Council."

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The revised acknowledgment accurately reflects the current situation in California, in which newly appointed conservators either access the *Handbook* electronically from the judicial branch public Website at no cost to them or pay to the appointing court the sum authorized by section 1835(f) for a printed copy reproduced by the court from the electronic copy.

Alternatives

The CCJA is very specific about the forms it requires the council to develop, and very thorough and precise in prescribing the contents of those forms. Therefore, no alternatives to their development and few alternatives to the contents of the forms were considered. The committee was unanimous in its approval of the forms for public circulation, the changes to the forms proposed in this report, and its recommendation for adoption or revision of the forms.

Implementation Requirements, Costs, and Operational Impacts

The Superior Court of Los Angeles County advised that the new forms recommended in this proposal would add to the court's workload. The court was unable to determine that the forms would reduce any existing costs, but advised that management as well as clerical staff would require training, and possible changes in procedures and modification and addition of codes in the court's case management system would be necessary.

The committee's view is that the additional workload and costs for the courts stem from implementation of the registration process by the CCJA rather than from the adoption of the forms required by that act for that process. This increase will be offset to some extent by the new registration fee of $30, authorized by Government Code section 70663, added by section 2 of the CCJA.

Attachments and Links

1. Judicial Council forms GC-360, GC-361, GC-362, and GC-310, at pages7–22
2. Chart of comments, at pages 23–26
3. Attachment A: Probate Code section 2023, at page 27
4. The California Conservatorship Jurisdiction Act, Senate Bill 940 (Stats. 2014, ch. 553), at *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB940&search_keywords*

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GC-360

CALIFORNIA ATTORNEY OR REGISTRANT WITHOUT CALIFORNIA ATTORNEY *(Name, address, and State Bar number):*

TEL NO.: FAX NO.:

E-MAIL ADDRESS:

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

STREET ADDRESS:

MAILING ADDRESS:

CITY AND ZIP CODE:

BRANCH NAME:

FOR RECORDER'S USE ONLY

CONSERVATORSHIP OF THE ☐ PERSON ☐ ESTATE OF *(Name):*

CONSERVATEE

CALIFORNIA REGISTRATION NUMBER

FOR COURT USE ONLY

Draft
Not Approved by the
Judicial Council

CONSERVATORSHIP REGISTRATION COVER SHEET AND ATTESTATION OF CONSERVATEE'S NON-RESIDENCE IN CALIFORNIA

(California Conservatorship Jurisdiction Act)

JURISDICTION WHERE CONSERVATORSHIP OR ADULT GUARDIANSHIP CASE FILED:

COURT:	DEPT.:	CASE NUMBER:

TITLE OF PROCEEDING:

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INFORMATION AND INSTRUCTIONS FOR REGISTRANTS

The California Conservatorship Jurisdiction Act (Prob. Code §§1980–2300) is California's modified version of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. Terms and phrases used in this Cover Sheet that are defined in California Probate Code sections 1982 or 2031 are in italics and have the meanings provided in those sections; all further statutory references are to that code. A *conservator of the person* in California is a fiduciary that is referred to in many other states or jurisdictions as the guardian of the person of an adult; a *conservator of the estate* in California is a person who is referred to in many other states or jurisdictions as the guardian of the estate of an adult or a person authorized by law to preserve and manage the property and finances of a protected person, who is a person for whom a court has issued a protective order; a *conservator of the person and estate* in California is a person who has the combined powers and authority of a *conservator of the person* and a *conservator of the estate* of an adult person, who is referred to in California as the *conservatee*. A *conservator* may be a conservator of the person, of the estate, or of the person and estate of a *conservatee*.

A *conservator* appointed by a court of a state other than California; or by a court of the District of Columbia, Puerto Rico, United States Virgin Islands, any territory or insular possession subject to the jurisdiction of the United States; or by a court of an *Indian tribe with jurisdiction*, including a *California tribe*, may register the *conservatorship order* with a California superior court in accordance with sections 2011 *(conservatorship of the person),* 2012 *(conservatorship of the estate),* or 2013 *(conservatorship of the person and estate)*. Registration is accomplished, after giving notice as required by section 2014, by **filing a signed and initialed copy of this Cover Sheet together with proof of notice** and **certified copies of (1) the appointing court's *conservatorship order*, (2) Letters of Conservatorship or other letters of office, and (3) any surety bond** with an appropriate California superior court identified in sections 2011, 2012, or 2013.

Upon registration and receipt of the written information concerning a *conservator's* rights, duties, limitations, and responsibilities in California described in sections 1835 and 2015, and the filing of the *conservator's* written acknowledgement of receipt of that information, the *conservator* may, while the *conservatee* resides outside of California or if the *conservatorship order* was made by the court of a *California tribe,* exercise in any county of this state all of the powers authorized in the *conservatorship order,* except as prohibited by the law of California, including maintaining actions and proceedings in this state (subject to any conditions imposed on nonresident parties if the *conservator* is not a resident of California). See section 2016.

*** Court where registration is made *(prepare separate cover sheet for each court where registration is to be made).***

Form Adopted for Mandatory Use
Judicial Council of California
GC-360 [New January 1, 2016]

Probate Code, §§ 2011—2013, 2017, 2023;
www.courts.ca.gov

CONSERVATORSHIP OF *(name):* CONSERVATEE	CALIFORNIA REGISTRATION NUMBER:

Registration may be available if **all** of the following facts are true:

1. The *conservatee* is over the age of 18 years *(place your initials here):* _____;

2. Under the law under which his or her *conservator* was appointed, the *conservatee* may not be involuntarily committed to a mental health facility or subjected to other involuntary mental health care that is similar to the California mental health proceedings listed in section 1981(b) *(place your initials here):* _____; and

3.There is no petition pending in a California state court for the appointment of a *conservator* for the *conservatee.*

EFFECT OF CALIFORNIA LAW AND CONSERVATEE'S RESIDENCE IN CALIFORNIA

A *conservator* acting under the authority of a registration under sections 2011, 2012, or 2013 is subject to the law of California governing the action, including all applicable court procedures, and is not authorized to take any action prohibited by that law. If a California law, including sections 2356.5, 2540, 2543, 2545, or 2591.5, or article 2 (commencing with section 1880) of chapter 4 of part 3 of division 4 of the code, mandates compliance with special requirements to exercise a particular power or take a particular step, a *conservator* registered under sections 2011, 2012, or 2013 may not exercise that power or take that step without first complying with those requirements. If the requirement is to obtain court approval or take other action in court, the *conservator* must seek that approval or otherwise proceed as needed in an appropriate California state court. California law also includes limitations on the authority of fiduciaries who are not authorized to practice law in California, including *conservators*, to appear in California state courts without attorneys so authorized.

Except in the case of the registration of a *conservatorship order* of a *California tribe*, registration is effective only while the *conservatee* resides outside California and does not authorize the *conservator* to take any action while the *conservatee* resides in California.

ATTACHMENTS TO REGISTRATION COVER SHEET
(Probate Code section 2013)

Attached to this cover sheet, presented for filing with it, are:

1. A certified copy of the order appointing the fiduciary in the court of the jurisdiction identified on page 1;

2. A certified copy of the Letters of Guardianship or Conservatorship or other letters of office issued by the court of the jurisdiction identified on page 1;

3. ☐ A certified copy of the bond required by the court of the jurisdiction identified on page 1. ☐ No bond was required.

4. Proof that notice of intent to register conservatorship (California Judicial Council form GC-361) was given in the manner and to the persons as required by California Probate Code section 2014.

Date:

(TYPE OR PRINT NAME)

▶ (SIGNATURE OF REGISTRANT)

DRAFT

CONSERVATORSHIP OF *(name):* CONSERVATEE	CALIFORNIA REGISTRATION NUMBER:

CONSERVATOR'S ATTESTATION OF CONSERVATEE'S NON-RESIDENCE IN CALIFORNIA
(Probate Code section 2017)

I am the registrant named below and the conservator of the conservatee named above.

☐ The conservatee does not reside in the State of California as of the date shown below.

☐ The conservatee resides in California as of the date shown below. My appointment as conservator was made by a court of a *California tribe*, which is an *Indian tribe with jurisdiction* under the California Conservatorship Jurisdiction Act (chapter 8 of part 3 of division 4 of the Probate Code, commencing with section 1980). (See section 1982.)

I promise to notify promptly any person to whom I have delivered a copy of this Conservatorship Registration Cover Sheet and Attestation of Conservatee's Non-Residence in California if the conservatee becomes a resident of the State of California. This promise does not apply to a conservatee who resides in California if his or her conservator was appointed by a court of a *California tribe* that is an *Indian tribe with jurisdiction* under the California Conservatorship Jurisdiction Act.

I declare under penalty of perjury under the laws of the State of California that I have read and understand the foregoing and that it is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF REGISTRANT)

DRAFT

CALIFORNIA ATTORNEY OR INTENDED REGISTRANT WITHOUT CALIFORNIA ATTORNEY: STATE BAR NUMBER:

NAME:

FIRM NAME:

STREET ADDRESS:

CITY: STATE: ZIP:

TELEPHONE NO.: FAX NO. :

E-MAIL ADDRESS:

ATTORNEY FOR *(Name):*

CONSERVATORSHIP OF THE ☐ PERSON ☐ ESTATE OF

(Name):

CONSERVATEE

NOTICE OF INTENT TO REGISTER CONSERVATORSHIP*

(California Conservatorship Jurisdiction Act)

JURISDICTION WHERE CONSERVATORSHIP OR ADULT GUARDIANSHIP CASE FILED:

COURT:	DEPT.:	CASE NUMBER:

TITLE OF PROCEEDING:

1. NOTICE is given that *(name):*
   (specify fiduciary or representative capacity):
   intends to register the conservatorship proceeding identified above with the following California superior court:
   Superior Court, County of , on or after *(specify date**):* .

2. NOTICE is further given that:

a. A conservator in a conservatorship registered in California under the California Conservatorship Jurisdiction Act (chapter 8 of part 3 of division 4 of the Probate Code, commencing with section 1980) taking an action under the Act is fully subject to the law of California governing the action, including all applicable court procedures concerning the action, and is not authorized to take any action prohibited by that law.

b. If a conservator in a conservatorship registered in California under the Act proposes to take a specific action that requires court approval or other action in court under California law, the conservator will be required to notify any person entitled to receive a copy of this Notice of the request for court approval or other court action. The person notified will have an opportunity to object or otherwise participate in the court proceeding at that time, in the same manner as other persons are entitled to object or otherwise participate under the law of California.

c. Information about a conservator's rights, duties, limitations, and responsibilities under California law may be found in a publication titled *Handbook for Conservators,* which is posted on the Judicial Council of California's website at: *www.courts.ca.gov/documents/handbook.pdf.*

d. Except in the case of a conservatorship filed in and supervised by the court of a California Indian tribe with jurisdiction, registration of a conservatorship in California is effective only while the conservatee resides outside California and does not authorize the conservator to take any action while the conservatee resides in California.

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*** Prepare and serve (deliver) a separate *Notice of Intent to Register Conservatorship* for each court in which you intend to register this conservatorship.**

**** The date of registration must be 15 or more days after this notice is mailed or personally delivered (Prob. Code, § 2014(a)) .**

CONSERVATORSHIP OF THE ☐ PERSON ☐ ESTATE OF

(Name):

CONSERVATEE

INSTRUCTIONS FOR DELIVERY OR SERVICE OF NOTICE OF INTENT TO REGISTER

A copy of this *Notice of Intent to Register Conservatorship* must be delivered, at least 15 days before registration of the conservatorship in California, to (1) the court that is supervising the conservatorship or guardianship proceeding in the state or other jurisdiction other than California shown on the first page of this form; (2) each person who has the right under the law of that jurisdiction to notice of the date, time, and place of a court hearing on a petition for the appointment of a guardian of an adult or a conservator; and (3) each person who would be entitled to notice of the date, time, and place of a court hearing on a petition for the appointment of a conservator in California (see Prob. Code §§ 1821–1824). These copies may be delivered by mail. However, copies of this Notice may be personally delivered instead of mailed. The registrant (the person who intends to register the conservatorship in California) must show the court that copies of this Notice have been delivered in compliance with applicable law. The registrant does this by performing the delivery and completing and signing a proof of delivery. The Notice is then combined with certified copies of the conservatorship appointment order, Letters of Conservatorship or other letters of office, any surety bond, and the original signed *Conservatorship Registration Cover Sheet and Attestation of Conservatee's Nonresidence in California* (form GC-360) for filing in the California court selected for registration (see Prob. Code §§ 2011–2013).

Pages 2–4 of this form contain a proof of delivery that may be used only to show delivery by mail. To show personal delivery, each person who performs the delivery must complete and sign a proof of personal delivery or service, and each signed copy of that proof must be attached to this Notice when it is delivered to the court to complete registration. You may use form number POS-020(P) to show personal delivery of this Notice. A fillable copy of that form (and all other forms, listed by their form numbers) may be found on the Judicial Council's Internet website, at *www.courts.ca.gov/formnumber.htm.*

PROOF OF DELIVERY BY MAIL

1. I am over the age of 18 years. I am a resident of or employed in the county where the mailing occurred.
2. My residence or business address is *(specify):*

3. I delivered the foregoing *Notice of Intent to Register Conservatorship* on each person named below by enclosing a copy in an envelope addressed as shown below AND
   a. ☐ depositing the sealed envelope with the United States Postal Service on the date and at the place shown in item 4 with the postage fully prepaid.
   b. ☐ placing the envelope for collection and mailing on the date and at the place shown in item 4 following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

4. a. Date mailed: b. Place mailed *(city, state):*

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 PERSON COMPLETING THIS FORM)

▶ (SIGNATURE OF PERSON COMPLETING THIS FORM)

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

Name and Relationship to Conservatee	Address *(number, street, city, state, and zip code)*
1. Appointing or Supervising Court	
2. Conservatee or Ward	

DRAFT

CONSERVATORSHIP OF THE ☐ PERSON ☐ ESTATE OF

(Name):

CONSERVATEE

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

Name and Relationship to Conservatee	Address *(number, street, city, state, and zip code)*

3. Persons Entitled to Notice of Hearing of Petition for Appointment of Conservator or Guardian in Appointing Court

☐ Additional persons listed on Attachment 3 (you may use form POS-30(P) for this purpose).

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CONSERVATORSHIP OF THE ☐ PERSON ☐ ESTATE OF

(Name):

CONSERVATEE

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

Name and Relationship to Conservatee	Address *(number, street, city, state, and zip code)*

4. Persons Entitled to Notice of Hearing of Petition for Appointment of Conservator in California (Prob. Code, §§ 1821–1824)*****

☐ Additional persons listed on Attachment 4 (you may use form POS-30(P) for this purpose).

*** You do not need to repeat names, relationships to Conservatee, and addresses of persons listed in item 3.**

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CALIFORNIA ATTORNEY OR REGISTRANT WITHOUT CALIFORNIA 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**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF * STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: *** Court where registration is filed.**	
CONSERVATORSHIP OF THE ☐ PERSON ☐ ESTATE OF *(Name):* CONSERVATEE	
CONSERVATORSHIP REGISTRANT'S ACKNOWLEDGMENT OF RECEIPT OF *HANDBOOK FOR CONSERVATORS* * **(California Conservatorship Jurisdiction Act)**	CALIFORNIA REGISTRATION NUMBER:

JURISDICTION WHERE CONSERVATORSHIP OR ADULT GUARDIANSHIP CASE FILED:		
COURT:	DEPT.:	CASE NUMBER:
TITLE OF PROCEEDING:		

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I acknowledge that I have received or accessed electronically the *Handbook for Conservators* adopted by the California Judicial Council.

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 CONSERVATORSHIP REGISTRANT)

*** File this form with each California superior court where you registered the conservatorship proceeding identified above.**

Form Adopted for Mandatory Use
Judicial Council of California
GC-362 [New January 1, 2016]

CONSERVATORSHIP REGISTRANT'S ACKNOWLEDGMENT OF RECEIPT OF *HANDBOOK FOR CONSERVATORS*
(Probate—Guardianships and Conservatorships)

Probate Code, §§ 1835, 2015, 2023;
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.: E-MAIL 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:	
CONSERVATORSHIP OF *(name):* (PROPOSED) CONSERVATEE	
PETITION FOR APPOINTMENT OF ☐ SUCCESSOR PROBATE CONSERVATOR OF THE ☐ PERSON ☐ ESTATE ☐ **Limited Conservatorship**	CASE NUMBER: HEARING DATE AND TIME: DEPT.:

1. **Petitioner *(name):*** **requests that**

   a. *(Name):* *(Telephone):*
   (Address):

   be appointed ☐ successor ☐ conservator ☐ limited conservator
   of the PERSON of the (proposed) conservatee and Letters issue upon qualification.

   b. *(Name):* *(Telephone):*
   (Address):

   be appointed ☐ successor ☐ conservator ☐ limited conservator
   of the ESTATE of the (proposed) conservatee and Letters issue upon qualification.

   c. (1) ☐ bond not be required ☐ because the proposed ☐ successor conservator is a corporate fiduciary or an exempt government agency. ☐ for the reasons stated in Attachment 1c.

   (2) ☐ bond be fixed at: $ to be furnished by an authorized surety company or as otherwise provided by law. *(Specify reasons in Attachment 1c if the amount is different from the minimum required by Probate Code section 2320.)*

   (3) ☐ $ in deposits in a blocked account be allowed. Receipts will be filed.
   (Specify institution and location):

   d. ☐ orders authorizing independent exercise of powers under Probate Code section 2590 be granted. Granting the proposed ☐ successor conservator of the estate powers to be exercised independently under Probate Code section 2590 would be to the advantage and benefit and in the best interest of the conservatorship estate. *(Specify orders, powers, and reasons in Attachment 1d.)*

   e. ☐ orders relating to the capacity of the (proposed) conservatee under Probate Code section 1873 or 1901 be granted. *(Specify orders, facts, and reasons in Attachment 1e.)*

   f. ☐ orders relating to the powers and duties of the proposed ☐ successor conservator of the person under Probate Code sections 2351–2358 be granted. *(Specify orders, facts, and reasons in Attachment 1f.)*

   g. ☐ the (proposed) conservatee be adjudged to lack the capacity to give informed consent for medical treatment or healing by prayer and that the proposed ☐ successor conservator of the person be granted the powers specified in Probate Code section 2355. *(Complete item 9 on page 6.)*

Do NOT use this form for a temporary conservatorship.

Form Adopted for Mandatory Use
Judicial Council of California
GC-310 [Rev. January 1, 2016]

PETITION FOR APPOINTMENT OF PROBATE CONSERVATOR
(Probate—Guardianships and Conservatorships)

Probate Code, §§ 1820, 1821, 2680–2682
www.courts.ca.gov

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CONSERVATORSHIP OF *(name):* CONSERVATEE	CASE NUMBER:

1. h. ☐ *(for limited conservatorship only)* orders relating to the powers and duties of the proposed limited ☐ successor * conservator of the person under Probate Code section 2351.5 be granted. *(Specify orders, powers, and duties in Attachment 1h and complete item 1j.)*

   i. ☐ *(for limited conservatorship only)* orders relating to the powers and duties of the proposed limited ☐ successor * conservator of the estate under Probate Code section 1830(b) be granted. *(Specify orders, powers, and duties in Attachment 1i and complete item 1j.)*

   j. ☐ *(for limited conservatorship only)* orders limiting the civil and legal rights of the (proposed) limited conservatee be granted. *(Specify limitations in Attachment 1j.)*

   k. ☐ orders related to dementia placement or treatment as specified in the *Attachment Requesting Special Orders Regarding Dementia* (form GC-313) under Probate Code section 2356.5 be granted. A *Capacity Declaration—Conservatorship* (form GC-335) and *Dementia Attachment to Capacity Declaration—Conservatorship* (form GC-335A), executed by a licensed physician or by a licensed psychologist acting within the scope of his or her licensure with at least two years experience diagnosing dementia, ☐ are filed herewith. ☐ will be filed before the hearing.

   ☐ (appointment of successor conservator only) will not be filed because an order relating to dementia placement or treatment was filed on *(date):* . That order has neither expired by its terms nor been revoked.

   l. ☐ other orders be granted. *(Specify in Attachment 1l.)*

2. (Proposed) conservatee is *(name):* *(Telephone):*
   (Present address):

3. a. ☐ **Jurisdictional facts** *(initial appointment only)* The proposed conservatee has no conservator in California and is a
   (1) ☐ resident of California and
   (a) ☐ a resident of this county.
   (b) ☐ not a resident of this county, but commencement of the conservatorship in this county is in the best interests of the proposed conservatee for the reasons specified in Attachment 3a.
   (2) ☐ nonresident of California but
   (a) ☐ is temporarily living in this county, or
   (b) ☐ has property in this county, or
   (c) ☐ commencement of the conservatorship in this county is in the best interest of the proposed conservatee for the reasons specified in Attachment 3a.

   b. **Petitioner** *(answer items (1) and (2) and check all other items that apply)*
   (1) ☐ is ☐ is not a **creditor** or an agent of a creditor of the (proposed) conservatee.
   (2) ☐ is ☐ is not a **debtor** or an agent of a debtor of the (proposed) conservatee.
   (3) ☐ is the proposed ☐ successor conservator.
   (4) ☐ is the (proposed) conservatee. *(If this item is* **not** *checked, you must also complete item 3f.)*
   (5) ☐ is the spouse of the (proposed) conservatee. *(You must also complete item 6.)*
   (6) ☐ is the domestic partner or former domestic partner of the (proposed) conservatee. *(You must also complete item 7.)*
   (7) ☐ is a relative of the (proposed) conservatee as *(specify relationship):*
   (8) ☐ is an interested person or friend of the (proposed) conservatee.
   (9) ☐ is a state or local public entity, officer, or employee.
   (10) ☐ is the guardian of the proposed conservatee.
   (11) ☐ is a bank ☐ is other entity authorized to conduct the business of a trust company.
   (12) ☐ is a professional fiduciary within the meaning of Business and Professions Code section 6501(f) who is licensed by the Professional Fiduciaries Bureau of the Department of Consumer Affairs. Petitioner's license number is provided in item 1 on page 1 of the attached Professional Fiduciary Attachment. *(Use form GC-210(A-PF)/GC-310(A-PF) for this attachment. You must also complete item 2 on page 2 of that form and item 3d below.)*

*** See item 5b on page 4.**

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CONSERVATORSHIP OF *(name):* CONSERVATEE	CASE NUMBER:

3. c. **Proposed** ☐ **successor** **conservator** is *(check all that apply)*

(1) ☐ a nominee. *(Affix nomination as Attachment 3c(1).)*
(2) ☐ the spouse of the (proposed) conservatee. *(You must also complete item 6.)*
(3) ☐ the domestic partner or former domestic partner of the (proposed) conservatee. *(You must also complete item 7.)*
(4) ☐ a relative of the (proposed) conservatee as *(specify relationship):*
(5) ☐ a bank. ☐ other entity authorized to conduct the business of a trust company.
(6) ☐ a nonprofit charitable corporation that meets the requirements of Probate Code section 2104.
(7) ☐ a professional fiduciary, as defined in Business and Professions Code section 6501(f). His or her statement concerning licensure or exemption is provided in item 1 on page 1 of the attached *Professional Fiduciary Attachment. (Use form GC-210(A-PF)/GC-310(A-PF) for this attachment.)*
(8) ☐ other *(specify):*

d. ☐ Engagement and prior relationship with petitioning professional fiduciary *(complete this item if petitioner is licensed by the Professional Fiduciaries Bureau.)*

(1) ☐ Statements of who engaged petitioner, or how petitioner was engaged to file this petition, and a description of any prior relationship petitioner had with the (proposed) conservatee or his or her family or friends, are provided in item 2 on page 2 of the attached *Professional Fiduciary Attachment. (Use form GC-210(A-PF)/ GC-310(A-PF) for this attachment.)*

(2) ☐ A petition for appointment of a temporary conservator is filed with this petition. That petition contains statements of who engaged petitioner, how petitioner was engaged to file this petition, and a description of any prior relationship petitioner had with the (proposed) conservatee or his or her family and friends.

e. **Character and estimated value of the property of the estate** *(complete items (1) or (2) and (3), (4), and (5)):*

(1) ☐ (For appointment of successor conservator only, if complete Inventory and Appraisal filed by predecessor):
Personal property: $, per Inventory and Appraisal filed in this proceeding on
(specify dates of filing of all inventories and appraisals):

(2) ☐ Estimated value of personal property: $
(3) Annual gross income from
(a) real property: $
(b) personal property: $
(c) pensions: $
(d) wages: $
(e) public assistance benefits: $
(f) other: $
(4) **Total** of (1) or (2) and (3): $
(5) Real property: $
(a) ☐ per Inventory and Appraisal identified in item (1).
(b) ☐ estimated value.

f. ☐ Due diligence *(complete this item if the (proposed) conservatee is not a petitioner):*

(1) Efforts to find the (proposed) conservatee's relatives or reasons why it is not feasible to contact any of them are described on Attachment 3f(1).

(2) Statements of the (proposed) conservatee's preferences concerning the appointment of any (successor) conservator and the appointment of the proposed (successor) conservator or reasons why it is not feasible to ascertain those preferences are contained on Attachment 3f(2).

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CONSERVATORSHIP OF *(name):* CONSERVATEE	CASE NUMBER:

3. g. So far as known to Petitioner, a conservatorship or equivalent proceeding concerning the proposed conservatee

☐ has not ☐ has been filed in another jurisdiction concerning the proposed conservatee, including a court of an Indian tribe with jurisdiction (see Prob. Code, § 2031(b)).

(If you answered "has," identify the jurisdiction and state the date the case was filed):

4. **(Proposed) conservatee**

a. ☐ is ☐ is not a patient in or on leave of absence from a state institution under the jurisdiction of the California Department of Mental Health or the California Department of Developmental Services *(specify state institution):*

b. ☐ is receiving or entitled to receive ☐ is neither receiving nor entitled to receive benefits from the U.S. Department of Veterans Affairs *(estimate amount of monthly benefit payable):*

c. ☐ is ☐ is not able to complete an affidavit of voter registration.

d. ☐ is ☐ is not, so far as is known to petitioner, a member of a federally recognized Indian tribe.

(If you answered "is," complete items (1)–(4)):

(1) Name of tribe:

(2) Location of tribe *(if the tribe is located in more than one state, the state that is the tribe's principal location):*

(3) The proposed conservatee ☐ does ☐ does not reside on tribal land.*

(4) So far as known to petitioner, the proposed conservatee ☐ owns ☐ does not own property on tribal land.

5. a. ☐ Proposed conservatee *(initial appointment of conservator only)*

(1) ☐ is an adult.
(2) ☐ will be an adult on the effective date of the order *(date):*
(3) ☐ is a married minor.
(4) ☐ is a minor whose marriage has been dissolved.

b. ☐ Vacancy in office of conservator *(appointment of successor conservator only. A petition for appointment of a limited conservator after the death of a predecessor is a petition for initial appointment. (Prob. Code, § 1860.5(a)(1).)*

There is a vacancy in the office of conservator of the ☐ person ☐ estate for the reasons ☐ specified in Attachment 5b. ☐ specified below.

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***"Tribal land" is land that is, with respect to a specific Indian tribe and the members of that tribe, "Indian country," as defined in 18 U.S.C. § 1151.**

CONSERVATORSHIP OF *(name):* CONSERVATEE	CASE NUMBER:

5.c. **(Proposed) conservatee** requires a conservator and is

(1) ☐ unable to properly provide for his or her personal needs for physical health, food, clothing, or shelter.
Supporting facts are ☐ specified in Attachment 5c(1) ☐ as follows:

(2) ☐ substantially unable to manage his or her financial resources or to resist fraud or undue influence.
Supporting facts are ☐ specified in Attachment 5c(2) ☐ as follows:

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CONSERVATORSHIP OF *(name):* CONSERVATEE	CASE NUMBER:

5. d. ☐ (Proposed) conservatee voluntarily requests the appointment of a ☐ successor conservator. *(Specify facts showing good cause in Attachment 5(d).)*
   e. ☐ *Confidential Supplemental Information* (form GC-312) is filed with this petition. *(Initial appointment of conservator only. All petitioners must file this form except banks and other entities authorized to do business as a trust company.)*
   f. (**Proposed) conservatee** ☐ is ☐ is not developmentally disabled as defined in Probate Code section 1420. Petitioner is aware of the requirements of Probate Code section 1827.5. *(Specify the nature and degree of the alleged disability in Attachment 5f).*

6. ☐ **Petitioner or proposed** ☐ **successor conservator is the spouse of the (proposed) conservatee.**
   (If this statement is true, you must answer a or b.)
   a. ☐ The (proposed) conservatee's spouse is not a party to any action or proceeding against the (proposed) conservatee for legal separation, dissolution of marriage, annulment, or adjudication of nullity of their marriage.
   b. ☐ Although the (proposed) conservatee's spouse is a party to an action or proceeding against the (proposed) conservatee for legal separation, dissolution, annulment, or adjudication of nullity of their marriage, or has obtained a judgment in one of these proceedings, it is in the best interest of the (proposed) conservatee that:
      (1) ☐ a ☐ successor conservator be appointed.
      (2) ☐ the spouse be appointed as the ☐ successor conservator.
      (If you checked item 6b(1) or (2) or both, specify the facts and reasons in Attachment 6b.)

7. ☐ **Petitioner or proposed** ☐ **successor conservator is the domestic partner or former domestic partner of the (proposed) conservatee.** *(If this statement is true, you must answer a or b.)*
   a. ☐ The domestic partner of the (proposed) conservatee has not terminated and does not intend to terminate the domestic partnership.
   b. ☐ Although the domestic partner or former domestic partner of the (proposed) conservatee intends to terminate or has terminated the domestic partnership, it is in the best interest of the (proposed) conservatee that
      (1) ☐ a ☐ successor conservator be appointed.
      (2) ☐ the domestic partner or former domestic partner be appointed as the ☐ successor conservator.
      (If you checked item 7b(1) or (2) or both, specify the facts and reasons in Attachment 7b.)

8. **(Proposed) conservatee** *(check all that apply)*
   a. ☐ will attend the hearing AND ☐ is the petitioner ☐ is not the petitioner AND ☐ has ☐ has not nominated the proposed ☐ successor conservator.
   b. ☐ *(initial appointment of conservator only)* is able but unwilling to attend the hearing AND ☐ does ☐ does not wish to contest the establishment of a conservatorship, ☐ does ☐ does not object to the proposed conservator, AND ☐ does ☐ does not prefer that another person act as conservator.
   c. ☐ *(initial appointment of conservator only):* is unable to attend the hearing because of medical inability. A *Capacity Declaration—Conservatorship* (form GC-335), executed by a licensed medical practitioner or an accredited religious practitioner ☐ is filed with this petition. ☐ will be filed before the hearing.
   d. ☐ *(initial appointment of conservator only)* is not the petitioner, is out of state, and will not attend the hearing.
   e. ☐ *(appointment of successor conservator only)* will not attend the hearing.

9. ☐ **Medical treatment of (proposed) conservatee**
   a. There is no form of medical treatment for which the (proposed) conservatee has the capacity to give an informed consent.
   b. A *Capacity Declaration—Conservatorship* (form GC-335) executed by a licensed physician or by a licensed psychologist acting within the scope of his or her licensure, stating that the (proposed) conservatee lacks the capacity to give informed consent for any form of medical treatment and giving reasons and the factual basis for this conclusion,
      ☐ is filed with this petition. ☐ will be filed before the hearing. ☐ will not be filed for the reason stated in c.
   c. ☐ *(appointment of successor conservator only)* The conservatee's incapacity to consent to any form of medical treatment was determined by order filed in this matter on *(date):*
      That order has neither expired by its terms nor been revoked.
   d. (Proposed) conservatee ☐ is ☐ is not an adherent of a religion that relies on prayer alone for healing, as defined in Probate Code section 2355(b).

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CONSERVATORSHIP OF *(name):* CONSERVATEE	CASE NUMBER:

10. ☐ **Temporary conservatorship**
Filed with this petition is a *Petition for Appointment of Temporary Conservator* (form GC-111).

11. **(Proposed) conservatee's relatives**

The names, residence addresses, and relationships of the spouse or registered domestic partner and the second-degree relatives of the (proposed) conservatee (his or her parents, grandparents, children, grandchildren, and brothers and sisters), so far as known to petitioner, are

a. ☐ listed below.

b. ☐ not known, or no longer living, so the (proposed) conservatee's deemed relatives under Probate Code section 1821(b)(1)–(4) are listed below.

	Name and relationship to conservatee	Residence address
(1)		
(2)		
(3)		
(4)		
(5)		
(6)		
(7)		
(8)		
(9)		
(10)		
(11)		
(12)		
(13)		
(14)		
(15)		
(16)		

☐ Continued on Attachment 11.

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CONSERVATORSHIP OF *(name):* CONSERVATEE	CASE NUMBER:

12. ☐ **Confidential conservator screening form**

Submitted with this petition is a *Confidential Conservator Screening Form* (form GC-314) completed and signed by the proposed ☐ successor conservator. *(Required for all proposed conservators except banks and trust companies.)*

13. ☐ **Court investigator**

Filed with this petition is a proposed *Order Appointing Court Investigator* (form GC-330).

14. Number of pages attached:

Date:

(TYPE OR PRINT NAME OF ATTORNEY FOR PETITIONER) ▶ (SIGNATURE OF ATTORNEY FOR PETITIONER)

(All petitioners must also sign (Prob. Code, § 1020; Cal. Rules of Court, rule 7.103).)

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)

(TYPE OR PRINT NAME OF PETITIONER) ▶ (SIGNATURE OF PETITIONER)

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SPR15-29

Probate Conservatorship: Judicial Council forms to implement the California Conservatorship Jursidiction Act (revise form GC-310; adopt forms GC-360, GC-361, and GC-362)

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

	Commentator	Position	Comment	Committee Response
1.	California Tribal Court–State Court Forum by Jennifer Walter, Attorney San Francisco	AM	We submit these comments on RUPRO Proposal SPR15-29 on behalf of the California Tribal Court–State Court Forum. The subject proposal revises one form and adopts three new forms to implement the California Conservatorship Jurisdiction Act (CCJA) (SB 940 Jackson, Stats. 2014 Ch. 553), which is the California version of the Uniform Adult Guardianship and Protective Proceedings Act. In recognition of the concurrent jurisdiction that California state courts and California tribal courts may exercise over tribal members in conservatorship proceedings, the CCJA contains unique jurisdictional provisions for federally recognized tribes exercising jurisdiction over conservatorship matters. These provisions are contained in Article 6 (sections 2031 – 2033). The CCJA specifically requires the Judicial Council to revise the Petition for Appointment of Conservator (form GC-310) (see Probate Code § 1821(k)). Section 2023 of the Act also requires the Judicial Council to develop court rules and forms, as necessary, for the implementation of this chapter (Chapter 8. Interstate Jurisdiction, Transfer and Recognition: California Conservatorship Jurisdiction Act) "including but not limited to …" a variety of matters.	Please see below.

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

SPR15-29
Probate Conservatorship: Judicial Council forms to implement the California Conservatorship Jurisdiction Act (revise form GC-310; adopt forms GC-360, GC-361, and GC-362)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			In reviewing the proposed revisions to the GC-310, we note that the proposed amendments are limited to the specific language required by section 1821(k). In order to avoid potential conflicts between tribal and state courts over jurisdiction, we recommend including a question under section 3a or 4d (or both) of the revised GC-310 form asking for information about conservatorship proceedings pending in a tribal court. Although this language is not explicitly required by section 1821(k) of the Probate Code, without it, there is a substantial risk that a proceeding could be filed in both courts. We believe inclusion of this information on the GC-310 form would assist state courts in more efficiently dealing with cases in which a state court and tribal court may share concurrent jurisdiction over a case. Accordingly inclusion of this language falls within the general goal of efficient implementation encompassed by section 2023 of the Act.	The advisory committee has revised form GC-310 to add, at the top of page four, a new item 3g. This item asks the petitioner to respond to the following: "So far as known to petitioner, a conservatorship or equivalent proceeding concerning the proposed conservatee *[ ]* has not *[ ]* has been filed in another jurisdiction, including a court of a federally recognized Indian tribe. *(If you answered "has," identify the jurisdiction and state the date the case was filed):"*
2.	Orange County Bar Association by Ashleigh Aitken, President Newport Beach	A	No specific comment.	No response necessary.
3.	Superior Court of Los Angeles County by Janet Garcia, Court Operations Manager Los Angeles	A	**Does the proposal appropriately address the stated purpose?** Yes **Would the forms proposal, as opposed to the entire foreign conservatorship registration**	The committee thanks the court for this comment.

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

SPR15-29
Probate Conservatorship: Judicial Council forms to implement the California Conservatorship Jursidiction Act (revise form GC-310; adopt forms GC-360, GC-361, and GC-362)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			process required by the CCJA, provide cost savings? If so quantify. Unable to determined cost savings, if any. The new forms created appear to add to the workload. **What would the implementation requirements be for courts?** This would require training of clerical staff and management, possible revising of procedures and/or adding/modifying/codes in CMS. **How well would this proposal work in courts of different sizes?** The proposal will work the same regardless of size.	
4.	Superior Court of Riverside County by Marita Ford Riverside	A	No specific comment.	No response necessary
5.	Superior Court of San Diego County by Michael M. Roddy, Executive Officer San Diego	A	No specific comment.	No response necessary.
6.	Trial Court Presiding Judges Advisory Committee/Court Executive Advisory Committee Joint Rules Subcommittee San Francisco	A	The JRS supports this proposal. However, the JRS recommends that the content of proposed form GC-362 (*Conservatorship Registrant's Acknowledgment of Receipt of Handbook For Conservators*) be merged with the other proposed forms, if possible, to reduce the number of forms that the courts will need to process.	The advisory committee thanks the JRS for its comments. However, its recommendation to fold the contents of form GC-362 into one of the other forms would present difficulties for the following reasons: 1. Combination with the *Notice of Intent to Register Conservatorship* (form GC-361) could

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

SPR15-29
Probate Conservatorship: Judicial Council forms to implement the California Conservatorship Jurisdiction Act (revise form GC-310; adopt forms GC-360, GC-361, and GC-362)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			Additionally, the JRS concluded that some courts may need to update their case management systems and conduct minimal training.	not be done because that form is not filed, except perhaps as an exhibit, and it is prepared and served before the basic registration form, form GC360, is filed with the registering court. 2. The CCJA expressly permits combination of the *Conservator's Attestation of Conservatee's Nonresidence in California* with the basic registration form, form GC-360, an invitation that was accepted by the committee (see page 3 of the revised form GC-360 (page 2 of the draft of the form circulated for comment) and Probate Code sections 2017(a)(3) and 2023(b)(2)). No such permission was given for the required acknowledgment of receipt that became form GC-362. 3. Probate Code section 2015 requires the court, *upon registration,* to provide the foreign conservator with the information about a conservator's rights, duties, limitations, and responsibilities in California identified in section 1835. The *Handbook for Conservators* is that information. This would mean, if the contents of form GC-362 were placed in form GC-360, a foreign conservator would apply for registration by presenting a form to the court that would include a signed receipt for material the court is not to deliver to him until after completion of registration.

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

State of California
PROBATE CODE
DIVISION 4. GUARDIANSHIP, CONSERVATORSHIP, AND OTHERPROTECTIVE PROCEEDINGS
PART 3. CONSERVATORSHIP
Chapter 8. Interstate Jurisdiction, Transfer, and Recognition: California Conservatorship Jurisdiction Act

Article 5. Miscellaneous Provisions

§ 2023

2023. (a) On or before January 1, 2016, the Judicial Council shall develop court rules and forms as necessary for the implementation of this chapter.

(b) The materials developed pursuant to this section shall include, but not be limited to, all of the following:

(1) A cover sheet for registration of a conservatorship under Section 2011, 2012,or 2013. The cover sheet shall explain that a proceeding may not be registered under Section 2011, 2012, or 2013 if the proceeding relates to a minor. The cover sheet shall further explain that a proceeding in which a person is subjected to involuntary mental health care may not be registered under Section 2011, 2012, or 2013. The cover sheet shall require the conservator to initial each of these explanations. The cover sheet shall also prominently state that when a conservator acts pursuant toregistration, the conservator is subject to the law of this state governing the action,including, but not limited to, all applicable procedures, and is not authorized to take any action prohibited by the law of this state. Except as provided in subdivision (c),the cover sheet shall also prominently state that the registration is effective only while the conservatee resides in another jurisdiction and does not authorize the conservator to take any action while the conservatee is residing in this state. Directly beneath these statements, the cover sheet shall include a signature box in which the conservator attests to these matters.

(2) The form required by paragraph (3) of subdivision (a) of Section 2017. If the Judicial Council deems it advisable, this form may be included in the civil cover sheet developed under paragraph (1).

(3) A form for providing notice of intent to register a proceeding under Section2011, 2012, or 2013.

(4) A form for a conservator to acknowledge receipt of the written information required by Section 2015.

(c) The materials prepared pursuant to this section shall be consistent with Section 2019.

(Added by Stats. 2014, Ch. 553, Sec. 20. (SB 940) Effective January 1, 2015. Operative January 1,2015, by Stats. 2014, Ch. 553, Sec. 29.)

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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 October 26 OR 27, 2015

Title
Court Facilities: Naming Request for the Existing, Unnamed Courthouse in Roseville

Rules, Forms, Standards, or Statutes Affected
None

Recommended by
Court Facilities Advisory Committee
Hon. Brad R. Hill, Chair
Hon. Patricia M. Lucas, Vice-Chair
Hon. Keith D. Davis, Chair of the Subcommittee on Courthouse Names

Agenda Item Type
Action Required

Effective Date
October 26 OR 27, 2015

Date of Report
September 16, 2015

Contact
William J. Guerin, 415-865-7510
william.guerin@jud.ca.gov
Chris Magnusson, 415-865-4041
chris.magnusson@jud.ca.gov

DRAFT

Executive Summary

The Court Facilities Advisory Committee and its Subcommittee on Courthouse Names recommends approving the request to name the existing, unnamed courthouse in the Bill Santucci Justice Center in the City of Roseville as the *Howard G. Gibson Courthouse.* This approval provides a name for the existing courthouse that was constructed in 2008 and after a former member of the bench of the Superior Court of Placer County.

Recommendation

The Court Facilities Advisory Committee and its Subcommittee on Courthouse Names recommends that the Judicial Council, effective October 26 OR 27, 2015, approve the request to name the existing, unnamed courthouse in the Bill Santucci Justice Center in the City of Roseville as the *Howard G. Gibson Courthouse.*

Previous Council Action

The council has taken no previous action on this courthouse naming request. In April 2014, the council adopted its revised *Courthouse Naming Policy,* available at *www.courts.ca.gov/documents/jc-20140425-itemJ.pdf.*

Rationale for Recommendation

Currently, the Superior Court of California, County of Placer, has an existing courthouse in the City of Roseville that lies in the Bill Santucci Justice Center, which is a complex containing three buildings: the existing courthouse, the jail, and the building that houses the offices of the probation department and the district attorney. This justice center has been named after former Mayor of Roseville and Board of Supervisor Member, Bill Santucci, although none of its buildings have been officially named to date. Therefore, the superior court requests that the existing courthouse be named after the Hon. Howard G. Gibson—a former member of their bench who passed away in 1986 (see Attachment A).

Judge Gibson had been a World War II veteran and a very well-respected community leader. He had been in private practice in the City of Roseville prior to becoming a justice court judge for the majority of his career there and then a superior court judge for the last several years. He was also raised in the City of Roseville and friends with Bill Santucci. The superior court has reached out to the Santucci family, speaking with a surviving relative of Bill Santucci, in order to explain the naming request, to which no objection was raised. There is also local community support for this request, as expressed by the City of Roseville as well as by Placer County's Office of the Sheriff, Bar Association, Board of Supervisors, and District Attorney (see Attachments B and F, respectively).

The advisory committee and its Subcommittee on Courthouse Names reviewed the naming request against section III.B.b of the council's *Courthouse Naming Policy* and found that it complies with all requirements.

Comments, Alternatives Considered, and Policy Implications

Council staff did not solicit comments on the recommended council action. No alternatives to the recommended action were considered.

Per the council's naming policy, requests involving names of persons for court facilities require evaluation by the advisory committee's Subcommittee on Courthouse Names, with a recommendation to the full advisory committee. On August 10, 2015, the advisory committee's Subcommittee on Courthouse Names evaluated the naming request, voting unanimously that the full advisory committee make a recommendation to the council to approve the request. In advance of that meeting, this naming request was posted for public comment on August 5, 2015, and no public comments were received. Also, and in advance of the full advisory committee's meeting on September 16, 2015, this naming request was posted for public comment on September 4, 2015, and no public comments were received.

Implementation Requirements, Costs, and Operational Impacts

The costs associated with the design and fabrication of the signage for the existing courthouse in the City of Roseville are paid from the operating budget of the Superior Court of Placer County.

Relevant Strategic Plan Goals and Operational Plan Objectives

The recommended council action supports Goal III, Modernization of Management and Administration, and Goal VI, Branchwide Infrastructure for Service Excellence.

Attachments

1. Attachment A: Courthouse naming request from Presiding Judge Alan V. Pineschi, Superior Court of California, County of Placer, July 27, 2015
2. Attachment B: Letter supporting the naming request from Sheriff-Coroner-Marshal Edward N. Bonner, Placer County, August 4, 2015
3. Attachment C: Letter supporting the naming request from President Daniel S. Wesp, Placer County Bar Association, August 3, 2015
4. Attachment D: Resolution supporting the naming request from the Placer County Board of Supervisors, August 4, 2015
5. Attachment E: Resolution supporting the naming request from the City of Roseville, August 5, 2015
6. Attachment F: Letter supporting the naming request from District Attorney R. Scott Owens, Office of the Placer County District Attorney, August 7, 2015

Superior Court of the State of California
In and For the County of Placer
Roseville, California

10820 Justice Center Drive, Roseville, California 95678
P. O. Box 619072, Roseville, California 95661

In Chambers of
Honorable Alan V. Pineschi
Presiding Judge
of the Superior Court
Department 33
(916) 408-6230 Fax (916) 408-6236

2015 JUL 30 P 3:32

July 27, 2015

Hon. Brad R. Hill,
Chair of the Court Facilities Advisory Committee
Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102

Re: Naming of Courthouse – Placer Superior Court

Dear Justice Hill:

Please consider this letter as our court's request to name the courthouse building located at 10820 Justice Center Drive in Roseville, California as the Howard G. Gibson Courthouse. The Judges of our bench voted unanimously, on June 24, 2015, to submit this application to your committee. We will submit, when appropriate, resolutions and letters of support for this naming from the local Bar Association, the Sheriff, the District Attorney, the Roseville City Council and the Placer County Board of Supervisors.

Judge Howard G. Gibson served as a Judge in Placer County for over twenty-five years. He was first elected to the Roseville Justice Court in 1958 and then later appointed to the Placer Superior Court by Governor Edmund G. Brown Jr. in 1982. He was the first Roseville attorney to have been appointed or elected to the Superior Court in Placer County's history. He retired from the Superior Court in 1984. Unfortunately, he passed in November of 1986 at the age of 65.

Accessibility, fairness, integrity and kindness are the characteristics which best describe Judge Howard Gibson. By publishing his home telephone number and home address in local telephone directories, he made himself accessible not only to law enforcement officers seeking the issuance of arrest/search warrants, but also for relatives of incarcerated persons seeking release from jail or couples needing a Judge to perform at a wedding ceremony. Judge Gibson was humble and respectful toward all persons appearing before him and was well known for his special efforts to help persons appearing in his courtroom feel comfortable no matter what type of matter brought them before the court. Notably, he took time to mentor and guide dozens of young lawyers who

went on to distinguished legal careers of their own. Judge Gibson exemplified public service from the moment he took the bench in 1958 until his retirement twenty-six years later.

Before becoming a Judge and during his legal career, Judge Gibson served his community and his country is a myriad of ways. After attending local schools, he joined the United States Army in July of 1942 and served in Europe and North Africa during World War II. After his return from the war, and upon his completion of the University of California's Hastings School of Law, he opened a small general law practice in Roseville, California. He was active in and generously contributed to many community and charitable organizations.

In 1978, he was appointed by President Jimmy Carter to the National Highway Transportation Safety Advisory Committee.

The Courthouse Naming Policy, adopted by the Judicial Council, sets out certain standards and criteria for the naming of courthouse facilities. Section III (B)(2)(b) of that policy sets out the particular criteria for the naming of a courthouse after a deceased person. We believe that the naming of the Placer Superior Court courthouse at 10820 Justice Center Drive in Roseville, California after Judge Howard G. Gibson meets all of the criteria set forth. While having passed away in 1986, Judge Gibson is still fondly remembered by many lawyers and Judges in the community. He made significant contributions to his country, state and community during his lifetime, there are no issues of conflict of interest and this naming is consistent with the California Code of Judicial Ethics.

Thank you for the opportunity to present this application to your committee. We are, of course, available to you or the committee staff to answer any additional questions or provide more information to you if necessary.

Sincerely,

Alan V. Pineschi
Presiding Judge

PLACER COUNTY
SHERIFF
CORONER-MARSHAL

MAIN OFFICE
2929 RICHARDSON DR.
AUBURN, CA 95603
PH: (530) 889-7800 FAX: (530) 889-7899

TAHOE SUBSTATION
DRAWER 1710
TAHOE CITY, CA 96145
PH: (530) 581-6300 FAX: (530) 581-6377

EST. 1851

EDWARD N. BONNER
SHERIFF-CORONER-MARSHAL

DEVON BELL
UNDERSHERIFF

August 4, 2015

Honorable Brad Hill, Chair
Judicial Council – Court Facilities Advisory Committee
455 Golden Gate Avenue
San Francisco, California 94102

Re: Courthouse Naming-Placer County Superior Court

Honorable Justice Hill:

This letter is to express my full enthusiastic support for the Placer County Superior Court's application to name the Courthouse located in Roseville, California at the Santucci Justice Center after Judge Howard G. Gibson.

Judge Gibson was a well-respected jurist in Placer County for over twenty five years having served as a Justice Court Judge in the Roseville Justice Court from 1958 until his appointment to the Superior Court in 1982 by Governor Edmund G. Brown Jr. He was the first lawyer from the City of Roseville to have ever been appointed and serve on the Superior Court of Placer County. I remember Judge Gibson as a young deputy and he was held in high regard by law enforcement and the defense community. Throughout his judicial career he was known for his accessibility, fairness, wisdom and humility and kindness.

I join the Judges of the Superior Court, the Placer County District Attorney Scott Owens, the Placer County Board of Supervisors, the Roseville City Council and Placer County Bar Association in asking your committee to approve this application and recommend to the Judicial Council of California that the Courthouse in Roseville be named in honor of Judge Howard G. Gibson.

Thank you for your consideration.

Sincerely,

Edward N. Bonner
Sheriff-Coroner-Marshal

Placer County Bar Association

2015 Board of Directors
Daniel Wesp
President
David Frank
Vice President
M. Scott Shuttleworth
Treasurer
Kristen Goodwin Alexander
Secretary
Sam Frazier
Director
Joseph Maloney
Director
Lant Barney
Past President

August 3, 2015

Honorable Brad Hill, Chair
Judicial Council – Court Facilities Advisory Committee
455 Golden Gate Avenue
San Francisco, CA 94102

RE: Courthouse Naming – Placer County Superior Court

Honorable Justice Hill:

This letter serves to express our full support for the Placer County Superior Court's application to the Court Facility Advisory Committee to name the Courthouse located in Roseville, California, at the Santucci Justice Center, after Judge Howard G. Gibson.

The Placer County Bar Association recognizes Judge Gibson as a respected jurist serving Placer County for over twenty five years. Judge Gibson was the first lawyer from the City of Roseville to have ever been appointed and serve on the Superior Court of Placer County. Throughout his judicial career Judge Gibson was known for his accessibility, fairness, wisdom, humility and kindness.

The Placer County Bar Association join the Judges of the Superior Court, the Sheriff of Placer County, the Placer County Board of Supervisors and the Roseville City Council in asking your committee to approve this application and recommend to the judicial council of California that the Courthouse in Roseville be named in honor of Judge Howard G. Gibson.

Thank you for your consideration.

Sincerely,

Daniel S. Wesp
PCBA President

Before the Board of Supervisors
County of Placer, State of California

IN THE MATTER OF A RESOLUTION IN SUPPORT OF THE PLACER COUNTY SUPERIOR COURT'S APPLICATION TO THE "COURT FACILITIES ADVISORY COMMITTEE" OF THE JUDICIAL COUNCIL OF CALIFORNIA TO NAME THE COURTHOUSE BUILDING AT THE SANTUCCI JUSTICE CENTER, IN ROSEVILLE, CALIFORNIA, IN PLACER COUNTY — THE "JUDGE HOWARD G. GIBSON COURTHOUSE."

Resolution No: 2015-156

The following RESOLUTION was duly passed by the Board of Supervisors of the County of Placer at a regular meeting held, 8/04/2015 **by the following vote on roll call:**

Ayes: DURAN, WEYGANDT, HOLMES, MONTGOMERY, UHLER

Noes: NONE

Absent: NONE

THE FOREGOING INSTRUMENT IS A CORRECT COPY OF THE ORIGINAL ON FILE IN THIS OFFICE ATTEST

ANN HOLMAN
Clerk of the Board of Supervisors, County of Placer, State of California
Deputy Clerk

Signed and approved by me after its passage.

Kirk Uhler 2015 Chairman,
Board of Supervisors

Attest:
Clerk of said Board

WHEREAS, the Judges of the Placer County Superior Court Bench have voted unanimously to submit an application to the "Court Facilities Advisory Committee" of the Judicial Council of California to name the Courthouse building, at the Santucci Justice Center, after the late Judge Howard G. Gibson; and

WHEREAS, Howard Gibson served the State of California and the County of Placer as a Roseville Justice Court Judge and then as a Placer County Superior Court Judge from the late 1950's to the early 1980's; and

WHEREAS, as a lifelong resident of Roseville, Howard Gibson was born February 5, 1921 at the County Hospital in Auburn, California, graduated from Roseville High School in 1939 and began college until his education was interrupted when he was drafted into the United States Army in 1942; and

WHEREAS, Howard served in the United States Army for over four years in the campaigns in North Africa, Italy, France and Germany and after the war, he continued his college education, married

Marnell Eich, and went on to the University of California, Hastings School of Law. Upon completion of law school, he returned to Roseville to open his law practice in 1953; and

WHEREAS, Howard reluctantly ran for the Roseville Justice Court judge in 1958 and upon winning the election, set about restoring confidence and credibility to the court; and

WHEREAS, Howard made sure that he was always accessible to his constituents listing his home address and phone number in the Roseville telephone directory throughout his judicial career; and

WHEREAS, as a Justice Court Judge, he frequently left his judicial robes in chambers and appeared in court at the counsel table rather than the Judge's bench, in order to make people feel more comfortable in court, treating everyone who appeared in his court with respect, kindness, and compassion; and

WHEREAS, to the young lawyers in his court Howard was affectionately known as "The Dean of the Roseville School of Law." With a keen sense of fairness, sharp intellect and gentle sense of humor, he enhanced many new lawyers' continuing legal education--always making every effort to help counsel reach a just and reasonable resolution; and

WHEREAS, in 1978, Howard received a presidential appointment from President Jimmy Carter to the National Highway Safety Advisory Committee; and

WHEREAS, in 1981, Governor Edmund G. Brown Jr. appointed him to the Placer County Superior Court, Howard Gibson became the first Roseville resident in the 130 year history of Placer County to be named to the Superior Court bench. Howard enjoyed his years on the Superior Court bench, providing valuable experience to the bench and creating a professional camaraderie and friendship with his fellow Judges; and

WHEREAS, Howard retired from the Superior Court bench at the end of 1983, ready after his years of service for a quiet retirement. With friends wanting to acknowledge and celebrate his 25 years on the bench and his accomplishments, he reluctantly agreed to a retirement celebration, but only on the condition that the event be a fundraiser for the restoration of the Placer County Historic Courthouse. After retiring, Howard continued to practice law part-time and enjoyed spending time with his many friends and family in Roseville; and

WHEREAS, Placer County Board of Supervisors stated it best with a simple plaque on his retirement, "The Honorable Howard G. Gibson, a matchless Judge and a great man".

NOW THEREFORE BE IT SO RESOLVED that the Placer County Board of Supervisors on behalf of the citizens of Placer County support the Placer County Superior Court's application to the "Court Facilities Advisory Committee" of the Judicial Council of California to name the Courthouse building at the Santucci Justice Center, in Roseville, California, in Placer County — the "JUDGE HOWARD G. GIBSON COURTHOUSE."

City of Roseville
RESOLUTION
of
COMMENDATION AND SUPPORT

WHEREAS, The Judges of the Placer County Superior Court Bench have voted unanimously to submit an application to the "Court Facilities Advisory Committee" of the Judicial Council of California to name the Santucci Justice Center courthouse building after the late Judge Howard G. Gibson; and

WHEREAS, Howard served the State of California and the County of Placer as a Roseville Justice Court Judge and as a Placer County Superior Court Judge from the late 1950s to the early 1980s; and

WHEREAS, a lifelong resident of Roseville, Howard was born February 5, 1921 at the County Hospital in Auburn, California, graduated from Roseville High School in 1939, began college, and was drafted into the United States Army in 1942; and

WHEREAS, Howard served in US Army for over four years in North Africa, Italy, France, and Germany, and after the war, he continued his college education, married Marnell Eich, went onto the University of California, Hastings School of Law, and upon completion of law school, he returned to Roseville to open his law practice in 1953; and

WHEREAS, Howard ran for Roseville Justice Court Judge in 1958 and upon winning the election, set about strengthening confidence and credibility to the court, always ensuring his accessibility to constituents by listing his home address and phone number in the Roseville telephone directory throughout his judicial career; and

WHEREAS, known as "The Dean of the Roseville School of Law," Howard had a keen sense of fairness, sharp intellect, and gentle sense of humor that displayed his respect, kindness, and compassion to those who appeared in his court; and

WHEREAS, Howard received appointments from President Jimmy Carter to the National Highway Safety Advisory Committee in 1978, and Governor Edmund G. Brown Jr. to the Placer County Superior Court in 1981; and

WHEREAS, Howard enjoyed his years on the Superior Court bench, providing valuable experience to the bench and creating a professional camaraderie and friendship with his fellow Judges; and

WHEREAS, Howard retired from the Superior Court bench at the end of 1983, and after retiring, continued to practice law part-time and enjoyed spending time with his many friends and family in Roseville; and

WHEREAS, Placer County Board of Supervisors stated it best with the inscription on his retirement plaque, "The Honorable Howard G. Gibson, a matchless Judge and a great man".

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROSEVILLE CALIFORNIA, to support the Placer County Superior Court's application to the "Court Facilities Advisory Committee" of the Judicial Council of California to name the Santucci Justice Center Courthouse building, the **"JUDGE HOWARD G. GIBSON COURTHOUSE".**

SIGNED AND APPROVED this 5th day of August, 2015.

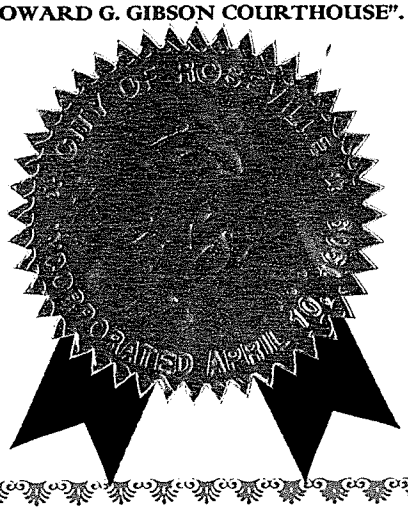
Carol Garcia

CAROL GARCIA, MAYOR

ATTEST:

Sonia Orozco

SONIA OROZCO, CITY CLERK
CITY OF ROSEVILLE, CALIFORNIA



R. SCOTT OWENS
DISTRICT ATTORNEY

PLACER COUNTY DISTRICT ATTORNEY
10810 Justice Center Drive • Suite 240
Roseville, CA 95678-6231
916 543-8000 • FAX 916 543-2550
www.placer.ca.gov

August 7, 2015

Honorable Brad Hill, Chair
Judicial Council – Court Facilities Advisory Committee
455 Golden Gate Avenue
San Francisco, CA 94102

Re: Courthouse Naming-Placer County Superior Court

Honorable Justice Hill:

This letter is to express my full support for the Placer County Superior Court's application to the Court Facility Advisory Committee to name the Courthouse located in Roseville, California, at the Santucci Justice Center, after Judge Howard G. Gibson.

Judge Gibson was a well respected jurist in Placer County for over twenty five years having served as a Justice Court Judge in the Roseville Justice Court from 1958 until his appointment to the Superior Court in 1982 by Governor Edmund G. Brown Jr. He was the first lawyer from the City of Roseville to have ever been appointed and serve on the Superior Court of Placer County. Throughout his judicial career he was known for his accessibility, fairness, wisdom and humility and kindness.

I join the Judges of the Superior Court, the Sheriff of Placer County, the Placer County Board of Supervisors, the Roseville City Council and Placer County Bar Association in asking your committee to approve this application and recommend to the Judicial Council of California that the Courthouse in Roseville be named in honor of Judge Howard G. Gibson.

Thank you for your consideration.

Sincerely,

R. Scott Owens
Placer County District Attorney

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: August 21, 2015

Title
Court Facilities: Prospective Lease of Corning Courthouse Pending Future Disposition

Rules, Forms, Standards, or Statutes Affected
None

Recommended by
Facilities Policies Working Group
Hon. Douglas P. Miller, Chair
Hon. Marla O. Anderson, Vice-chair

Agenda Item Type
Action Required

Effective Date
October 27, 2015

Date of Report
September 8, 2015

Contact
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Executive Summary

The Facilities Policies Working Group (FPWG) recommends that the Judicial Council (1) approve a short-term triple-net lease (the Lease) of the closed Corning Courthouse (Courthouse) to the County of Tehama (County) pending its sale to the County following further Judicial Council action and legislative authorization of such sale, and (2) direct staff to continue negotiating the Lease of the Courthouse to the County.

Recommendation

The Facilities Policies Working Group (FPWG) recommends that the Judicial Council, effective October 27, 2015:

1. Authorize staff to negotiate a triple-net lease of the Courthouse with Tehama County; and

2. Delegate to the Administrative Director or his designee the authority to execute that lease and other related agreements and documents.

Previous Council Action

Neither the FPWG nor the Judicial Council has taken any previous action with respect to leasing the Courthouse or its ultimate disposition.

At its March 20, 2015 meeting, the FPWG voted to recommend to the Judicial Council that Judicial Council staff be authorized to negotiate a lease of another closed court facility, the Plumas-Sierra Courthouse, to an unrelated third party, and to delegate to the Administrative Director authority to execute that lease, and on April 17, the Judicial Council voted to accept that recommendation.

Rationale for Recommendation

The Courthouse located at 720 Hoag Street in Corning is an approximate 4300 square foot building situated on a 0.5222 acre parcel of real property. The County transferred title to the Courthouse to the Judicial Council as part of the SB 1732 courthouse transfer process by grant deed recorded on January 19, 2010. The fair market value of the Courthouse is $275,000 according to a February 2014 appraisal obtained by Judicial Council staff.

On July 1, 2013, the Superior Court of California, County of Tehama (the Court) ceased operations at the Courthouse due to budget cuts. At approximately the same time, work commenced on the New Red Bluff Courthouse which is scheduled for completion in the fall of 2016. Planning for the New Red Bluff Courthouse has always contemplated closure of the Courthouse and consolidation of its operations into the new courthouse. The Court has notified Judicial Council staff in writing that it does not intend to re-open the Courthouse prior to the completion of construction of the New Red Bluff Courthouse.

At the time of the Court's closure of the Courthouse in 2013 and prior to formation of the FPWG, Judicial Council staff gave written notice of that closure to the County, and asked the County whether it would be interested in purchasing the Courthouse pursuant to Government Code 70391(c)(2)[1] which provides as follows:

> The Judicial Council shall consult with the county concerning the disposition of the facility. Notwithstanding any other law, including Section 11011, when requested by the transferring county, a surplus facility shall be offered to that county at fair market value prior to being offered to another state agency or local government agency.

[1] All future code references in this report are to the Government Code, unless otherwise noted.

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The County responded quickly in the affirmative, and indicated that it wanted to consummate the transaction as soon as possible because it wanted to immediately lease the Courthouse to North Valley Services,[2] which has grant money that must be encumbered by the end of October, 2015.

Judicial Council staff informed the County that any sale of the Courthouse to the County would require specific legislative authorization, and that as a result, a sale transaction could not close before January 1, 2017, at the time of the likely effective date for the legislation authorizing the sale. With the passage of time since that exchange, that likely effective date has slipped to January 1, 2018.

As an interim measure that would allow the County to engage North Valley Services to provide services in Corning and allow North Valley Services to encumber its grant money before October 31, 2015, and relieve the Judicial Council of its ongoing obligations to operate and maintain the Courthouse, Judicial Council staff proposed leasing the Courthouse to the County on a triple-net basis until such time as title could be transferred to the County in a duly authorized sale transaction. The County was receptive to that proposal and since that time, Judicial Council staff and County staff have been negotiating terms for that lease.

The proposed lease would be of the entire property on an "as-is" basis for a nominal rental amount, but with the County solely responsible for all operation, maintenance, and repair of the Courthouse and for insuring it. Because of the County's need to offer a stable location for North Valley Services for a period of up to ten years, the lease would have an initial two year term with eight one-year extensions, though after the initial term, either party could terminate the lease on 90 days prior notice. The expectation of the parties, however, is that the Courthouse would be sold to the County as soon as possible with the lease terminating upon the transfer of title.

Legal Authorities

With the enactment of the Trial Court Facilities Act in 2002 (as amended, the Act), the Legislature granted the Judicial Council broad authority over trial court facilities. Specifically, section 70391(a) provides that the Judicial Council shall "[e]xercise full responsibility, jurisdiction, control, and authority as an owner would have over trial court facilities the title of which is held by the state, including, but not limited to, the acquisition and development of facilities."

This broad and unqualified language confers an authority coextensive with that of an owner upon the Judicial Council, except where expressly limited by statute. Other than the requirement that the Judicial Council dispose of surplus court facilities (section 70391(c)), nothing in the Act or elsewhere expressly prohibits the Judicial Council from entering into an out-bound lease of all or a portion of a court facility with an unrelated third party while it carries out its disposition duty.

[2] North Valley Services is a local non-profit organization that provides services to individuals with mental disabilities.

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The Legislature's use of the phrase "as an owner would have" to describe the nature and scope of the Judicial Council's authority over court facilities is significant. Under California's Civil Code (CC), "[t]he ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others" (CC section 654). Ownership is qualified when it is shared with one or more persons; when the time of enjoyment is deferred or limited; and when the use is restricted. (CC section 680). Otherwise, it is absolute, meaning the owner "has the absolute dominion over it, and may use it or dispose of it according to his pleasure, subject only to general laws." (CC sections 678-679). "Ownership is a bundle of rights and privileges," and an owner may enter into a lease agreement conferring on the tenant the rights of exclusive possession of the property "against all the world," including the owner (*Union Oil Co. v. State Bd. of Equal.* (1963) 60 Cal.2d 441, 447).

Based on the foregoing, Judicial Council has the requisite authority under California law to enter into a lease for the Courthouse.

Comments, Alternatives Considered, and Policy Implications

This proposal was not circulated for comment. Staff has received written communication from the Superior Court of Tehama County in which the court confirmed it has no plans to reoccupy the Corning Courthouse, and supports the proposed transaction.

Alternative actions considered

An alternative to the recommended course of action is to not go forward with the lease to the County and leave the Courthouse vacant until authorization is sought and obtained to permanently dispose of the Courthouse. This alternative is not recommended because the judicial branch would continue to bear the cost of operating and maintaining the property, and likely alienate the County, the one party that has already identified itself as a possible buyer of the property once its sale is authorized.

Implementation Requirements, Costs, and Operational Impacts

Staff will need to negotiate final lease terms, a routine task for Real Estate staff. No out-of-pocket costs will be incurred in order to enter into a lease. The Court ceased operations at this location in July, 2013; therefore, there are no operational impacts.

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Attachments and Links

1. Government Code section 70391: *http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=70391*.

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 27, 2015

Title
Equal Access Fund: Distribution of Funds for Partnership Grants and IOLTA-Formula Grants

Rules, Forms, Standards, or Statutes Affected
None

Recommended by
State Bar Legal Services Trust Fund Commission
Adrian Dollard, Cochair
Christina Vanarelli, Cochair

Agenda Item Type
Action Required

Effective Date
October 27, 2015

Date of Report
September 17, 2015

Contact
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Executive Summary

As stated in its report on the *Equal Access Fund: Distribution of Funding for IOLTA-Formula Grants and Partnership Grants Under the Budget Act of 2015,* the State Bar Legal Services Trust Fund Commission notes that the Budget Act of 2015 includes an estimated $14,192,000 in the Equal Access Fund for distribution to legal services providers and support centers. Equal Access funds are distributed primarily in two parts: IOLTA-Formula Grants and Partnership Grants (with a small amount also distributed for administration). The State Bar Legal Services Trust Fund Commission requests approval of the distribution of $12,773,000 in IOLTA-Formula Grants for fiscal year 2015–2016, according to the statutory formula in the state Budget Act. It further requests that the Judicial Council approve distribution of $1,419,000 in partnership grants for 2016 and approve the commission's findings that the proposed budget for each individual grant complies with statutory and other relevant guidelines.

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Recommendation

The Legal Services Trust Fund Commission recommends that the Judicial Council approve the distribution of $12,773,000 in IOLTA-Formula Grants for 2015–2016 according to the terms of the state Budget Act and approve the commission's determination that the proposed budget of each individual grant complies with statutory and other guidelines.

The Legal Services Trust Fund Commission recommends that the Judicial Council approve the distribution of $1,419,000 in Equal Access Fund Partnership Grants for distribution to the following legal services agencies for programs conducted jointly with courts to provide legal assistance to self-represented litigants:

1. **Alameda County Bar Volunteer Legal Services:**
   Unlawful Detainer Mediation Project $55,000
   Alameda County Family Law Day of Court Pilot Project..... $60,000

2. **Bay Area Legal Aid:**
   Housing Law Clinic (Contra Costa) $40,000
   San Mateo County Consumer Debt Clinic $60,000

3. **Bet Tzedek Legal Services:**
   Streamlining & Expanding Court-Based Conservatorship Clinics
   (Los Angeles County) $60,000

4. **California Rural Legal Services:**
   San Luis Obispo County Rental Clinic for Self-Represented Litigants..... $45,000

5. **Central California Legal Services, Inc.:**
   Guardianship Project $25,000
   Tenant/Landlord Housing Law Clinic (Fresno) $50,000

6. **Community Legal Services in East Palo Alto:**
   San Mateo County Unlawful Detainer Mandatory Settlement Conference $45,000

7. **East Bay Community Law Center:**
   Holistic Legal Assistance Project (Alameda) $65,000

8. **Elder Law and Advocacy:**
   Imperial County Unlawful Detainer/Elder Abuse Restraining Order Self-Help
   Clinic $65,000

9. **Family Violence Law Center:**
   Domestic Violence Pro Per Project (Alameda) $25,000

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10. **Inland Empire Latino Lawyers Association:**
Small Claims Advocacy & Awareness Project (Riverside/San Bernardino) $20,000

11. **Justice and Diversity Center:**
Family Law Assisted Self-Help/Case Resolution (FLASH/CARE) Project
(San Francisco).. ..... $20,000

12. **Legal Aid Foundation of Los Angeles:**
Long Beach Self-Help Legal Access Center $72,000

13. **Legal Aid of Marin:**
Unlawful Detainer/MSC Calendar Assistance $35,000

14. **Legal Aid Society of Napa Valley:**
Small Claims Assistance Project $25,000

15. **Legal Aid Society of Orange County:**
Consumer Debt Workshop (Norwalk, Los Angeles)……$55,000
Limited Conservatorship Clinic $25,000
Unlawful Detainer Clinic $55,000

16. **Legal Aid Society of San Diego, Inc.:**
Civil Harassment & Elder Abuse Restraining Order Program at the HOJ $45,000
San Diego County Conservatorship Assistance Project $40,000

17. **Legal Services of Northern California:**
Civil Harassment and Small Claims Mediation Project (Butte) $25,000
Mother Lode Pro Per Project (Amador, Calaveras, El Dorado, Placer) $50,000
Guardianship and Clean Slate Project (Mendocino) $31,000
Small Claims and Consumer Law Self Help Clinic (Yolo) $40,000

18. **Neighborhood Legal Services of Los Angeles County:**
Chatsworth Self Help Legal Access Center Project $69,000
Pasadena Unlawful Detainer Assistance Project $55,000

19. **Public Counsel:**
Guardianship Clinic (Los Angeles) $55,000

20. **Public Law Center:**
Orange County Expanded Domestic Violence Assistance Project $40,000

21. **Riverside Legal Aid:**
Small Estates Assistance Program…… $37,000

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22. **San Diego Volunteer Lawyer Project:**
North County Civil Harassment/Unlawful Detainer Self-Help Clinic $60,000

Total $1,419,000
The text of the commission's report and its attachments are found at pages 7–57.

Previous Council Action

The Judicial Council has approved the proposed distribution for each of the past 16 years based on the recommendations of the Legal Services Trust Fund Commission.

Rationale for Recommendation

Since 1999, the state Budget Act has contained a provision for the allotment of $10 million to an Equal Access Fund "to improve equal access and the fair administration of justice." (Assem. Bill 93, ch. 10, pp. 12-16; Stats. 2014, ch. 25, pp. 12–16; Stats. 2013, ch. 20, pp.11–15; Stats. 2012, ch. 21, pp. 14–18; Stats. 2011, ch. 33, pp. 17–21; Stats. 2010, ch. 712, pp. 21–25; Stats. 2009, ch. 1, pp. 18–22; Stats. 2008, ch. 268, pp. 32–36; Stats. 2007, ch. 171, pp. 40–42; Stats. 2006, ch. 47, pp. 26–30; Stats. 2005, ch. 38, pp. 9–11; Stats. 2004, ch. 208, pp. 16–17; Stats. 2003, ch. 157, pp. 11–12; Stats. 2002, ch. 379, pp. 30–31; Stats. 2001, ch. 106, pp. 73–74; Stats. 2000, ch. 52, pp. 78–79; Stats. 1999, ch. 50, pp. 55–56.)

In 2005, the Uniform Civil Fees and Standard Fee Schedule Act was approved by the Legislature and the Governor. That act established a new distribution of $4.80 per filing fee to the Equal Access Fund. The estimated revenue from filing fees for the fund is $5.7 million per year. Those revenues have been collected by the trial courts since January 2007.

The Budget Act requires the Judicial Council to distribute the Equal Access Fund monies to legal services providers through the State Bar Legal Services Trust Fund Commission. The State Bar created the commission to administer the law regulating attorneys' interest-bearing trust accounts (IOLTAs). (Bus. & Prof. Code, § 6210 et seq.; State Bar Rules Regulating Interest-Bearing Trust Fund Accounts for the Provision of Legal Services to Indigent Persons, rule 4.)

The Budget Act states that "[t]he Judicial Council shall approve awards made by the commission if the council determines that the awards comply with statutory and other relevant guidelines. . . . The Judicial Council may establish additional reporting or quality control requirements. . . ."[1] *All recipients of partnership grants conduct an annual evaluation of the effectiveness of the programs, and are required to submit their evaluation results to the commission by March 1, 2017.*

[1] The Budget Act language is attached in the commission's report, at pages 18-20.

Under the Budget Act, the Chief Justice, as Chair of the Judicial Council, appoints one-third of the voting members to the commission—five attorney members and two public members, one of whom is a court administrator. The Chief Justice also appoints three nonvoting judges to the commission—two trial court judges and one appellate justice. (The membership roster is attached in the commission's report at pages 21–23.)

There are two grant programs, IOLTA-formula grants and partnership grants. The Budget Act provides that 90 percent of the funds be distributed to legal services agencies according to a statutory formula (the IOLTA-formula grants). The remaining 10 percent of the funds are to be distributed as partnership grants to legal services programs for projects conducted jointly with the courts to provide legal assistance to self-represented litigants. The process for choosing the legal services programs to receive these partnership grants is stated in the commission's report at pages 10–14.

For the grant period funded by the 2015 Budget Act, the Legal Services Trust Fund Commission has approved a schedule for allocation of the part of the Equal Access Fund grants referred to as IOLTA-Formula Grants to legal services providers according to the formula established under the Business and Professions Code.

The commission's report on the allocation of the Equal Access Fund shows that the commission has followed the statutory requirements and the additional criteria adopted by the council at its August 1999 meeting.

It is appropriate for the Judicial Council to approve the distribution of $12,773,000 in IOLTA-Formula Grants awarded by the Legal Services Trust Fund Commission to allow distribution to the eligible organizations in October. It is also appropriate that the council approve $1,419,000 in Partnership Grants.

Distributing the funds to the commission will allow it to carry out the terms of the Budget Act and will put the funds of the Equal Access Fund into the hands of legal services providers to supply legal assistance to self-represented litigants. IOLTA-Formula Grants are to be distributed on a calendar-year basis beginning January 1, 2016. The fiscal year for the Partnership Grants commences January 1, 2015.

The commission's report on the allocation of the Equal Access Fund shows that the commission has followed the statutory requirements and the additional criteria proposed in a report to the Judicial Council at its August 1999 meeting.

Comments, Alternatives Considered, and Policy Implications

The recommendations have been approved by the Legal Services Trust Fund Commission and its Partnership Grants Committee as required by law. The statutory scheme does not contemplate public comment.

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There are no viable alternatives to distributing the funds according to the recommendations of the Legal Services Trust Fund Commission. The Budget Act requires the council to approve the distribution if it finds that the statutory and other relevant guidelines are met.

Implementation Requirements, Costs, and Operational Impacts

The IOLTA-Formula Grants require no court implementation. Partnership grants will require the courts that have elected to participate in joint projects with local legal services providers to cooperate in the manner proposed in their grant applications.

Council staff will work with the staff of the Legal Services Trust Fund Commission to oversee administration of the Equal Access Fund, including fulfillment of requirements for reports on the commission's administration of the fund. Staff will also provide support to the commission (including the one-third of its members appointed by the Chief Justice) to facilitate administration of the Equal Access Fund.

The recommendation contained in this report will have no direct fiscal effect on the courts; nevertheless, the courts will indirectly benefit from assistance provided to self-represented litigants. Council staff support will be covered by the provision for administrative costs in the Budget Act appropriation.

Relevant Strategic Plan Goals and Operations Plan Objectives

This recommendation helps implement Goal I of the Judicial Council's strategic plan—Access, Fairness, and Diversity—by increasing representation for low-income persons.

Attachments

1. Attachment A: Report of the State Bar Legal Services Trust Fund Commission
2. Attachment B: Legal Services Trust Fund Commission and Relevant Committee Membership
3. Attachment C: Comparison of IOLTA and IOLTA-Formula EAF Grants for Calendar Year 2015
4. Attachment D: Partnership Grant Request for Proposal for 2016 Funding
5. Attachment E: Highlights of Recommended Partnership Grant Projects for 2016
6. Attachment F: IOLTA-Formula and Partnership Grant Agreement Exemplars

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THE STATE BAR OF CALIFORNIA

LEGAL SERVICES TRUST FUND PROGRAM

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Superior Court of California
County of Alameda

DATE: September 15, 2015

TO: The Judicial Council of California

FROM: Adrian Dollard, Co-Chair
Christina Vanarelli, Co-Chair
Legal Services Trust Fund Commission

Stephanie Choy, Managing Director
Legal Services Trust Fund Program

SUBJECT: Equal Access Fund: Distribution of Funding for IOLTA-Formula Grants and Partnership Grants under the Budget Act of 2015

EXECUTIVE SUMMARY

Since 1999, the Judicial Council (the "Council") budget has included the Equal Access Fund ("EAF") to provide grants for free legal assistance to indigent Californians. These grants are made through the Legal Services Trust Fund Commission of the State Bar of California (the "Commission").

In 1999, the Judicial Council took action to implement this Fund, adopting procedures for the Chief Justice to appoint a third of the members of the Commission and approving the award of grants. The Council has approved the award of grants each subsequent year since 1999.

Each year the Equal Access Fund is distributed in two parts: 1) 90% of the funds are distributed according to the statutory Interest on Lawyers' Trust Accounts ("IOLTA") formula; and, 2) 10% of the funds are distributed as discretionary grants for joint projects between court and legal service programs to make legal assistance available to pro per litigants.

IOLTA Formula Grants: The $13,010,715 in IOLTA-formula Grants allocated for the 2014-15 grant period has funded a wide range of legal services for low-income Californians. These grant funds were allocated according to a formula set forth in the IOLTA statute (Business & Professions Code sections 6210 et seq.) and pursuant to established procedures for determining eligibility and administering grants. Two categories of legal services providers are eligible for grants: "Qualified Legal Services Projects" and "Qualified Support Centers."

A system of grant application, budget review, performance reports, and on-site visits is used to monitor compliance with grant requirements.

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Partnership Grants: The $1,445,635 in Partnership Grants for 2014-15 (calendar year 2015) funded 30 projects that enhance the ability of unrepresented litigants to pursue justice in civil courts across California.

Annually since the inception of the Equal Access Fund, the Commission has presented the Council with recommendations for approval of IOLTA-formula grants prior to the start of the grant year, and then separately presented recommendations for Partnership Grants a few months later. Last year the Commission determined, with the input and approval of staff of the Council, to implement a new schedule for administration of all its grants, including the two types of EAF grants under the Budget Act of 2015. Under this new schedule, the Commission synchronized the three different grants that the Trust Fund Program has historically administered. Pursuant to this new schedule, this year, Partnership Grants were reviewed first, and IOLTA-Formula EAF budget proposals are scheduled to be reviewed in early October in conjunction with IOLTA budgets. We request the Council approve the distribution of $14,192,000 of Equal Access Funds for IOLTA-Formula and Partnership Grants under the 2015 Budget Act, as follows:

> IOLTA-Formula Grants. It is now timely and appropriate for the Council to approve the distribution of the IOLTA-Formula Grants under the Budget Act of 2015, in the total amount of $12,773,000, which amount includes the Basic Budget Act allocation and projected filing fees.
>
> The Commission identified eligible or provisionally eligible legal services providers and will be calculating the appropriate allocation of funds available for IOLTA- Formula Equal Access Fund grants under the Budget Act of 2015 in accordance with the IOLTA statute. The Commission will review budgets to ascertain compliance with statute, rules and guidelines, and with the Council's approval, will begin distribution of EAF grant funds on October 1, 2015.
>
> Partnership Grants. It is also timely and appropriate for the Council to approve the Commission's recommendations for Partnership Grants under the Budget Act of 2015, to support activities during calendar year 2016, in the total amount of $1,419,000. These discretionary grants are only available to programs already eligible for IOLTA funding, and are awarded after a careful review and analysis of grant proposals based on established criteria. Partnership grants will, upon approval, be distributed to projects that have completed documentation as early in 2016 as practicable.

INTRODUCTION – THE BUDGET ACT

The Equal Access Fund, initially created by the Budget Act of 1999, has been continued in each subsequent Budget Act, including the Budget Act of 2015.

Originally, a single general fund allocation for the Equal Access Fund was directed to the Council under each Budget Act, to be distributed in grants to legal services providers through the Legal Services Trust Fund Commission. In 2015 that general fund allocation is $10,392,000.

Since 2005, this general fund allocation has been supplemented with revenues received through the Uniform Civil Fees and Standard Fee Schedule Act. That Act established a new distribution to the Equal Access Fund of $4.80 per initial civil filing fee. Through these fees, the Equal Access Fund has been supplemented by amounts that have historically ranged up to as

much as $6.4 million annually. The sum projected to be received through filing fee revenues has been consistently set at $5,480,000 since the Budget Act of 2012.

The sum of (a) the basic budgetary allocation of $10,392,000 pursuant to the Budget Act of 2015; (b) additional funding from the Trial Court Trust Fund in the total amount of $3,800,000 results in an aggregate estimated $14,192,000 available for Equal Access Fund grants under the Budget Act of 2015. Additionally, $700,000 is allocated under the Budget Act for administrative fees of the Judicial Council and the State Bar.

This amount is only an estimate. In years in which filing fees have been higher than projected, undistributed amounts have been added to the amount available for distribution in the subsequent year. In recent years, filing fees have been less than projected, and in that case the Commission and Board of Trustees of the State Bar of California have approved covering any shortfall in the IOLTA-formula grants with IOLTA funds because IOLTA and IOLTA-formula grants are distributed to the same grantees on the same allocated share basis. Grantees are advised that should there be a shortfall in filing fees that impacts the Partnership Grants, those grants may be funded at less than 100%.

The budget control language establishes two kinds of Equal Access Fund grants: "IOLTA-Formula" Grants and "Partnership" Grants. The budget also provides for funds for the cost of administration. Distribution will be pursuant to the language of the Budget Act:

- Ninety percent of the grant funds are to be distributed to IOLTA-eligible legal services providers according to a formula set forth in California's Interest on Lawyers' Trust Accounts ("IOLTA") statute. Funds available for this category of grants, called "IOLTA-Formula Grants," equal $12,773,000.

- Ten percent of the grant funds are set aside for Partnership Grants to IOLTA-eligible legal services providers for "joint projects of court and legal services programs to make legal assistance available to pro per litigants." Funds available for Partnership Grants equal $1,419,000.

- An amount equal to five percent of the Budget Act grant allocations has been set aside for administrative costs, in a total amount up to $700,000, to be shared between the Council and the Commission (34% and 66% respectively).

(The relevant portions of the Budget Act of 2015 are attached as Attachment A.)

The Chief Justice continues to appoint one-third of the members of the Commission, plus three judicial advisors. All of them participate actively in the Commission's work, with each serving or having served on one of its three standing committees. (Attachment B is a roster of current Commission members, and the members of the Eligibility and Budget and Partnership Grant committees, which were responsible for oversight of the 2015 grant processes.)

In 2014, as part of comprehensive efforts to improve efficiencies, the Trust Fund Program took steps to synchronize its various grant calendars to a single grant year beginning January 1, 2015. In order to shift EAF grants from its traditional October 1 start date, the transitional EAF grant last year was for a "five quarter" period beginning October 1, 2014 and ending December 2015, with the last quarter based on projected funding from the 2015 Budget Act. Therefore, the 2016 EAF grant will be based on the remaining three quarters of funds from the 2015 Budget Act, and projected funding for the last quarter from the 2016 Budget Act. Grant

agreement wording provides that grant funding is contingent on the appropriation and availability of funds.

THE LEGAL SERVICES GRANTS PROGRAM

For each year of the Equal Access Fund, the budget control language has provided for the funds to be distributed "to qualified legal services projects and support centers as defined in sections 6213 through 6215 of the Business and Professions Code." Those provisions of the IOLTA statute establish the basic eligibility requirements for these two categories of organizations that are entitled to receive funding:

- "Legal Services Projects," which have as their primary purpose the provision of legal services in civil matters directly to indigent clients without charge. [Business and Professions Code, §6213(a)]

- "Support Centers," which provide training, technical assistance and advocacy support to the legal services projects on a statewide basis. [Business and Professions Code, §6213(b)]

The fund helps the most vulnerable Californians when they face critical, life-changing legal issues affecting their basic needs, their safety, and their security – issues such as elder abuse, domestic violence, family support, housing or access to needed health care. Among those served are the working poor, children, people who live in isolated rural areas, veterans, those with limited English proficiency, people suffering abuse, people with disabilities and the frail elderly.

In March 2005, the Council submitted an extensive report to the Legislature evaluating the efficiency and effectiveness of the first five years of use of these funds. The report concluded that "nonprofit legal aid providers have efficiently and effectively used their grants to provide legal assistance to some of the most vulnerable Californians, but that there remains a tremendous unmet need." At the time, the Council reported that the Equal Access Fund should be increased to build on the statewide legal aid network serving low-income people; that additional funding is needed to expand court-based self-help centers; and that ongoing evaluation is needed to continue to improve the delivery of legal assistance to indigent and marginalized Californians. Since 2005, legal service organizations continue to report tremendous accomplishments with the funding, but also tremendous continuing and heartbreaking unmet need within their service populations.

ELIGIBILITY AND DISTRIBUTION

All Trust Fund grantees must be nonprofit corporations, must maintain quality control procedures approved by the commission, and must meet minimum funding and service criteria that are set out in the Business and Professions Code, §§6214-6215. The requirements regarding eligibility and use of funds are reflected in regulating rules and grant conditions approved by the State Bar Board of Trustees and incorporated into a written agreement with each grant recipient. To monitor compliance with these requirements, the commission administers a system of grant reporting and oversight that includes written reports, regular personal contact and on-site visits.

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Oversight begins with the annual application for funding. The application includes extensive information about the legal services provider's activities and services, accompanied by an annual financial statement that must be audited (or reviewed if gross expenditures are less than $500,000) by an independent certified public accountant. Following the commission's determination of eligibility and allocation of IOLTA-Formula Grant amounts, each applicant submits a proposed budget for use of the funds, with a narrative description of the services to be provided and how the efficacy and impact of those services will be measured and maximized. The commission reviews this budget to ensure that it complies with the requirements described above before any funds are actually distributed. Subsequently grant recipients provide written reports of their expenditure of grant funds, services provided, and clients or customers served.

On-site visits supplement review of the application documentation and budgets to monitor compliance with the statutory requirements and grant conditions as well as to evaluate provider effectiveness and monitor the provider's fiscal practices for the handling of grant funds. Teams of staff, sometimes joined by commission members, conduct these visits on a three-year cycle.

IOLTA-Formula Grants. Legal services providers have used the IOLTA-Formula Equal Access Fund Grants for a wide range of services and activities that reflect both the legal needs of poor people and the special strengths of the participating programs. A substantial share of the efforts funded by these grants has been aimed at legal needs of children (adoptions, guardianships and children's access to health care, for example) or the elderly (abuse cases, nursing home evictions, home equity fraud). IOLTA-Formula Grants have also supported efforts to address the needs of families, including a range of services to help overcome barriers to self-sufficiency and make welfare-to-work a reality. Others have focused on populations that are particularly at risk, such as people with disabilities, veterans, the homeless, or victims of human trafficking.

The Budget Act requires 90 percent of the Equal Access Fund to be distributed to qualified organizations under the same statutory allocation formula as IOLTA funds, consistent with sections 6216 through 6223 of the Business and Professions Code ("IOLTA-Formula Grants"). Business and Professions Code section 6216 establishes this formula:

- Fifteen percent of the grant money is reserved for Support Centers and is divided among those centers equally.

- The remaining eighty-five percent of the funds is allocated among all California counties based on poverty population, and then within each county among Legal Services Projects based on the amount each such organization spent in the prior calendar year providing free legal services to the indigent in that county. Programs that utilize volunteers as their principal means of delivering legal services share an additional allocation in each county where they so qualify.

The IOLTA statute also addresses the use of funds by recipient organizations. Qualified Legal Services Projects must use grants to provide free civil legal services to indigent persons in the counties for which the funds are allocated. In addition, Legal Services Projects must make extra efforts to increase services to especially disadvantaged and underserved client groups within their service areas. Qualified Support Centers must publicize the availability of their services and demonstrate that they actually provide legal support without charge to qualified Legal Services Projects on a statewide basis. [Business and Professions Code, §§6218, 6220, 6221,

6223] A list of the recipients to receive these grants under the allocations of the Budget Act of 2015 is attached as Attachment C.

Partnership Grants. Since its inception in 1999, 10% of the Equal Access Fund has been allocated for a competitive grants program for projects that work with local courts to help provide legal services for self-represented litigants. In 2015, thirty projects throughout California are receiving $1,445,635 in total Partnership Grants, in grant sums from $20,000 to $80,000.

Eligibility of Partnership Grants is limited to organizations that have been found eligible by the Commission to receive IOLTA and IOLTA-formula grants as "Qualified Legal Services Projects" under Business and Professions Code section 6213(b). Recipients are selected to "seed" new projects, and also to maximize the impact of this funding across areas of legal need, population types, and geographical regions. In the grant cycle funded by the Budget Act of 2015, $1,419,000 will be available for Partnership Grants for operations in calendar year 2016.

Request for Proposals

The Request for Proposals for Partnership Grant projects for calendar year 2016 were released in April and were due in May. Notice of the RFP also was distributed to local court personnel. (A copy of this RFP is attached as Attachment D.) The Partnership Grants Committee carefully reviewed and discussed Partnership Grant applications and made recommendations to the full Commission, for final selection and allocations at its August 21 meeting. These recommendations are provided to the Council now. The Council has final responsibility for approving the Commission's recommendations for grant awards at its October 2015 meeting.

Selection Criteria

The Budget Act contains four essential elements for Partnership Grants:

- Recipients must be organizations that are eligible for Legal Services Trust Fund Program grants.
- The funds must be used for joint projects of legal services programs and courts.
- The services must be for "indigent persons" as defined in the Trust Fund Program statute.
- The services must be for self-represented litigants.

In 1999, the Commission convened court staff, legal services program directors, and staff of the Judicial Council to work with Trust Fund Program staff to develop grant-making processes and set criteria for partnership grants. This group concluded, and the Commission concurred, that it was important to give courts and legal services programs considerable latitude to develop effective models to address the needs within their particular communities. Each round of grants was envisioned as funding a range of projects, including projects in both urban and rural areas and in larger and smaller counties, and those that address different areas of law. Grant projects should include both new and continuing projects, with an eye towards maximizing the impact of this funding across areas of legal need, population types, and geographical regions.

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In 2008, the Partnership Committee of the Trust Fund Commission reviewed and substantially reaffirmed most of the practices and priorities it had developed over the years for generating proposed allocations. However, the Commission did determine to soften the practice of terminating funding after five years, and to consider continuation funding for a short additional time where exceptional and compelling circumstances so dictate, particularly in rural areas or where disasters have struck. This year, there is only one project that is being funded to continue services beyond its fifth year; and, in this instance, the project has instituted a new component and modest funding is being provided to support only this new component.

As in past years, we received proposals that span a wide range of substantive, procedural, technical and programmatic solutions. All proposals must include:

- A letter of support from the applicable court's presiding judge.
- A written Memorandum of Understanding between the legal services programs and the cooperating court indicating how the joint project, the court, and any existing self-help center, including the family law facilitator (as appropriate), will work together.
- A plan for an appropriate level of direct supervision of paralegals and other support staff by a qualified attorney.
- A plan to anticipate and meet the needs of litigants who are not within the legal services provider's service area or are ineligible for their services.
- A plan to address the needs of unrepresented litigants who do not meet the financial eligibility requirements (e.g., by providing general information in the form of local information sheets, videos, workshops, etc.).
- A clearly stated policy regarding administration of financial eligibility standards, and established protocols to observe that policy.
- Protocols to minimize conflicts of interest, or to address them as needed, and to ensure the impartiality of services;
- A plan for project continuity, including efforts to identify and secure additional funding within three years and to be free of Partnership support after five years.
- A multi-phase evaluation plan including such components as surveys, interviews, focus groups, courtroom observations, and file reviews, with a commitment to report on both qualitative and quantitative project results within three months of the end of the grant year.

Additionally, applicants for refunding of existing Partnership projects were required to provide year-to-date status reports on the implementation and performance of their projects. This requirement began this year in place of requiring grantees to provide a separate mid-year status report, consistent with our ongoing streamlining efforts.

Because all recipients of the Partnership Grants are organizations that already receive IOLTA and IOLTA-Formula Grants through the Legal Services Trust Fund Program, they are already

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subject to requirements for oversight and reporting that are in place. The Commission has been working for the past two years, with the support of Judicial Council staff, to develop evaluation and outcome data collection for reporting on all legal services that are provided by grantees.

Review and Selection Process

The Chief Justice continues to appoint one-third of the members of the Legal Services Trust Fund Commission, plus three non-voting judges who serve as advisors. All of them participate actively in the commission's work, with each serving or having served on one of its three standing committees, which include the Eligibility and Budgets and Partnership Grants committees.

The Partnership Grants Committee is responsible for evaluating all Partnership Grant proposals and making funding recommendations to the full commission. (The judges participate fully – and vote – during committee considerations; they participate fully but do not vote in full commission deliberations.) A list of the members of the Legal Services Trust Fund Commission and the members of its Partnership Grants Committee is provided in Attachment B.

Committee members were divided into staffed "evaluation teams" and each member was assigned primary responsibility to review several applications, which for the first time they were able to do online on the Trust Fund Program's new cloud-based grantmaking portal.

After completing these individual reviews, evaluation teams met by conference call to review all assigned proposals and to discuss specific concerns and issues with respect to individual projects, which were then investigated by staff. The full committee then met on May 29, to identify promising proposals and develop preliminary grant awards based on individual and team evaluations. This meeting also identified additional issues for further investigation by Trust Fund staff. The committee met again on the morning of August 21 to reconsider and finalize its slate of grant recommendations, which was presented to the full commission for its approval that afternoon.

The commission is satisfied that all grant proposals represent well-conceived projects that warrant support with partnership grant funding.

Overview of Applications and Proposed Grants

For the $1,419,000 available for Partnership grants, the commission received 34 applications totaling $1,968,781 in requests. The grant applications represent broad geographic diversity as well as diversity in substantive areas of law and the nature of services to be provided. The Trust Fund Program received proposals for refunding from 22 of the 30 currently-funded projects, and from 12 projects seeking first-time funding. Of the applications, two were not selected for funding, resulting in a total of 32 grant recommendations.

All of the recommended grants involve collaboration between at least one legal services program and one court. Some are creative partnerships among multiple legal services programs and courts. Several propose to utilize technology to make services more accessible, and all are primarily located at, or in close proximity to, the courthouse. The recommended grants reflect a mix of geographic areas and program types. All include a high quality of work to

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be performed, high demand for services, and innovative approaches to maximize the impact of the grant. The Commission is requesting your approval for the following grant awards.[2]

PROGRAM	PROJECT	RECOMMENDED PARTNERSHIP GRANT
Alameda County Bar Volunteer Legal Services	**Unlawful Detainer Mediation Project**	**$25,000**
Alameda County Bar Volunteer Legal Services	**Alameda County Family Law Day of Court Pilot Project**	**$60,000**
Bay Area Legal Aid	Contra Costa County Housing Law Clinic	$40,000
Bay Area Legal Aid	San Mateo County Consumer Debt Clinic	$60,000
Bet Tzedek Legal Services	Streamlining & Expanding Court-Based Conservatorship Clinics	$60,000
California Rural Legal Assistance	**San Luis Obispo County Rental Clinic for Self-Represented Litigants**	**$45,000**
Central California Legal Services	**Guardianship Project**	**$25,000**
Central California Legal Services	Tenant/Landlord Housing Law Clinic	$50,000
Community Legal Services in East Palo Alto	San Mateo County Unlawful Detainer Mandatory Settlement Conference	$45,000
East Bay Community Law Center	Holistic Legal Assistance Project (formerly "Civil Justice Self-Help Project")	$65,000
Elder Law & Advocacy	**Imperial County Unlawful Detainer/Elder Abuse Restraining Order Self-Help Clinic**	**$65,000**
Family Violence Law Center	**Domestic Violence Pro Per Project**	**$25,000**
IELLA Legal Aid Project	Small Claims Advocacy & Awareness Project	$20,000
Justice & Diversity Center	**Family Law Assisted Self Help/ Case Resolution (FLASH/CARE)**	**$20,000**
Legal Aid Foundation of Los Angeles	Long Beach Self-Help Legal Access Center	$72,000
Legal Aid of Marin	Mandatory Settlement Conference Calendar	$35,000
Legal Aid of Napa Valley	Small Claims Assistance & Mediation Project	$25,000
Legal Aid Society of Orange County	Consumer Debt Workshop	$55,000

[2] Bolded items are new projects.

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Legal Aid Society of Orange County	Limited Conservatorship Project	$25,000
Legal Aid Society of Orange County	Unlawful Detainer Clinic	$55,000
Legal Aid Society of San Diego	Civil Harassment and Elder Abuse Restraining Order Program at the HOJ	$45,000
Legal Aid Society of San Diego	San Diego Conservatorship Assistance Project	$40,000
Legal Services of Northern California - Butte	Civil Harassment and Small Claims Mediation Project	$25,000
Legal Services of Northern California - Mother Lode	Mother Lode Pro Per Project	$50,000
Legal Services of Northern California - Ukiah	Guardianship and Clean Slate Project	$31,000
Legal Services of Northern California - Yolo Yolo County	**Small Claims and Consumer Law Self Help Clinic**	**$40,000**
Neighborhood Legal Services of Los Angeles County	**Chatsworth Self-Help Legal Access Center Project**	**$69,000**
Neighborhood Legal Services of Los Angeles County	Pasadena Unlawful Detainer Assistance Project	$55,000
Public Counsel	Guardianship Clinic	$55,000
Public Law Center	Orange County Expanded Domestic Violence Assistance Project	$40,000
Riverside Legal Aid	**Small Estates Assistance Program**	**$37,000**
San Diego Volunteer Lawyer Program	North County Civil Harassment/ Unlawful Detainer Self-Help Clinic	$60,000
TOTAL GRANT AWARDS		**$1,419,000**

A brief summary of each project is listed in Attachment E.

NEXT STEPS: TRUST FUND COMMISSION AND JUDICIAL COUNCIL

Legal Services Trust Fund Commission

Based on the Budget Act, the Commission will provide grantees with tentative IOLTA-Formula Equal Access Fund grant allocation amounts, as well as IOLTA grant allocations. Based on these tentative amounts, each grant recipient will be asked to prepare a detailed line item budget for each tentative allocation. Budgets will be reviewed by Legal Services Trust Fund Program staff, and the Committee will review and make recommendations to the Commission for approval at its December 11 meeting. Thereafter, the State Bar will sign a grant agreement with each recipient program. (Attachment F is a form version of the grant agreements used last year. No major changes have been proposed for this year's agreement.)

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The period for distribution of IOLTA-Formula EAF grants under the Budget Act of 2015 will be October 1, 2015, through September 30, 2016, with the final quarter of the 2015 grant year to be funded by next year's Budget Act allocation. Assuming timely administration of the contract, and approval of funds from the State Controller's office, we will issue the first of four quarterly grant checks for distribution to recipients in late November.

The Commission, working through staff, will be responsible for the administration of these Equal Access Funds in tandem with IOLTA revenues and contributions to the Justice Gap Fund. The Commission will continue its oversight of the EAF grant program, including review of expenditure reports and program-owned evaluation. Along with the regular reporting already required for IOLTA Fund Grants, grant recipients provide separate quarterly expenditure reports for Equal Access Fund IOLTA-Formula Grants. For the 2016 grant year, the Commission is developing uniform outcome measures and reporting for IOLTA and EAF grants combined.

At its meeting in August, the Commission reviewed Partnership Grant proposals and selected projects to recommend to the Council for funding in the 2016 grant year.

We will continue to work closely with the Council staff, requiring appropriate evaluation of grant funding, and providing regular reports reflecting how the grants meet the statutory requirements and other guidelines, as well as information needed to assist the Council in budget preparation. The Legal Services Trust Fund staff, working together with the Judicial Council staff continues to encourage legal services providers to use evaluative tools to make critical assessments of their work and its impact on the communities they serve.

Judicial Council

The Budget Act provides that "the Judicial Council shall approve awards made by the commission if the Council determines that the awards comply with statutory and other relevant guidelines." It is now timely and appropriate for the Council to approve:

- The distribution of $12,773,000 in IOLTA-Formula Grants under the Budget Act of 2015, for grants to legal services providers determined by the Commission to be in compliance with statutory and other applicable guidelines, in the amounts identified in Attachment C. The funds will be released by the Council to the State Bar in four equal disbursements, and will be paid out to the eligible legal services programs quarterly (or as close to quarterly as possible depending on contract timing), for the period October 1, 2015 through September 30, 2016.

- The distribution of $1,419,000 in 2016 Partnership Grants to the projects, and in the amounts, identified in Attachment E.

SUMMARY OF COUNCIL ACTION REQUESTED

In conclusion, it is timely and appropriate for the Council to approve, at its October 2015 meeting, the distribution of $12,773,000 in IOLTA-Formula Grants and of $1,419,000 in Partnership Grants, pursuant to the Budget Act of 2015. Council approval is necessary to enable appropriate grant administration to fund projects for the period beginning January 1, 2016.

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Assembly Bill No. 93
CHAPTER 10

An act making appropriations for the support of the government of the State of California and for several public purposes in accordance with the provisions of Section 12 of Article IV of the Constitution of the State of California, relating to the State Budget, to take effect immediately, budget bill.

[Approved by Governor June 24, 2015. Filed with Secretary of State June 24, 2015.]

AB 93, Weber. Budget Act of 2015.

[…..]

The people of the State of California do enact as follows:

SECTION 1.00.

This act shall be known and may be cited as the "Budget Act of 2015."

[….]

0250-101-0001--For local assistance, Judicial Branch: 17,753,000
Schedule:
(1) 0150010-Support for Operation of Trial Courts 6,201,000
(2) 0150051-Child Support Commissioner Program (AB 1058)..... 54,332,000
(3) 0150055-California Collaborative and Drug Court Projects..... 5,748,000
(4) 0150075-Grants—Other..... 1,586,000
(5) 0150083-Equal Access Fund 10,392,000
(6) Reimbursements to 0150051-Child Support Commissioner Program (AB 1058) −54,332,000
(7) Reimbursements to 0150055-California Collaborative and Drug Court Projects.. −4,588,000
(8) Reimbursements to 0150075-Grants—Other..... −1,586,000

Provisions:

1. In order to improve equal access and the fair administration of justice, the funds appropriated in Schedule (8) are to be distributed by the Judicial Council through the Legal Services Trust Fund Commission to qualified legal services projects and support centers as defined in Sections 6213 to 6215, inclusive, of the Business and Professions Code, to be used for legal services in civil matters for indigent persons. The Judicial Council shall approve awards made by the commission if the council determines that the awards comply with statutory and other relevant guidelines. Ten percent of the funds in Schedule (8) shall be for joint projects of courts and legal services programs to make legal assistance available to pro per litigants and 90 percent of the funds in Schedule (8) shall be distributed consistent with Sections 6216 to 6223, inclusive, of the Business and Professions Code. The Judicial Council may establish additional reporting or quality control requirements consistent with Sections 6213 to 6223, inclusive, of the Business and Professions Code.

[….]

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Senate Bill No. 97
CHAPTER 11

An act to amend the Budget Act of 2015 by amending Items 0250-101-0932 […] Section 2.00 of, […] that act, relating to the State Budget, and making an appropriation therefor, to take effect immediately, budget bill.

[Approved by Governor June 24, 2015. Filed with Secretary of State June 24, 2015.]
SB 97, Committee on Budget and Fiscal Review. Budget Act of 2015.
[…..]

The people of the State of California do enact as follows:

SECTION 1.
Item 0250-101-0932 of Section 2.00 of the Budget Act of 2015 is amended to read:
[….]

0250-101-0932—For local assistance, Judicial Branch,
Payable from the Trial Court Trust Fund:.....2,337,627,000
Schedule:
(1) 0150010-Support for Operation of Trial Courts 1,883,879,000
(2) 0150019-Compensation of Superior Court Judges 323,784,000
(3) 0150028-Assigned Judges.....26,047,000
(4) 0150037-Court Interpreters.....94,089,000
(5) 0150067-Court Appointed Special Advocate (CASA) program 2,213,000
(6) 0150071-Model Self-Help Program.....957,000
(7) 0150083-Equal Access Fund 5,482,000
(8) 0150087-Family Law Information Centers.....345,000
(9) 0150091-Civil Case Coordination.....832,000
(11) Reimbursements to 0150010-Support for Operation of Trial Courts ..... −1,000

Provisions:
[….]
7. In order to improve equal access and the fair administration of justice, the funds appropriated in Schedule (7) are available for distribution by the Judicial Council through the Legal Services Trust Fund Commission in support of the Equal Access Fund Program to qualified legal services projects and support centers as defined in Sections 6213 to 6215, inclusive, of the Business and Professions Code, to be used for legal services in civil matters for indigent persons. The Judicial Council shall approve awards made by the commission if the council determines that the awards comply with statutory and other relevant guidelines. Upon approval by the Administrative Director, the Controller shall transfer up to 5 percent of the funding appropriated in Schedule (7) to Item 0250-001-0932 for administrative expenses. Ten percent of the funds remaining after administrative costs shall be for joint projects of courts and legal services

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programs to make legal assistance available to pro per litigants and 90 percent of the funds remaining after administrative costs shall be distributed consistent with Sections 6216 to 6223, inclusive, of the Business and Professions Code. The Judicial Council may establish additional reporting or quality control requirements consistent with Sections 6213 to 6223, inclusive, of the Business and Professions Code.
8. Funds available for expenditure in Schedule (7) may be augmented by order of the Director of Finance by the amount of any additional resources deposited for distribution to the Equal Access Fund Program in accordance with Sections 68085.3 and 68085.4 of the Government Code. Any augmentation under this provision shall be authorized not sooner than 30 days after notification in writing to the chairpersons of the committees in each house of the Legislature that consider appropriations, the chairpersons of the committees and appropriate subcommittees that consider the State Budget, and the Chairperson of the Joint Legislative Budget Committee, or not sooner than whatever lesser time the chairperson of the joint committee, or his or her designee, may determine.
[….]

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LEGAL SERVICES TRUST FUND COMMISSION OF THE STATE BAR OF CALIFORNIA 2014-15

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Hon. Brad Seligman Superior Court of California, County of Alameda 24405 Amador Street, Department 504 Hayward, CA 94544 Email: bseligman@alameda.courts.ca.gov Judicial Advisor Judicial Council: 2014-2017	Hon. William J. Murray, Jr. Associate Justice of the Court of Appeal Third Appellate District 914 Capitol Mall, 4th Floor Sacramento, CA 95814 ph.: 916-654-0115 email: william.murray@jud.ca.gov Judge Judicial Council: 2013-2016

Note: 2015-2016 Judicial Council appointments have not yet been announced

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LEGAL SERVICES TRUST FUND COMMISSION
COMMITTEE ASSIGNMENTS
2014 - 2015

Eligibility and Budget Committee

Adrian Dollard, Co-Chair (2015)
Parissh Knox, Co-Chair (2016)
Banafsheh Akhlaghi (2016)
Chen Song (2016)
Herman De Bose (2017)
Richard Reinis (2015)
LaQuita Robbins (2016)
Kim Savage (2015)
Judge Brad Seligman (2017)
Melanie Snider (2016)
Judge Jack Sutro, Jr. (2015)

Partnership Grants Committee

Christina Vanarelli, Co-Chair (2015)
Christian Schreiber, Co-Chair (2016)
Mark Conrad (2016)
Judge Michael Convey (2015)
Justice William Murray (2016)
Susan Ryan (2015)
Tania Ugrin-Capobianco (2017)
Donna Hershkowitz (2017)

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Attachment C, to be provided

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PARTNERSHIP GRANTS
2016 REQUEST FOR PROPOSAL

FORM B – PROJECT DESCRIPTION

Project Title: *(auto-fill)*

Answer the following questions as concisely as possible. The answers must be self-contained. Do not refer the reader to any other documents.

1. Program's Qualifications. What is the applicant program's experience providing assistance to self-represented litigants, including court-based services?

2. Needs Assessment. Describe the demographics of the target community, the geographic area to be served by the project, and why the target population is in particular need of the services to be provided.

3. Types of Services to be Provided.
   a. Describe the legal issues to be addressed, and the type and level of services to be offered by the project. How will the planned services address the needs identified?

   b. Identify any new resource materials to be developed and the individual(s) who will be responsible for preparing those materials. How will new materials differ from those materials already available, i.e. materials posted on www.courts.ca.gov, www.lawhelpca.org or www.CAlegaladvocates.org.

   c. Describe language capabilities among staff and any plans for developing resource materials in multiple languages. If your service population includes persons who are monolingual in a language that staff does not speak, explain how the project will ensure services are available to those persons.

   d. Describe how you will communicate the availability of services to litigants and the community.

   e. What changes have been made to the project since it was first funded with a Partnership Grant, and why? *(applicants for refunding only)*

   f. Provide information about current and planned collaboration with other legal services programs and other types of organizations in the community.

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4. Goals and Objectives.
   a. Specify numbers to be served per category of service (*quantitative goals*).

Services and Resources	**Goal**	
Group-Setting Services	# of Workshops/mo	# of Individuals/mo.
Information on Substantive Legal Options		
Information on General Court Processes and Procedure		
Document Preparation or Review		
Trial/Hearing Preparation		
Other *(describe below)*		
Individually-Delivered Services		# of Individuals/mo.
Information on Substantive Legal Options		
Information on General Court Processes and Procedure		
Document Preparation or Review		
Filing Assistance		
Mediation/Settlement Assistance		
Trial/Hearing Preparation		
Post-Trial/Hearing Assistance		
Other Extended Services		
Other *(describe below)*		
Other Services	# of resource materials	# distributed
Resource Materials		
Other *(describe below)*		

   b. Describe services identified above as "other." If any of the other numbers in the above chart require explanation, provide the additional explanatory text here.

   c. Identify any anticipated goals for the project not quantified in the chart above.

   d. If you will be providing workshops, please describe the format for those workshops. For example, will you utilize videoconference, or online document assembly? What is the goal of each workshop and what do you hope the customer will take away with them?

5. Location.
   a. Services must be provided at the courthouse except in rare circumstances. Will services be provided at the courthouse? ☐ Yes ☐ No

   b. If no, explain why services cannot be located at the court and measures that will be taken to ensure litigants follow-up with assistance received and otherwise overcome the distance barrier.

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c. Will all services strictly be provided at the project site? ☐ Yes ☐ No

d. If no, what services will be provided or completed off-site?

6. Quality Control, including Supervision.
   a. Describe the staffing and supervisory structure for the project, identifying key personnel if possible. If onsite supervision is not possible for project staff, describe the steps that will be taken to ensure the highest levels of quality control.

   b. If the project is designed to utilize volunteers, indicate whether these will be attorneys, paralegals, law students, etc. Describe the work volunteers will undertake and explain how they will be trained and supervised.

   c. If the project includes document preparation, how will the project ensure that documents are completed correctly? Will the documents be reviewed by project staff, and if so, who will conduct the review, and when will the review be conducted?

   d. If a sub-grant of any Partnership Grant funds is envisioned, provide details for that arrangement, including plans for oversight and evaluation of the services provided by the sub-grantee.

7. Income Eligibility Guidelines. Explain how the project will verify income eligibility to ensure that Partnership Grant funds are only used to serve indigent individuals. (Business & Professions Code Section 6213(d))

8. Attorney-Client Relationship. Do you plan to establish an attorney-client relationship?
   ☐ Yes ☐ No

   a. Conflict of Interest? If yes, do you have a protocol for conducting conflict checks? ☐ Yes ☐ No

Describe the protocols that will be used to check for conflicts and how individuals will be served in the event a conflict is identified, i.e., referrals to a conflict panel, independent contractor, etc.

   b. If no, explain how litigants will be made aware of the scope of services to be provided and how customers will be informed that an attorney-client relationship will not be established.

9. Impartiality of the Court.
   a. Do you expect to serve only one party or side of a matter?
   ☐ Yes ☐ No

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b. If yes, which party or side of the matter do you plan to serve?

c. Explain why the project has established this limitation. What steps have been taken to explore all implications of this decision, and address any risk of an appearance of impartiality on the court's part?

10. Alternative Services. Describe the methods to be used to screen for subject matter eligibility and explain how the project will otherwise address the needs of unrepresented litigants. What information will be available for litigants who are ineligible for services due to income, subject matter, or residency? If the plan is to provide referral, explain how *meaningful* referrals will be made in situations where the project cannot provide services, such as when it serves only one party, lacks resources to provide service to all who seek it, or where a conflict arises.

11. Collaboration and Partnership with the Court
    a. Court's Role: Identify the general areas of responsibility that the court has agreed to assume, and those that will remain the responsibility of the applicant.

    b. Describe plans for meeting with court personnel to discuss both substantive and logistical issues as they arise. Coordination meetings should be scheduled no less often than quarterly and should be conducted with formal agendas.

12. Timetable. Describe the proposed timetable for implementation of the project by quarter for the grant year *(new projects only)*.

13. Evaluation.
    a. Provide a detailed plan describing how the project's services will be evaluated. The plan should include both an assessment of the benefit of the project's services for those seeking assistance as well as the impact of funded services on the court.

    b. Identify the specific evaluation efforts to ascertain ways to improve services, including efforts in conjunction with the court, such as interviews with self-represented litigants, court personnel or other partners, survey parameters, case file review methodology, and details on any other evaluation process contemplated.

14. Project Continuity
    a. Describe plans to obtain other sources of funding to cover a portion of the project's costs after three years of operations, and to function independently from the Partnership Grants program after no more than five years. Include information about fundraising efforts, commitments of future funding, in-kind contributions, etc.

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b. List all funding sources that have been approached in the last twelve months, the amounts requested and the revenue actually raised for project operations. Specifically identify any funds that were obtained by leveraging the Partnership Grant.

c. Grants are awarded after the fifth year of funding only in rare and exceptional circumstances. Any applicant seeking funding beyond the fifth year must describe the circumstances that justify continued funding.

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PARTNERSHIP GRANTS
2016 REQUEST FOR PROPOSAL
FORM C - PROJECT BUDGET

Project Title: _____
Prepared by: _____
Email: _____ **Phone/Ext:** _____

ACCOUNT TITLE	PROPOSED PARTNERSHIP GRANT	OTHER TRUST FUND MONIES	NON-TRUST FUND MONIES	TOTAL
Personnel				
1. Lawyers				
2. Paralegals				
3. Other Staff				
4. SUBTOTAL				
5. Employee Benefits				
6. TOTAL PERSONNEL				
Non-Personnel				
7. Space				
8. Equip. Rental & Maintenance				
9. Office Supplies				
10. Printing & Postage				
11. Telecommunications				
12. Technology				
13. Program Travel				
14. Training				
15. Library				
16. Insurance				
17. Audit				
18. Evaluation				
19. Contract Service to Clients				
20. Contract Service to Orgs				
21. Other				
22. TOTAL NON-PERSONNEL				
23. TOTAL				
24. Projected Carry-Over Funds				
25. TOTAL AMOUNT OF FUNDS				

PROJECT STAFF	PARTNERSHIP GRANT (in FTEs)	OTHER TRUST FUND MONIES (in FTEs)	NON-TRUST FUND MONIES (in FTEs)	TOTAL TIME (in FTEs)
1. Lawyers				
a.				
b.				
c.				
Total Lawyers				
2. Paralegals				
a.				
b.				
Total Paralegals				
3. Other Staff				
a.				
b.				
Total Other Staff				
4. TOTAL PERSONNEL				

End of worksheet

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PARTNERSHIP GRANTS
2016 REQUEST FOR PROPOSAL

FORM D – BUDGET NARRATIVE

Project Title: *(auto-fill)*

Provide an explanation for each line item in the project budget. Identify the costs to be covered by the Partnership Grant, other Trust Fund monies, and any expenses to be covered with cash contributions by any organization, including the applicant, the cooperating court, or any third party partner. Also, identify the nature and source of all in-kind resources to be utilized by the project, the estimated value of such in-kind contributions, and the basis for the estimated value.

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PARTNERSHIP GRANTS
2016 REQUEST FOR PROPOSAL

FORM E – PROJECT ASSURANCES

Project Title: *(auto-fill)*

Applicant assures compliance with the following:

☐ Applicant agrees it will use any grant funds it receives from the Partnership Grants portion of the Equal Access Fund only for purposes allowed under the State Budget Act, upon approval thereof, and any grant agreement it enters into with the Legal Services Trust Fund Program.

☐ Applicant agrees to expend any grant funds solely on civil legal assistance to indigent* self-represented litigants in California courts. (*Business & Professions Code Section 6213(d))

☐ Applicant will not discriminate based on race, color, national origin, religion, gender, disability, age, marital or domestic partnership status, medical condition, or sexual orientation.

☐ Applicant will comply with quality control procedures adopted by the State Bar of California.

☐ Applicant will permit reasonable site visits and will present additional information deemed reasonably necessary to determine compliance with the terms of a grant under the Partnership Grants portion of the Equal Access Fund.

☐ Applicant will comply with fiscal management and control procedures adopted by the State Bar of California.

☐ Applicant agrees to consult with the Legal Services Trust Fund Program concerning media coverage of any project funded by a Partnership Grant.

☐ Applicant understands that any proposal submitted for a Partnership Grant, and all documents submitted pursuant to issuance of a Partnership Grant, are public documents, and may be disclosed to any person.

☐ Applicant assures that, to the extent this grant is being sought for an existing project, the funds will be in addition to and will not supplant current funding committed to that project. However, to the extent applicant seeks to move some of the funding already committed to the project for use on other activities, the applicant will submit to the Commission an explanation of the need for the other activities, justifying the alternate use of the funds.

☐ Applicant agrees it will cooperate with data collection processes or with research efforts of the Legal Services Trust Fund Program or the Judicial Council to evaluate the Partnership Grants project.

☐ Applicant acknowledges that it has read and will comply as fully as possible with the Guidelines for the Operation of Self-Help Centers in California Trial Courts, as affirmed February 28, 2011.

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Signed:

Executive Director Applicant Program	Chair (or other officer), Board of Directors Applicant Program
Print Name	Print Name and Title
Date	Date

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PARTNERSHIP GRANTS
2016 REQUEST FOR PROPOSAL

FORM F – PRESIDING JUDGE SUPPORT
(Add additional forms for each partner court)

Project Title: *(auto-fill)*

1. Project Abstract: *(auto-fill)*

2. Attorney-Client Relationship: I understand the proposed project does *(not)* plan to establish an attorney-client relationship.

   a. The proposed project does *(not)* have a protocol for conducting conflict checks: *(auto-fill)*

3. Impartiality of the Court: The applicant has advised the court that it does *(not)* intend to serve only one party or side of a matter, and has advised on the reasons for the limitation, the steps taken to explore all implications of this decision, and has addressed any risk of an appearance of impropriety on the court's part:
   (auto-fill)

4. Alternative Services: The applicant has described the methods to be used to screen for subject matter eligibility, and the information that will be available for litigants who are ineligible for services due to income, subject matter, or residency, including how the referral is ensured to be a meaningful one:
   (auto-fill)

5. Memorandum of Understanding: I understand that if the project is funded, the court and the applicant will memorialize the details of the partnership in a Memorandum of Understanding, which will reflect all aspects of the partnership, including the respective areas of responsibility of the Court and the applicant, as well as plans for regular coordination meetings.

   Status of MOU:
   - ☐ Continuing MOU is enclosed and will be effective during the grant term.
   - ☐ A new, fully executed MOU is enclosed.
   - ☐ A fully executed MOU will be provided to the Legal Services Trust Fund Program before the beginning of the grant term.

6. Additional comments:

As the Presiding Judge of the Superior Court of California, County of *(auto-fill)*, I have reviewed the application of *(auto-fill)* for a Partnership Grant to provide services to self-represented litigants in the court. I fully support the grant proposal, as described below:

Signed:

_____ _____

Presiding Judge Date

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PARTNERSHIP GRANTS
2016 REQUEST FOR PROPOSALS

PROJECT SUMMARY

The following summary report will be shared with the Legal Services Trust Fund Commission and Judicial Council. **Please confirm that the information below is correct.** To edit the information below, return to the corresponding question within the RFP and edit the text as desired. For questions, contact the Legal Services Trust Fund Program. *(The field labels in the table below match to questions in the forms above. Ideally, the field labels below would link to the corresponding question in the RFP from which the data is being pulled so the applicant can easily edit their answer.)*

Program Name	*(auto-fill)*		
Project Name	*(auto-fill)*		
Partner Court	*(auto-fill)*		
Project Location	*(auto-fill)*		
On-Site Days/Hours	*(auto-fill)*		
Project Abstract	*(auto-fill)*		
Personnel Categories	**Project Staff**	**Total Project FTEs**	**PG Share of FTEs**
Lawyers	*(auto-fill)*	*(auto-fill)*	*(auto-fill)*
	(auto-fill)	*(auto-fill)*	*(auto-fill)*
	(auto-fill)	*(auto-fill)*	*(auto-fill)*
	Lawyers Total	*(auto-fill)*	*(auto-fill)*
Paralegals	*(auto-fill)*	*(auto-fill)*	*(auto-fill)*
	(auto-fill)	*(auto-fill)*	*(auto-fill)*
	Paralegals Total	*(auto-fill)*	*(auto-fill)*
Other Staff	*(auto-fill)*	*(auto-fill)*	*(auto-fill)*
	(auto-fill)	*(auto-fill)*	*(auto-fill)*
	Other Staff Total	*(auto-fill)*	*(auto-fill)*
Services and Resources		**Goal**	
Group-Setting Services		# of Workshops/mo	# of Individuals/mo
Information on Substantive Legal Options		*(auto-fill)*	*(auto-fill)*
Information on General Court Processes and Procedure		*(auto-fill)*	*(auto-fill)*
Document Preparation or Review		*(auto-fill)*	*(auto-fill)*
Trial/Hearing Preparation		*(auto-fill)*	*(auto-fill)*
Other		*(auto-fill)*	*(auto-fill)*
Individually-Delivered Services			# of Individuals/mo
Information on Substantive Legal Options			*(auto-fill)*
Information on General Court Processes and Procedure			*(auto-fill)*
Document Preparation or Review			*(auto-fill)*
Filing Assistance			*(auto-fill)*
Mediation/Settlement Assistance			*(auto-fill)*
Trial/Hearing Preparation			*(auto-fill)*

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Post-Trial/Hearing Assistance			*(auto-fill)*
Other Extended Services			*(auto-fill)*
Other			*(auto-fill)*
Other Services		# of resource materials	# distributed
Resource Materials		*(auto-fill)*	*(auto-fill)*
Other		*(auto-fill)*	*(auto-fill)*
Attorney-Client Relationship	Yes ☐ No ☐	**Conflict of Interest?**	Yes ☐ No ☐
Income Eligibility Guidelines	*(auto-fill)*		
Alternative Services	*(auto-fill)*		
Court's Role	*(auto-fill)*		

Grant Year	Total Budget	Amount Requested	Amount Awarded
(auto-fill historical data) 2015	*(auto-fill historical data)*	*(auto-fill historical data)*	*(auto-fill historical data)*

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Attachment E: Highlights of Recommended Partnership Grant Projects for 2016

2016 PARTNERSHIP GRANT RECOMMENDATIONS						
NO.	PROGRAM LEGAL NAME	PROJECT NAME	COUNTY	NEW OR RETURNING APPLICANT	DESCRIPTION	PROPOSED ALLOCATION
1.	ALAMEDA COUNTY BAR VOLUNTEER LEGAL SERVICES	Unlawful Detainer Mediation Project	Alameda	New	This project is a joint effort to help pro se litigants arrive at a fair and reasonable resolution of their eviction matters without trial. Pro se litigants can frequently work out a better result with assistance from a trained neutral mediator. Five or six volunteer mediators staff the calendar each week and try to help the parties reach settlement. Oversight is provided by the Court's Alternative Dispute Resolution Programs Administrator, a Court intern dedicated to the project and the CEO of VLSC (an experienced landlord-tenant attorney and mediator).	$25,000
2.	ALAMEDA COUNTY BAR VOLUNTEER LEGAL SERVICES	Alameda County Family Law Day of Court Pilot Project	Alameda	New	The Alameda County Bar Association Volunteer Legal Services Corporation (VLSC) seeks funding for the Family Law Day of Court Pilot Project (DOC). This project will offer support to self-represented litigants who appear on Alameda County Family Court by bringing a staff attorney on-site to provide expanded services to litigants and oversight and support to the volunteers.	$60,000
3.	BAY AREA LEGAL AID	Contra Costa County Housing Law Clinic	Contra Costa	Returning	Bay Area Legal Aid proposes operation of the Contra Costa County Housing Law Clinic (Clinic) conducted currently at the Richmond, Pittsburg and Martinez courthouses. The Clinic will assist low-income self-represented litigants in landlord-tenant and unlawful detainer law in Contra Costa County. Assistance provided includes: information on landlord and tenant rights and obligations; information on the Unlawful Detainer process; document preparation for unlawful detainer Judicial Council pleadings and other common pleadings such as applications for a temporary stay of eviction; and referrals to other social and legal service providers.	$40,000

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Attachment E: Highlights of Recommended Partnership Grant Projects for 2016

2016 PARTNERSHIP GRANT RECOMMENDATIONS						
NO.	PROGRAM LEGAL NAME	PROJECT NAME	COUNTY	NEW OR RETURNING APPLICANT	DESCRIPTION	PROPOSED ALLOCATION
4.	BAY AREA LEGAL AID	San Mateo County Consumer Debt Clinic	San Mateo	Returning	Bay Area Legal Aid in collaboration with the Superior Court of San Mateo County proposes funding to support its Consumer Debt Clinic. The goal of the Clinic is to empower consumers to negotiate better outcomes and to avoid illegal unfair and fraudulent tactics often employed by debt collectors. The Clinic starts with a Know-Your-Rights presentation followed by one-on-one meetings with supervised law student or pro bono attorney, who assists litigants with preparing and filing answers understanding and effectively conducting settlement negotiations preparing discovery responses.	$60,000
5.	BET TZEDEK LEGAL SERVICES	Streamlining Court-Based Clinics	Los Angeles	Returning	Bet Tzedek began operating Self-Help Conservatorship Clinics (SHCC) in 2007 for people seeking conservatorships for their aging and/or developmentally disabled loved ones. In 2014 SHCC assisted 1 369 litigants at five courthouses – approximately 40 percent of all conservatorships filed in Los Angeles County. In 2016, Bet Tzedek seeks to help pro per litigants by providing SHCC at five county courthouses through: 1) Long-Term Capacity Building: Recruitment and training of law firms and corporate legal departments to provide pro bono assistance to litigants seeking conservatorships; and, 2) Streamlining: Use of technology to expand access through computer-based conservatorship assistance at courthouses throughout Los Angeles County.	$60,000
6.	CALIFORNIA RURAL LEGAL ASSISTANCE INC.	San Luis Obispo County Rental Clinic for Self-Represented Litigants	San Luis Obispo	New	CRLA's Rental Clinic will be staffed by an English-Spanish bilingual attorney two days per week for 7 hours per day. The attorney staffing the clinic will review the entire eviction process beginning with the various types of notices their requirements and exceptions. The staff attorney will also be able to provide information on security deposits and habitability issues and tenants' rights against housing discrimination.	$45,000

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Attachment E: Highlights of Recommended Partnership Grant Projects for 2016

2016 PARTNERSHIP GRANT RECOMMENDATIONS						
NO.	PROGRAM LEGAL NAME	PROJECT NAME	COUNTY	NEW OR RETURNING APPLICANT	DESCRIPTION	PROPOSED ALLOCATION
7.	CENTRAL CALIFORNIA LEGAL SERVICES	Tenant/Landlord Housing Law Project	Fresno	Returning	Central California Legal Services Inc.'s Clinic addresses Unlawful Detainer (UD) matters in partnership with the Fresno Superior Court. Self-represented litigants (tenants and landlords) receive information on issues related to the unlawful detainer court process and assistance in completing the Judicial Council's forms. Services include: information on tenant/landlord rights and responsibilities; the UD process; document preparation; how to prepare for court; and referrals to other legal and social service providers. Four two-hour sessions are available weekly to assist litigants on-site at the courthouse.	$25,000
8.	CENTRAL CALIFORNIA LEGAL SERVICES	Guardianship Project	Fresno	New	The Guardianship Project will assist self-represented litigants who need to obtain a guardianship for minor children. Self-represented litigants (petitioners and those who oppose) will receive information to help them understand what to expect and how to prepare for court. Services include information and guidance on the procedures necessary to obtain the guardianship. In a workshop setting staff will assist litigants to prepare and file their documents explain the process and prepare them for the court hearing. These services take place in a two-step workshop setting at CCLS offices. These activities will be supported through a partnership with the Fresno County Law Library.	$50,000
9.	COMMUNITY LEGAL SERVICES IN EAST PALO ALTO	San Mateo County Unlawful Detainer Mandatory Settlement Conference	San Mateo	Returning	The mandatory settlement conference (MSC) process in San Mateo County provides both parties in an unlawful detainer (UD) action the opportunity to resolve their disputes without the pressure and risk that make the trial stage so acrimonious and potentially harmful. The partnership between Community Legal Services in East Palo Alto (CLSEPA) and the Superior Court of California for San Mateo County aims to make the most of the MSC process and reduce the burden on the court by shortening the UD trial docket.	$45,000

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Attachment E: Highlights of Recommended Partnership Grant Projects for 2016

2016 PARTNERSHIP GRANT RECOMMENDATIONS						
NO.	PROGRAM LEGAL NAME	PROJECT NAME	COUNTY	NEW OR RETURNING APPLICANT	DESCRIPTION	PROPOSED ALLOCATION
10.	EAST BAY COMMUNITY LAW CENTER	Holistic Legal Assistance Project (formerly "Civil Justice Self-Help Project")	Alameda	Returning	EBCLC's Holistic Legal Assistance Project provides legal intervention (but not representation) where low-income litigants are facing potentially life-changing consequences: the loss of their homes, the garnishment of wages, or the end of employment.	$65,000
11.	ELDER LAW & ADVOCACY	Imperial County Unlawful Detainer Clinic	Imperial	New	The EL&A proposal is for operation of the Imperial County Unlawful Detainer/Elder Abuse Restraining Order Self-Help Clinic (ICUD/EA) located in the Access Center. The site is located at the Imperial County Superior Court courthouse in El Centro. Operating approximately 15 hours to provide information and assistance in the unlawful detainer and elder abuse restraining order processes.	$65,000
12.	FAMILY VIOLENCE LAW CENTER	Domestic Violence Pro Per Project	Alameda	New	The Domestic Violence Pro Per (DVPP) Project is a collaborative project of Family Violence Law Center (FVLC) Volunteer Legal Services Corporation of the Alameda County Bar Association (VLSC) and the Self-Help Center of the Superior Court of California County of Alameda (SHC). The DVPP Project will provide critical legal assistance to pro per domestic violence litigants in Southern Alameda County through weekly Domestic Violence Petitioner Clinic for DVPA petitioners at the Fremont Hall of Justice.	$25,000
13.	IELLA LEGAL AID PROJECT	Small Claims Advocacy and Awareness Project (SCAAP)	Riverside/ San Bernadino	Returning	SCAAP is jointly envisioned as a solution to help litigants obtain access to justice and to increase courtroom efficiency. The project is designed to focus on 'How to Present Your Claim' and 'How to Proceed After Court'. Since court self-help advisors only assist with general court paperwork information, SCAAP is not a duplication of a currently offered service by the courts or another nonprofit agency. IELLA and the Courts believe SCAAP fills this justice gap.	$20,000

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Attachment E: Highlights of Recommended Partnership Grant Projects for 2016

2016 PARTNERSHIP GRANT RECOMMENDATIONS						
NO.	PROGRAM LEGAL NAME	PROJECT NAME	COUNTY	NEW OR RETURNING APPLICANT	DESCRIPTION	PROPOSED ALLOCATION
14.	JUSTICE & DIVERSITY CENTER OF THE SAN FRANCISCO BAR	Family Law Assisted Self Help/Case Resolution (FLASH/CARE)	San Francisco	New	The Justice & Diversity Center proposes continuing its FLASH project, including a pilot component through which JDC will provide legal assistance at a new Family Centered Case Resolution calendar to be established by the Court in 2015. The purpose of the calendar is to move certain cases toward disposition in a timely manner. The calendar will be dedicated to managing cases involving but not limited to dissolution, legal separation , nullity, and parentage that have been inactive for 16 months or more.	$20,000
15.	LEGAL AID FOUNDATION OF LOS ANGELES	Long Beach Self-Help Center	Los Angeles	Returning	In 2016 LAFLA proposes expand services to monolingual Asian persons. LAFLA would develop web- based Asian language videos of the Center's Dissolution and Unlawful Detainer workshops. Litigants would use the Center's computers to view educational and instructional videos and then complete the necessary Judicial Council forms. Funding would also enable LAFLA to explore ways to use technology to expand culturally and linguistically appropriate access for litigants across LAFLA's Self Help Legal Access Centers.	$72,000
16.	LEGAL AID OF MARIN	Mandatory Settlement Conference Calendar	Marin	Returning	The Marin Unlawful Detainer ("UD") - Mandatory Settlement Conference ("MSC") Calendar Program provides access to legal services that extremely low income pro per litigants need when facing eviction. The program teaches landlords and tenants how to approach settlement, discuss the tenancy or present at trial. Since implementation of Marin UD-MSC in 2012 Legal Aid of Marin ("LAM") had the capacity to advocate for litigants in Court on all residential unlawful detainer matters. The advocates and the Court are flexible so that scheduling all of the proposed Conferences on a single calendar every other Thursday afternoon week becomes the most effective efficient use of resources.	$35,000

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Attachment E: Highlights of Recommended Partnership Grant Projects for 2016

2016 PARTNERSHIP GRANT RECOMMENDATIONS						
NO.	PROGRAM LEGAL NAME	PROJECT NAME	COUNTY	NEW OR RETURNING APPLICANT	DESCRIPTION	PROPOSED ALLOCATION
17.	LEGAL AID OF NAPA VALLEY	Small Claims Assistance & Mediation Project	Napa	Returning	Legal Aid of Napa Valley (LANV) will work with its Court partner to provide assistance to low-income individuals in Small Claims Court. Through the Small Claims Assistance Project (SCAP) LANV will assist unrepresented low-income individuals prepare the legal paper-work court filings and fee waivers necessary to assert and defend matters in Small Claims Court. SCAP will be staffed by one attorney from LANV for eight and one half hours a week, including being present before and during the Small Claims Court calendar. SCAP will be implemented in conjunction with the Self Help Center sharing office space and equipment to maximize resources.	$25,000
18.	LEGAL AID SOCIETY OF ORANGE COUNTY	Limited Conservatorship Clinic	Orange	Returning	The Legal Aid Society of Orange County (LASOC) will continue to provide Limited Conservatorship Workshops and Clinics at the Central Justice Center. LASOC will serve pro per and expand the services offered by the Court to help bridge the service gap by addressing the unmet need of self-represented litigants who must obtain limited conservatorships over persons with developmental disabilities. This grant will allow the LASOC to disseminate information regarding limited conservatorships provide assistance with completing the relevant pleadings assist parties throughout the litigation process and with obtaining orders and letters of conservatorship.	$55,000
19.	LEGAL AID SOCIETY OF ORANGE COUNTY	Consumer Debt Workshop	Los Angeles	Returning	The Legal Aid Society of Orange County (LASOC)/ Community Legal Services (CLS) will partner with the Court to conduct the Consumer Debt Workshop. This Workshop will be provided on a weekly basis and will be conducted by a CLS staff or contract attorney. The Debt Collections Workshop will educate inform and assist litigants who have questions about debt collection practices litigants who have been sued in court on debt collection issues and litigants who have had a debt collection judgment entered against them.	$25,000

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Attachment E: Highlights of Recommended Partnership Grant Projects for 2016

2016 PARTNERSHIP GRANT RECOMMENDATIONS						
NO.	PROGRAM LEGAL NAME	PROJECT NAME	COUNTY	NEW OR RETURNING APPLICANT	DESCRIPTION	PROPOSED ALLOCATION
20.	LEGAL AID SOCIETY OF ORANGE COUNTY	Unlawful Detainer Clinic	Orange	Returning	Legal Aid Society of Orange County (“LASOC”) will offer the Unlawful Detainer Clinic at the Central Justice Center in Santa Ana CA (the "Court") to serve pro per litigants facing eviction in Orange County. The Unlawful Detainer Clinic will enable LASOC to assist litigants at the Court, which is often the starting point for tenants facing evictions. Given the summary nature of unlawful detainer proceedings LASOC will offer three (3) workshops and one (1) clinic each week to provide timely assistance to pro per litigants seeking to file responses with the court.	$55,000
21.	LEGAL AID SOCIETY OF SAN DIEGO	San Diego County Conservatorship Assistance Program	San Diego	Returning	The San Diego County Conservatorship Project (SDCCAP) proposes a fourth year of operation to assist families and friends of elderly and disabled adults in order that they may gain the authority they need to properly care for their loved ones. The program will continue to help individuals to petition for Conservatorship of the Person and provide information and assistance for Conservatorship of the Estate. SDCCAP will be operated by an on-site full-time staff attorney as well as by volunteer attorneys and law students.	$45,000
22.	LEGAL AID SOCIETY OF SAN DIEGO	Civil Harassment and Elder Abuse Restraining Order at the HOJ	San Diego	Returning	The Civil Harassment and Elder Abuse Temporary Restraining Order (TRO) Project seeks to continue self-help services to low-income unrepresented individuals who need to petition for or respond to a Civil or Elder Abuse TRO. The project will help individuals know their legal options and to ultimately cut down on violence in local neighborhoods homes and schools. The program will do this by continuing to provide facilitator-like services and assist litigants to make more informed choices such as when and how to file and how to do so in a manner that is most effective and efficient for the litigant and the Court.	$40,000

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Attachment E: Highlights of Recommended Partnership Grant Projects for 2016

2016 PARTNERSHIP GRANT RECOMMENDATIONS						
NO.	PROGRAM LEGAL NAME	PROJECT NAME	COUNTY	NEW OR RETURNING APPLICANT	DESCRIPTION	PROPOSED ALLOCATION
23.	LEGAL SERVICES OF NORTHERN CALIFORNIA	2016 Civil Harassment and Small Claims Mediation Project	Butte	Returning	The LSNC - Butte Civil Harassment and Small Claims Mediation Project will provide mediation services to indigent self-represented litigants in Butte County Superior Court on Civil Harassment and Small Claims court calendars. Trained mediators will attend the court calendar sessions and be referred all eligible cases by the partnering court to assist the litigants in settling their legal conflicts.	$25,000
24.	LEGAL SERVICES OF NORTHERN CALIFORNIA	Mother Lode Pro Per Project	Amador Calaveras El Dorado Placer	Returning	The Mother Lode Pro Per Project (MLPPP) proposes continued funding to provide direct one-on-one service to the residents of four rural counties (Amador Calaveras El Dorado and Placer) in all areas of civil law. The project enables self help services for these four rural counties which otherwise have very little assistance outside of their respective Family Law Facilitator programs.	$50,000
25.	LEGAL SERVICES OF NORTHERN CALIFORNIA	Guardianship and Clean Slate Project	Mendocino	Returning	This program will provide in pro per litigants an increased level of service in the substantive areas of guardianships and criminal records clean-up remedies including "expungements." Attorneys, working with interpreter services will provide services primarily at the Ukiah courthouse. To effectively reach and provide access to outlying communities, phone hours will also be offered in addition to scheduled hours at the Fort Bragg courthouse (Ten Mile Branch). Besides assistance with form completion serv,ices will consist of special educational workshops and provision of self-help informational materials, including materials translated into Spanish.	$31,000

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Attachment E: Highlights of Recommended Partnership Grant Projects for 2016

2016 PARTNERSHIP GRANT RECOMMENDATIONS						
NO.	PROGRAM LEGAL NAME	PROJECT NAME	COUNTY	NEW OR RETURNING APPLICANT	DESCRIPTION	PROPOSED ALLOCATION
26.	LEGAL SERVICES OF NORTHERN CALIFORNIA	Small Claims and Consumer Law Self Help Clinic	Yolo	New	Legal Services of Northern California's Yolo County office (LSNC) and the Yolo County Superior Court propose to provide legal assistance to low income persons in small claims court and limited civil cases involving contract and debt collection matters. The new proposed project will be unique to the region and will fill a gap in services for self-represented litigants, in the new courthouse scheduled to open in August. The attorney will assist self-represented litigants with court forms and pleadings advise them about trial preparation bench trials and court procedures and offer monthly workshops on relevant topics.	$40,000
27.	NEIGHBORHOOD LEGAL SERVICES	Pasadena Unlawful Detainer Assistance Project	Los Angeles	Returning	NLSLA proposes to continue its Partnership with the LASC to provide services to Self-Represented Litigants with family law and unlawful detainer matters and to train and implement the International Family Law Service workshop County wide so that litigants may obtain assistance at their local court instead of having to travel to Pasadena.	$69,000
28.	NEIGHBORHOOD LEGAL SERVICES	Chatsworth Self-Help Legal Access Center	Los Angeles	New	NLSLA proposes to provide self-help services for Self-Represented Litigants in Housing, Family Law and continue its self-help consumer work at Chatsworth. In November 2014, the LASC relocated all family law operations from San Fernando to Chatsworth. There are currently no self-help services other than the Facilitator and the existing consumer workshops that NLSLA provides. NLSLA plans to house a bilingual attorney to provide self-help services in family law, housing and continue the consumer self-help services that exist at Chatsworth.	$55,000

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2016 PARTNERSHIP GRANT RECOMMENDATIONS						
NO.	PROGRAM LEGAL NAME	PROJECT NAME	COUNTY	NEW OR RETURNING APPLICANT	DESCRIPTION	PROPOSED ALLOCATION
29.	PUBLIC COUNSEL	Guardianship Clinic	Los Angeles	Returning	Public Counsel's Pro Per Guardianship Clinic provides brief counsel advice and referrals to pro per litigants from throughout Los Angeles County who are seeking guardianships or other actions in the probate court. The Clinic assists individuals by providing: Information about guardianships and other probate issues; Screening to ensure that the litigant's legal matter is appropriate for filing in Probate Court; Comprehensive needs assessments; review of pleadings prepared by the litigant to ensure accuracy for filing; User-friendly guides in English and Spanish to assist litigants with guardianship proceedings including form pleadings filing instructions notice requirements and advice on appearing in court; and computers to assist litigants with completing the applicable forms (in English and Spanish).	$55,000
30.	PUBLIC LAW CENTER	Orange County Expanded Domestic Violence Assistance Project	Orange	Returning	The Expanded Domestic Violence Assistance Project is a partnership between the Public Law Center (PLC) Community Service Programs Inc. (CSP) and the Orange County Superior Court. PLC will provide legal aid to domestic violence victims through PLC bilingual staff attorneys bilingual intake specialists trained pro bono attorneys and volunteer law students. PLC also places self-represented restraining order petitioners with private pro bono attorneys as needed. The services are provided at the Lamoreaux Justice Center in Orange and will expand to the Superior Court Service Center when appropriate.	$40,000
31.	RIVERSIDE LEGAL AID	Small Estates Assistance Program	Riverside	New	This project will provide a pro se self-help clinic at the Riverside Superior Court to assist unrepresented indigent litigants with probate administration and summary proceedings as well as answer general questions relating to decedents' estates. In addition the program will offer monthly public Probate Accounting Workshops to assist people with the lengthy complex local accounting forms packets. The clinic will operate only in Riverside and Indio in its initial year with an expansion to the Temecula branch the following year.	$37,000

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Attachment E: Highlights of Recommended Partnership Grant Projects for 2016

2016 PARTNERSHIP GRANT RECOMMENDATIONS						
NO.	PROGRAM LEGAL NAME	PROJECT NAME	COUNTY	NEW OR RETURNING APPLICANT	DESCRIPTION	PROPOSED ALLOCATION
32.	SAN DIEGO VOLUNTEER LAWYER PROGRAM INC.	North County Civil Harassment/Unlawful Detainer Self-Help Clinic	San Diego	Returning	The CHRO/UD clinic is a self-help clinic that provides information and assistance in the UD and CHRO processes. Eligible participants will receive assistance in preparing the requisite forms in their UD actions or for requesting or responding to CHROs. Resource materials and written information on the process for unlawful detainers and for obtaining civil harassment retraining orders including service of process and filing and participating at court hearings will be available in both English and Spanish.	$60,000
	TOTAL OF ALL GRANTS					$1,419,000

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Program #

GRANT AGREEMENT

THE STATE BAR OF CALIFORNIA

LEGAL SERVICES TRUST FUND PROGRAM - EQUAL ACCESS FUND

This Grant Agreement is made as of October 1, 2014, (the "Effective Date") between The State Bar of California ("State Bar"), a California public corporation, and «LEGALNAME», a California nonprofit corporation ("Recipient").

RECITALS

Pursuant to California Business and Professions Code Section 6210-6228 (the "Act") and Title 3 of the State Bar Rules (the "Rules"), a Legal Services Trust Fund Program ("Program") has been established in the State of California. The Program administers an Equal Access Fund ("Fund") that is funded pursuant to the annual California Budget Act (the "Budget Act") and the Uniform Civil Fees and Standard Fee Schedule Act of 2005 ("Fee Schedule Act").

Recipient has completed, executed and submitted to State Bar an Application for Funding under the Program and Fund. As part of the Application for Funding, Recipient has completed, executed and submitted to State Bar, Certifications, Assurances, Attachments, and a Proposed Budget (collectively, including the Application for Funding, the "Application Materials").

In reliance upon the representations and agreements made in the Application Materials, State Bar has determined that Recipient is eligible for an IOLTA-Formula Equal Access Fund grant under the Program and the Fund for the period commencing on October 1, 2014 and ending on December 31, 2015 ("Grant Period").

The Board of Directors, the officers and similarly empowered staff of Recipient have read and understand the Act, Budget Act, the Rules, the Application Materials, and the Legal Services Trust Fund Program General Grant Provisions (the "Grant Provisions). Recipient has familiarized its staff with the requirements of the Act, the Rules, the Grant Provisions and the Application Materials.

AGREEMENTS

1. Pursuant to the Act, Rules, and Fund, and in reliance upon the promises and representations made by Recipient, State Bar grants to Recipient $«EAFGRANT» ("Grant Amount").

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2. The Act, Budget Act, Fee Schedule Act, Rules, Grant Provisions and Application Materials, including any additions or amendments made to the Application Materials by agreement between the State Bar and Recipient, are incorporated into this Agreement as if set forth in their entirety in this Agreement. Recipient agrees to comply with the Act, Budget Act, Fee Schedule Act, Rules, Grant Provisions and Assurances and other agreements made in the Application Materials. Recipient agrees to comply with all lawful statutes, rules, regulations, guidelines, policies, instructions and similar directives pertaining to the Program and the Fund (collectively "Directives") issued by the State of California, the Supreme Court of the State of California or State Bar, including without limitation, any Directive adopted after the Effective Date.

3. State Bar will use its best efforts to pay the Grant Amount in accordance with the Grant Provisions. State Bar, however, will in no circumstances bear any liability to Recipient or to other persons or entities for delays in payments.

4. Notwithstanding the Grant Provisions or any other provision of the entire agreement regarding the payment of grants, Recipient acknowledges that the Grant Amount and all payments thereof shall be made from funds received by the State Bar pursuant to the Budget Act and Fee Schedule Act ("State Funding"); and are contingent upon the availability and sufficiency of such funds to the State Bar, as determined by the State Bar. Consequently, Recipient shall not be guaranteed any specific dollar amount in grant funds, or any grant funds at all, if funds received pursuant to State Funding are insufficient or unavailable to the State Bar. This Agreement shall terminate automatically if State Funding becomes unavailable. The State Bar shall not assume any liability whatsoever to Recipient for any failure to pay the Grant Amount or any part thereof that results because funds are insufficient or unavailable.

5. Recipient must spend funds received in connection with the Program and Fund in each county served in the amounts set forth in the Schedule of Grant Allocations, attached hereto and made a part hereof.

6. Recipient represents and warrants that Recipient's Application Materials for a grant under the Program and Fund do not contain any misstatement of a material fact or omit any material fact necessary to make the statements contained in the Application Materials not misleading. Recipient will notify State Bar promptly of any change in any material fact affecting Recipient's eligibility to receive funds under the Program and Fund, including without limitation, any change that affects the accuracy of any statement made in conjunction with Recipient's application for a grant under the Program and Fund.

7. In support of the State Bar's obligation to the Judicial Council to ensure full participation by Trust Fund grant recipients in maintaining and utilization of statewide on-line resources for legal advocates and consumers of legal services, Recipient will:

a) Ensure that, during the grant year, Recipient is accurately identified on the statewide legal services websites, including, as appropriate, in the:

i. Client referral directory on LawHelpCalifornia.org;
ii. Legal Services Directories (support center and field program directories); and
iii. *Pro Bono* Opportunities Guide on CALegalAdvocates.org.

b) Include information about LawHelpCalifornia.org and CALegalAdvocates.org in trainings for new advocates; circulate information about the sites when received from state coordinators; encourage advocates to join the CALegalAdvocate.org Web site; and encourage participation in available brief trainings about the sites.

8. Recipient will permit State Bar's agents to inspect at any time any office or other premises maintained by Recipient or used by Recipient in connection with the expenditure of funds received under the Program. Recipient will cooperate with State Bar's agents during such inspections and will furnish the agents with any information that the agents reasonably request as relevant to determining Recipient's compliance with this Agreement. State Bar's right of access to Recipient's records for purposes of compliance will survive the expiration of the Grant Period. In complying with disclosure requirements of this Agreement and of the Program and Fund, Recipient may withhold any client-identifying information when Recipient reasonably determines that disclosure would violate the Act, the Rules or a rule or canon of professional responsibility.

9. The Act, Budget Act, Fee Schedule Act, Rules, Grant Provisions and Directives set forth requirements concerning use of Program funds and payment for subcontracts to provide legal services ("Subcontracted Services"). Recipient acknowledges its obligation to inform all providers of Subcontracted Services with the requirements of the Program and to obtain from all Subcontracted Services providers a written agreement to comply with all requirements of this Agreement as if that provider is the Recipient. Recipient assigns to State Bar all rights that Recipient has or will acquire to inspect the premises and records of providers of Subcontracted Services to ensure compliance with Program, provided that disclosure of client-identifying information by a provider of Subcontracted Services shall be governed by the provisions of paragraph 8 hereof.

10. (a) Recipient shall not represent or in any way suggest that it may obligate or pledge the credit of the State of California or of State Bar.

(b) Recipient agrees to indemnify, defend, and hold harmless State Bar (including its Board of Trustees, officers, agents, and employees, as the same may be constituted now and from time to time hereafter) from and against any and all liabilities, losses, damages, expenses or costs, whatsoever (including reasonable attorneys' fees, costs and expenses), which may arise against or be incurred by State Bar as a result of or in connection with (i) claims by any and all contractors, subcontractors, providers of consulting services, materialmen, laborers, or any other person, firm, or corporation retained by Recipient to furnish or supply work, service, materials, or supplies in connection with the performance of this Agreement; and (ii) claims by any person, firm, or corporation for injury or damage by Recipient or Recipient's agents in connection with the provision of legal services pursuant to this Agreement. Recipient shall further protect, indemnify and hold harmless the State Bar from and against all liabilities, losses, damages, expenses, or costs, whatsoever (including reasonable attorneys' fees, costs

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and expenses), arising from or in connection with the State Bar's enforcement of its rights under this paragraph. This indemnity provision shall survive the termination or expiration of this Grant Agreement.

(c) Recipient will use reasonable efforts to have State Bar named as an insured party to any liability insurance policies purchased by or for Recipient.

11. This Agreement does not impose on State Bar any obligation to provide Recipient funds in excess of the Grant Amount or beyond the end of the Grant Period.

12. (a) All notices given in connection with this Agreement will be in writing and be made personally or by first-class, certified, registered or express mail addressed to the parties at the addresses stated below:

State Bar: The State Bar of California
180 Howard Street
San Francisco, California 94105
Attention: Stephanie L. Choy, Managing Director
Legal Services Trust Fund Program

Recipient: «COMMON_NAME»
«ADDRESS1» «ADDRESS2»
«CITY», «STATE» «ZIP»
Attention: «STAFFDIR»
«TITLE»

Notices given by mail will be deemed to have been given five (5) business days after being deposited in a United States Postal Services mailbox or with an express courier mail service. Changes in address for purposes of giving notice will be effective two weeks after giving notice of the change in address.

(b) This Agreement, together with the Application Materials, Rules, Grant Provisions and Directives, contains and constitutes the entire agreement between State Bar and Recipient regarding the State Bar's grant of Equal Access Fund monies to Recipient and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement shall be binding upon agents and successors of both parties. No alteration of the terms of this Agreement will be valid or effective unless in writing and executed by each party.

(c) This Agreement was made and entered into by the parties in the State of California and shall be construed according to the laws of that state. Any action or suit brought to interpret, construe or enforce the provisions of this Agreement shall be commenced in the Superior Court of the State of California, in and for the county of San Francisco.

(d) Each party has full power and authority to enter into and perform this Agreement and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. Each party further acknowledges that its

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Directors, Governors or similarly empowered persons have read this Agreement, understand it and agree to be bound by it.

(e) No term or provision herein shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented. No consent or waiver by one party to a breach of this Agreement by the other party, whether expressed or implied, shall constitute a consent to, waiver of, or excuse for any other, different, or subsequent breach. No amendment, consent, or waiver on behalf of State Bar shall be binding upon State Bar unless it is executed by the Executive Director of The State Bar of California or his/her designee.

By executing this Agreement below, the parties agree to its terms.

THE STATE BAR OF CALIFORNIA	RECIPIENT
Date: _____ , 2014	Date: _____ , 2014
THE STATE BAR OF CALIFORNIA	RECIPIENT
By: _____ Sam Quan Interim Chief Financial Officer	By: _____ «STAFFDIR» «TITLE»
By: _____ Kelli Evans, Senior Director Administration of Justice	By: _____ Name (Print): Title of Board Officer

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Program # <program #>

GRANT AGREEMENT

THE STATE BAR OF CALIFORNIA

LEGAL SERVICES TRUST FUND PROGRAM - EQUAL ACCESS FUND

PARTNERSHIP GRANT

This Grant Agreement is made as of January 1, 2015 (the "Effective Date"), between The State Bar of California ("State Bar"), a California public corporation, and «Program_LEGAL_name», a California nonprofit corporation ("Recipient").

RECITALS

Pursuant to California Business and Professions Code Section 6210-6228 (the "Act"), and Title 3, Division 5, Chapter 2, of the Rules of the State Bar of California (the "Rules"), a Legal Services Trust Fund Program ("Program") has been established in the State of California. The Program administers an Equal Access Fund ("Fund") that is funded pursuant to the annual California Budget Act (the "Budget Act") and the Uniform Civil Fees and Standard Fee Schedule Act of 2005 ("Fee Schedule Act").

Recipient has completed, executed and submitted to State Bar a Proposal for a Partnership Grant pursuant to the Request for Proposals for Partnership Grants issued by the Program. As part of the Proposal for Partnership Grants, Recipient has completed, executed and submitted to State Bar, Assurances, Attachments, and a Proposed Budget (collectively, the "Proposal Materials").

In reliance upon the representations and agreements made in the Proposal Materials, State Bar has determined to award Recipient a Partnership Grant for the period commencing on January 1, 2015 and ending on December 31, 2015 ("Grant Period").

The Board of Directors, the officers and similarly empowered staff of Recipient have read and understand the Act, Budget Act, Rules, and the Proposal Materials. Recipient has familiarized its staff with the requirements of the Act, Budget Act, Rules, the Legal Services Trust Fund Program General Grant Provisions ("Grant Provisions") and the Proposal Materials.

AGREEMENTS

1. Pursuant to requirements of the Program and Fund and in reliance upon the promises and representations made by Recipient, State Bar grants to Recipient $«Final_Allocation_Decision» ("Grant Amount") for your «Project_Name».

2. The Act, Budget Act, Rules, Grant Provisions and Proposal Materials, including any additions or amendments made to the Proposal Materials by agreement between the State Bar and Recipient, are incorporated into this Agreement as if set forth in their entirety in this Agreement. Recipient agrees to comply with the Act, Budget Act, Rules, Grant Provisions and Assurances and other agreements made in the Proposal Materials. Recipient agrees to comply with all lawful statutes, rules, regulations, guidelines, policies, instructions and similar directives pertaining to the Program and the Fund (collectively "Directives") issued by the State of California, the Supreme Court of the State of California or State Bar, including without limitation, any Directive adopted after the Effective Date.

3. State Bar will use its best efforts to pay the Grant Amount within 90 days after execution of this Agreement. State Bar, however, will in no circumstances bear any liability to Recipient or to other persons or entities for delays in payments.

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4. Notwithstanding the Grant Provisions or any other provision of the entire agreement regarding the payment of grants, Recipient acknowledges that the Grant Amount and all payments thereof shall be made from funds received by the State Bar pursuant to the Budget Act and the Uniform Civil Fees and Standard Fee Schedule Act; and are contingent upon the availability and sufficiency of such funds to the State Bar, as determined by the State Bar. Consequently, Recipient shall not be guaranteed any specific dollar amount in grant funds or any grant funds at all, if funds received pursuant to the Budget Act and the Uniform Civil Fees and Standard Fee Schedule Act are insufficient or unavailable to the State Bar. This Agreement shall terminate automatically if state funding becomes unavailable. The State Bar shall not assume any liability whatsoever to Recipient for any failure to pay the Grant Amount or any part thereof that results because funds are insufficient or unavailable.

5. Recipient agrees to submit financial and program activity reports to the State Bar as requested, to provide the State Bar with copies of any materials produced with grant funds, and to cooperate with the State Bar in evaluating the results of this grant. Recipient agrees to submit to the State Bar a written agreement with the Cooperating Court(s) regarding the areas of cooperation set forth in the Proposal Materials.

6. Recipient represents and warrants that Recipient's Proposal Materials for a grant under the Program and Fund do not contain any misstatement of a material fact or omit any material fact necessary to make the statements contained in the Proposal Materials not misleading. Recipient will notify State Bar promptly of any change in any material fact affecting Recipient's eligibility to receive funds under the Program and Fund, including without limitation, any change that affects the accuracy of any statement made in conjunction with Recipient's application for a grant under the Program and Fund. Recipient will notify State Bar promptly of any material change in the planned activities or proposed budget contained in the Proposal Materials or any revision thereto.

7. For all publications produced with funding under the Program and Fund, Recipient hereby assigns to the State Bar a royalty-free, nonexclusive, irrevocable, world-wide right and license to reproduce, publish, display, distribute and use these materials. Recipient also hereby assigns to the State Bar a royalty-free, nonexclusive, and irrevocable right to authorize qualified legal services projects, support centers, and courts to use these materials.

8. Recipient will permit State Bar's agents to inspect at any time any office or other premises maintained by Recipient or used by Recipient in connection with the expenditure of funds received under the Program. Recipient will cooperate with State Bar's agents during such inspections and will furnish the agents with any information that the agents reasonably request as relevant to determining Recipient's compliance with this Agreement. State Bar's right of access to Recipient's records for purposes of compliance will survive the expiration of the Grant Period. In complying with disclosure requirements of this Agreement and of the Program and Fund, Recipient may withhold any client-identifying information when Recipient reasonably determines that disclosure would violate the Act, the Rules or a rule or canon of professional responsibility.

9. The Act, Budget Act, Rules, Grant Provisions and Directives set forth requirements concerning use of Program funds and payment for subcontractors to provide legal services ("Subcontracted Services"). Recipient acknowledges its obligation to inform all providers of Subcontracted Services with the requirements of the Program and to obtain from all Subcontracted Services providers a written agreement to comply with all requirements of this Agreement as if that provider is the Recipient. Recipient assigns to State Bar all rights that Recipient has or will acquire to inspect the premises and records of providers of Subcontracted Services to ensure compliance with Program, provided that disclosure of client-identifying information by a provider of Subcontracted Services shall be governed by the provisions of paragraph 8 hereof.

10. Recipient agrees to any additional requirements which may be set forth in any Exhibit or Addendum to this Grant Agreement, which are incorporated herein.

11. (a) Recipient shall not represent or in any way suggest that it may obligate or pledge the credit of the State of California or of State Bar.

(b) Recipient agrees to indemnify, defend, and hold harmless State Bar (including its Board of Trustees, officers, agents, and employees, as the same may be constituted now and from time to time hereafter) from and against any and all liabilities, losses, damages, expenses or costs, whatsoever (including reasonable attorneys' fees, costs and expenses), which may arise against or be incurred by the State Bar as a result of or in connection with (i) claims by any and all contractors, subcontractors, providers of consulting services, materialmen, laborers, or any other person, firm, or corporation retained by Recipient to furnish or supply work, service, materials, or supplies in connection with the performance of this Agreement; and (ii) claims by any person, firm, or corporation for injury or damage by Recipient or Recipient's agents in connection with the provision of services pursuant to this Agreement. Recipient shall further protect, indemnify and hold harmless State Bar from and against all liabilities, losses, damages, expenses, or costs, whatsoever (including reasonable attorneys' fees, costs and expenses), arising from or in connection with State Bar's enforcement of its rights under this paragraph. This indemnity provision shall survive the termination or expiration of this Grant Agreement.

(c) Recipient will use reasonable efforts to have State Bar named as an insured party to any liability insurance policies purchased by or for Recipient, and shall provide State Bar with these certificates of insurance.

12. This Agreement does not impose on State Bar any obligation to provide Recipient funds in excess of the Grant Amount or beyond the end of the Grant Period.

13. (a) All notices given in connection with this Agreement will be in writing and be made personally or by first-class, certified, registered or express mail addressed to the parties at the addresses stated below:

State Bar: The State Bar of California
180 Howard Street
San Francisco, California 94105-1617

Attention: Stephanie L. Choy, Managing Director
Legal Services Trust Fund Program

Recipient: «Program_LEGAL_Name»
«Address1»
«City», «State» «Zip»

Attention: «Executive_Director»
Executive Director

Notices given by mail will be deemed to have been given five (5) business days after being deposited in a United States Postal Services mailbox or with an express courier mail service. Changes in address for purposes of giving notice will be effective two weeks after giving notice of the change in address.

(b) This Agreement, together with the Proposal Materials, Rules, Grant Provisions and Directives, contains and constitutes the entire agreement between State Bar and Recipient regarding the State Bar's grant of a Partnership Grant to Recipient and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement shall be binding upon agents and successors of both parties. No alteration of the terms of this Agreement will be valid or effective unless in writing and executed by each party.

(c) This Agreement was made and entered into by the parties in the State of California and shall be construed according to the laws of that state. Any action or suit brought to

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interpret, construe or enforce the provisions of this Agreement shall be commenced in the Superior Court of the State of California, County of San Francisco.

(d) Each party has full power and authority to enter into and perform this Agreement and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. Each party further acknowledges that its Directors, Trustees, or similarly empowered persons have read this Agreement, understand it and agree to be bound by it.

(e) No term or provision herein shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented. No consent or waiver by one party to a breach of this Agreement by the other party, whether expressed or implied, shall constitute a consent to, waiver of, or excuse for any other, different or subsequent breach. No amendment, consent or waiver on behalf of State Bar shall be binding upon State Bar unless it is executed by the Executive Director of The State Bar of California or his/her designee.

By executing this Agreement below, the parties agree to its terms.

THE STATE BAR OF CALIFORNIA	RECIPIENT
By _____ Kelli Evans, Senior Director Administration of Justice	By _____ «PGNM28» _____ Program Director
DATE: _____, 2014	DATE: _____, 2014
By _____ Peggy Van Horn, Chief Financial Officer	By _____ _____ Title (Board Chair or Other Board Officer)
DATE: _____, 2014	DATE: _____, 2014

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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: October 27, 2015

Title
Judicial Council Report to the Legislature: Allocation of New Judgeships Funding in FY 2014–2015

Rules, Forms, Standards, or Statutes Affected
None

Recommended by
Zlatko Theodorovic, Director
Judicial Council Finance

Agenda Item Type
Action Required

Effective Date
October 27, 2015

Date of Report
September 16, 2015

Contact
Patrick Ballard, 818-558-3115
patrick.ballard@jud.ca.gov

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Executive Summary

Judicial Council staff recommends approval of the attached *Report on Allocation of Funding in Fiscal Year (FY) 2014–2015 for Support of New Judgeships Authorized in FY 2007–2008*. The Budget Act of 2007 requires that this report be submitted each year until all judgeships are appointed and new staff hired.

Recommendation

Staff recommends that the Judicial Council:

1. Approve the *Report on Allocation of Funding in Fiscal Year (FY) 2014–2015 for Support of New Judgeships Authorized in FY 2007–2008*; and

2. Direct staff to submit the report to the Legislature.

Previous Council Action

These reports have been approved by the council and submitted to the Legislature annually. Previous reports can be found at *www.courts.ca.gov/7466.htm*.

Rationale for Recommendation

This report is required to be submitted to the Legislature each year. The attached report contains basically the same information as in the report submitted to the Legislature for FY 2013–2014, except for changes in the distribution of the ongoing facilities funding from the Court Facilities Trust Fund.

Comments, Alternatives Considered, and Policy Implications

This report was not circulated for comment, and no alternatives were considered because submitting this report to the Legislature is a requirement under the Budget Act of 2007.

Implementation Requirements, Costs, and Operational Impacts

Implementing the recommendations in this report results in no costs or operational impacts.

Attachments and Links

1. *Report on Allocation of Funding in Fiscal Year (FY) 2014–2015 for Support of New Judgeships Authorized in FY 2007–2008*.

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JUDICIAL COUNCIL OF CALIFORNIA

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TDD 415-865-4272
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www.courts.ca.gov

HON. TANI G. CANTIL-SAKAUYE
Chief Justice of California
Chair of the Judicial Council

HON. DOUGLAS P. MILLER
Chair, Executive and Planning Committee

HON. DAVID M. RUBIN
Chair, Litigation Management Committee

HON. KENNETH K. SO
Chair, Policy Coordination and Liaison Committee

HON. HARRY E. HULL, JR.
Chair, Rules and Projects Committee

HON. MARSHA G. SLOUGH
Chair, Technology Committee

Hon. Marla O. Anderson
Hon. Brian John Back
Hon. Richard Bloom
Mr. Mark G. Bonino
Hon. Daniel J. Buckley
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Mr. Frank A. McGuire
Hon. Eric C. Taylor
Hon. Charles D. Wachob

MR. MARTIN HOSHINO
Administrative Director, Judicial Council

September 16, 2015

Ms. Diane F. Boyer-Vine
Legislative Counsel
State of California
State Capitol, Room 3021
Sacramento, California 95814

Mr. Daniel Alvarez
Secretary of the Senate
California State Senate
State Capitol, Room 400
Sacramento, California 95814

Mr. E. Dotson Wilson
Chief Clerk of the Assembly
State Capitol, Room 3196
Sacramento, California 95814

Re: *Report on Allocation of Funding in Fiscal Year (FY) 2014–2015 for Support of New Judgeships Authorized in FY 2007–2008*

Dear Ms. Boyer-Vine, Mr. Alvarez, and Mr. Wilson:

The Judicial Council respectfully submits this report, as required by the Budget Act of 2007 (Stats. 2007, ch. 171). The Budget Act included $27.767 million in FY 2007–2008 to support 50 new judgeships and the staff associated with those judgeships, to be allocated as follows: one month of funding, ongoing for 50 judgeships, support staff, and appropriate facilities costs ($3.366 million); and one-time funding associated with the positions such as furniture and equipment, as well as tenant improvements ($24.401 million).

Provision 11 of the Budget Act of 2007 provided that "[t]he Judicial Council shall report to the Legislature on January 1, 2008, and each January 1 thereafter, until all judgeships are appointed and new staff hired, on the amount of funds allocated to each trial court to fund the new portions." Per the Budget Act of 2007, expenditure of the funding was

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contingent on the enactment of legislation authorizing the establishment of the judicial positions. In 2007, the authorizing legislation was Assembly Bill 159 (Stats. 2007, ch. 722). The funding assumed the appointment of judgeships could begin at the end of FY 2007–2008. However, ongoing funding necessary for the remaining 11 months of these judgeships has not been included in subsequent budget acts.

In FY 2011–2012, $518,077 of the ongoing operations portion of the funding was permanently transferred away from the courts to the counties as part of the realignment of court security funding.

The table below displays the FY 2014–2015 allocation of the ongoing funding for one month of operations from the Trial Court Trust Fund and the ongoing facilities funding from the Court Facilities Trust Fund, by court. The chart does not add up to the ongoing $3.366 million because (1) the security funding is not included (as explained above), and (2) approximately $743,000 in judicial salaries is not included because these funds do not go to the courts directly.

Court	Operations	Facilities	Total
Butte	$28,234		$28,234
Contra Costa	38,395		38,395
Del Norte	30,041		30,041
Fresno	118,390		118,390
Kern	99,042		99,042
Kings	27,244		27,244
Los Angeles	39,581		39,581
Madera	28,370		28,370
Merced	61,809		61,809
Monterey	32,093		32,093
Orange	36,812		36,812
Placer	72,835		72,835
Riverside	225,528		225,528
Sacramento	222,156		222,156
San Bernardino	224,715	$10,629	235,344
San Joaquin	106,611		106,611
Shasta	29,747		29,747
Solano	35,189	144,675	179,864
Sonoma	40,672	296,696	337,368
Stanislaus	67,770		67,770
Tulare	56,781		56,781
Yolo	30,874		30,874
Total:	**$1,652,889**	**$452,000**	**$2,104,889**

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The funding appropriated in relation to the 50 new judgeships is used to provide ongoing staff resources to support the judicial workload identified for the new judgeships—work that is, for the most part, being performed by assigned judges and temporary judges until the new judges are appointed.

If you have any questions related to this report, please contact Zlatko Theodorovic, Director, Judicial Council Finance, at 916-263-1397.

Sincerely,

Martin Hoshino
Administrative Director
Judicial Council of California

MH/VM
cc: Margie Estrada, Policy Consultant, Office of Senate President pro Tempore Kevin de León
Fredericka McGee, Special Assistant to Assembly Speaker Toni G. Atkins
Anita Lee, Senior Fiscal and Policy Analyst, Legislative Analyst's Office
Tina McGee, Executive Secretary, Legislative Analyst's Office
Tiffany Garcia, Program Budget Analyst, Department of Finance
Peggy Collins, Principal Consultant, Joint Legislative Budget Committee
Benjamin Palmer, Chief Counsel, Senate Judiciary Committee
Julie Salley-Gray, Consultant, Senate Budget and Fiscal Review Committee
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Cory Jasperson, Director, Governmental Affairs, Judicial Council
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MR. MARTIN HOSHINO
Administrative Director, Judicial Council

Report Summary

Report title: *Report on Allocation of Funding in Fiscal Year (FY) 2014–2015 for Support of New Judgeships Authorized in FY 2007–2008*

Statutory citation: Budget Act of 2007 (Stats. 2007, ch. 171)

Date of report: October 27, 2015

The Judicial Council has submitted a report to the Legislature in accordance with the Budget Act of 2007.

Provision 11 of the Budget Act of 2007 (Stats. 2007, ch. 171) provides that "[t]he Judicial Council shall report to the Legislature on January 1, 2008, and each January 1 thereafter, until all judgeships are appointed and new staff hired, on the amount of funds allocated to each trial court to fund the new portions."

The following summary of the report is provided under the requirements of Government Code section 9795.

For FY 2014–2015, a total of $2.105 million was allocated to 22 trial courts in support of new judgeships authorized in FY 2007–2008: $1.653 million for operations costs from the Trial Court Trust Fund to all 22 courts and $452,000 for facilities costs from the Court Facilities Trust Fund to 3 courts.

The full report can be accessed here: www.court.ca.gov/7466.htm.

A copy of the report may be obtained by calling 415-865-7553.

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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: 10-26-2015

Title
Judicial Council Report to the Legislature: Disposition of Criminal Cases According to the Race and Ethnicity of the Defendant

Rules, Forms, Standards, or Statutes Affected
None

Recommended by
Judicial Council staff
Court Operations Services
Donna Hershkowitz, Director
Leah Rose-Goodwin, Manager, Office of Court Research

Agenda Item Type
Action Required

Effective Date
N/A

Date of Report
9-11-2015

Contact
David Smith, 415-865-7696
Office of Court Research
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Executive Summary

Court Operations Services and its Office of Court Research recommend that the Judicial Council approve the report *Disposition of Criminal Cases According to the Race and Ethnicity of the Defendant* and direct staff to transmit it to the Legislature. Doing so fulfills the requirements of Penal Code section 1170.45, which requires the Judicial Council to report annually on the disposition of criminal cases statewide according to the defendants' race and ethnicity. Since 2001 the Judicial Council's Office of Court Research has produced this report by analyzing the disposition of felony cases using data provided by the California State Department of Justice.

The 2015 report indicates that when controlling for prior record and type of offense, no group of defendants systematically receives the most severe sentence in a way that was principally related to their race/ethnicity. However, within offense categories (e.g., drug offenses or property offenses) there are small to moderate, but statistically significant differences in the sentencing outcomes among racial/ethnic groups.

Recommendation

The Office of Court Research (OCR) recommends that the Judicial Council approve the report *Disposition of Criminal Cases According to the Race and Ethnicity of the Defendant* and direct staff to transmit it to the Legislature.

Previous Council Action

Although the OCR has submitted annual reports since 2001, these previous reports were not approved by the Judicial Council until 2012 because protocol at that time did not require council action on reports that did not include recommendations. The council approved the 2012, 2013, and 2014 reports and directed staff to transmit the year's report to the Legislature.

Rationale for Recommendation

Approval of this report for transmittal to the Legislature will comply with the mandate of Penal Code section 1170.45, requiring the Judicial Council annually to report on the disposition of criminal cases "according to the race and ethnicity of the defendant[1]." The full text of Penal Code section 1170.45 is included in the appendix to the attached report.

Comments, Alternatives Considered, and Policy Implications

This report is legislatively mandated, so no alternatives were considered and a comment period was not required.

Implementation Requirements, Costs, and Operational Impacts

Staff shortages at the Judicial Council have made the production of the report more difficult. However, the OCR has developed procedures for retrieving, managing, and analyzing the data that help moderate the work in producing this report. The submission of this report to the Legislature carries no implementation requirements or costs for the trial courts.

Relevant Strategic Plan Goals and Operational Plan Objectives

The mandate for the Judicial Council to report on the disposition of criminal cases according to the race and ethnicity of defendants was established by the Legislature rather than by the Judicial Council. This mandate is not, however, inconsistent with the very first objective of the *Operational Plan for California's Judicial Branch*, adopted in 2008. Objective 1, related to the strategic plan Goal I, Access, Fairness, and Diversity, is to "Ensure that all court users are treated with dignity, respect, and concern for their rights and cultural backgrounds, without bias or appearance of bias, and are given an opportunity to be heard."

Attachments

1. *Disposition of Criminal Cases According to the Race and Ethnicity of the Defendant*

[1] The report uses categories for race and ethnicity established following a call by the Office of Management and Budget in 1997 to revise standards for federal data on race and ethnicity. The revision currently used by the U.S. Bureau of the Census established the following categories: American Indian or Alaskan Native, Asian, Black or African American, Hispanic or Latino, Native Hawaiian or other Pacific Islander (PI), and White.

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Disposition of Criminal Cases According to the Race and Ethnicity of the Defendant

2015 REPORT TO THE CALIFORNIA LEGISLATURE AS REQUIRED BY PENAL CODE SECTION 1170.45

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JUDICIAL COUNCIL OF CALIFORNIA

Judicial Council of California
Court Operations Services
Office of Court Research
455 Golden Gate Avenue
San Francisco, California 94102-3688

This report has been prepared and submitted to the California Legislature as required by Penal Code section 1170.45.

This report is also available on the California Courts website at *www.courts.ca.gov.*

Printed on recycled paper.

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JUDICIAL COUNCIL OF CALIFORNIA

Hon. Tani G. Cantil-Sakauye
Chief Justice of California and
Chair of the Judicial Council

Mr. Martin Hoshino
Administrative Director
Judicial Council

Jody Patel
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OPERATIONS & PROGRAMS DIVISION

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Ms. Donna Hershkowitz
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Ms. Leah Rose-Goodwin
Manager, Office of Court Research

Mr. David Smith
Senior Research Analyst and Primary Author of Report
Office of Court Research

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Background

Penal Code section 1170.45 directs the Judicial Council to report annually on the statewide disposition of criminal cases according to defendants' race and ethnicity. The complete text of section 1170.45 is attached as an appendix to this report.

Consistent with all reports submitted since reporting began in 2001, the Judicial Council's Office of Court Research analyzed felony disposition data for this report. The data used in the analysis are from 2014, the last year for which complete annual data are available from the California Department of Justice (DOJ). Throughout this report, the combined term *race/ethnicity* and the phrase *race or ethnicity* correspond to U.S. Census Bureau categorizations.[1]

The critical question for any assessment of sentencing outcomes by race/ethnicity is the degree to which similarly situated offenders receive dissimilar sentences as a result of their race or ethnicity. In other words, to properly assess the impact of race and ethnicity in sentencing studies, it is imperative to control for any factors relevant to sentencing decisions (e.g., type of offense or prior record) to ensure that like defendants are being compared to one another. For example, all other things being equal, one would expect that a defendant convicted of a more serious felony would receive a more severe sentence than a defendant convicted of a less serious felony. Similarly, one would expect that a defendant with a serious prior record would receive a more severe sentence than a defendant who had no prior record and was convicted of the same crime.

The primary focus of the study is an analysis of sentencing outcomes by the defendants' race/ethnicity. Because California's sentencing laws dictate very specific sentences based on prior record and type of offense, this report introduces controls for prior criminal history and type of offense. In other words, it seeks to compare sentencing outcomes for defendants who were convicted of similar offenses and had similar criminal histories.

Summary of Findings

When controlling for prior record and type of offense, the data show no consistent pattern in the severity of sentences that are principally related to the defendants' race/ethnicity. However, within offense categories (e.g., drug offenses or property offenses) there are small to moderate, but statistically significant differences in the sentencing outcomes among the racial/ethnic groups represented in this data.

[1] In 1997, the Office of Management and Budget announced a revised standard for federal data on race and ethnicity. The revision established the following racial/ethnic categories: American Indian or Alaskan Native, Asian, Black or African American, Hispanic or Latino, Native Hawaiian or Other Pacific Islander, and White. (See Office of Management and Budget, Statistical Policy Directive 15, 62 Fed. Reg. 58782–58790 (Oct. 30, 1997).) Because of the small percentage of American Indian defendants in the data set used for this study, this group is included only in descriptive analyses. In addition, a combined category, Asian/Pacific Islander (Asian PI), is used in the analysis to refer to defendants of Asian or Native Hawaiian/Other Pacific Islander ethnicity.

While this report looks at only a single year of data, it is important to note that reports from previous years have also indicated that the data do not demonstrate systematic bias against any one group in sentencing. Moreover, although some groups are treated less harshly in some case types and situations in a certain year, these findings vary from year to year. This suggests that any form of differential judicial treatment based on race or ethnicity depends on very specific contexts that could require more study and resources to identify.

Limitations of the Findings

The lack of data on sentence length and specific type of prior record limits the conclusions one can confidently make about any observed differences in sentencing related to race or ethnicity. More detailed information in these categories would enable control for a wider array of factors and thus a more precise comparison of sentencing outcomes for different racial and ethnic groups than is possible here. As a result, the findings contained in this report cannot be used on their own as an indication of bias or to identify the cause of differences in sentences within the California criminal justice system.

In addition, it is important to keep in mind that a sentencing outcome is the consequence of many intermediate and interdependent steps within the criminal justice system. Studies of sentencing outcomes cannot take into account all factors such as local law enforcement policies and district attorney charging and plea practices. Under California's determinate sentencing law, sentencing itself may be viewed as the least discretionary stage in the adjudication of a criminal case.

An example that illustrates this important point is the manner in which most felony cases reach disposition in the California trial courts. In California, the most recent data available indicate that slightly more than 2 percent of felony cases a year reach trial[2]. Thus, the vast majority of felony cases statewide reach disposition before trial, mostly by plea agreements between defense counsel and the district attorney. The trial court judge must review and approve plea agreements made between defense counsel and the district attorney; however, the sentences for these cases are not determined exclusively by the judge. The findings in this report therefore reflect sentencing outcomes for felony cases that are rarely, if ever, based on the unilateral decision of a trial court judge.

Another confounding factor is that within the 58 superior court jurisdictions in California there may be important differences in charging practices, plea offerings, and court culture that are not captured by aggregated, statewide outcomes. Although the courts are unified by statewide statutes governing most aspects of criminal case management and processing, there will be subtle but meaningful differences between jurisdictions in the operation of the justice system and the counties' population characteristics.

[2] Courts Statistics Report (CSR) for 2014, Table: Felonies--Method of Disposition, page 116.

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Data Source and Limitations

Source of Data

Historically, the Criminal Justice Statistics Center (CJSC) of the California Department of Justice (DOJ) has taken responsibility for maintaining the Offender-Based Transaction Statistics (OBTS) report file, which tracks the processing of individual offenders from the point of entry into the criminal justice system to the point of exit. The data used for this study were obtained from the OBTS file generated by CJSC under the auspices of DOJ.

Two major source documents are combined to make up the OBTS file: (1) fingerprint cards (FD-249), which represent official arrests; and (2) *Disposition of Arrest and Court Action* (JUS 8715) forms, which this report refers to as *dispositions*.

Limitations

CJSC documentation highlights the following limitations on the use of the OBTS data file:

- OBTS data are based on the year of disposition regardless of when the felony arrest occurred and therefore may be reported a year or more after the actual arrest.
- The OBTS data do not include information about sentence length. Thus, it is impossible to assess the relative differences in sentences beyond categorical distinctions (see diagram 1). While certain sentences may be categorically the same—a sentence to prison, for example—they can vary considerably in severity as measured by the length of the sentence.
- Comparisons of county-level data should be made with caution because the completeness of reporting may vary between jurisdictions and from year to year.
- The OBTS data represents the felony arrest and disposition records that the criminal justice system has forwarded to the DOJ in a calendar year. Given the fluctuations in the processing and reporting of this data by justice system entities it should not be considered an exacting record of the total number of adult felony arrests or the total number of dispositions for a calendar year.
- Only the final disposition of an arrest event is included in the OBTS file; intermediate dispositions—such as diversion programs, suspended proceedings, reopenings, retrials, and subsequent actions—are excluded. In addition, dispositions of adult felony arrests in state correctional institutions are excluded from county-level totals.
- If a person is arrested for multiple offenses, the OBTS file contains only the most serious offense based on the severity of possible punishment. If there are multiple court dispositions, the OBTS file contains only the most serious court disposition and the associated offense.
- Despite the underreporting of dispositions, CJSC has indicated that it is confident that the arrest disposition data received provides an accurate general description of the statewide processing of adult felony arrestees.

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- Caution should be used when comparing conviction and nonconviction dispositions, given that DOJ budget constraints necessitate the processing of conviction dispositions on the basis of priority.
- Information on prior records is incomplete because it is computed only for "new offenders"—those who had a first arrest after August 1982.

Offender Profile

The OBTS file for 2014 contains a total of 313,198 records of arrest for felony-level offenses in calendar year 2014 or earlier that were disposed in calendar year 2014.[3] Diagram 1 on the following page shows the number of dispositions at distinct case processing stages for all OBTS felony dispositions in 2014.

Regardless of race/ethnicity, court dispositions made up 78 percent of all dispositions, whereas dispositions by law enforcement agencies or the prosecuting attorney accounted for 22 percent. Dispositions by law enforcement agencies include cases dropped for reasons such as insufficient evidence. The breakdown by race/ethnicity for this disposition type is found in table 1.

Table 1: Offenders Released by Law Enforcement Agencies or the Prosecuting Attorney

Race/Ethnicity	Number Released	Percentage of Releases
American Indian or Native Amer.	236	0.4
Asian/PI	2,062	3.1
Black or African American	16,111	23.8
Hispanic or Latino	26,461	39.1
White	20,365	30.1
Other/Unknown	2,397	3.5
Total	**67,632**	**100.0**

[3] Before analyses were conducted, a small number of duplicate records were deleted from the original data file to avoid double counting cases discussed in this report.

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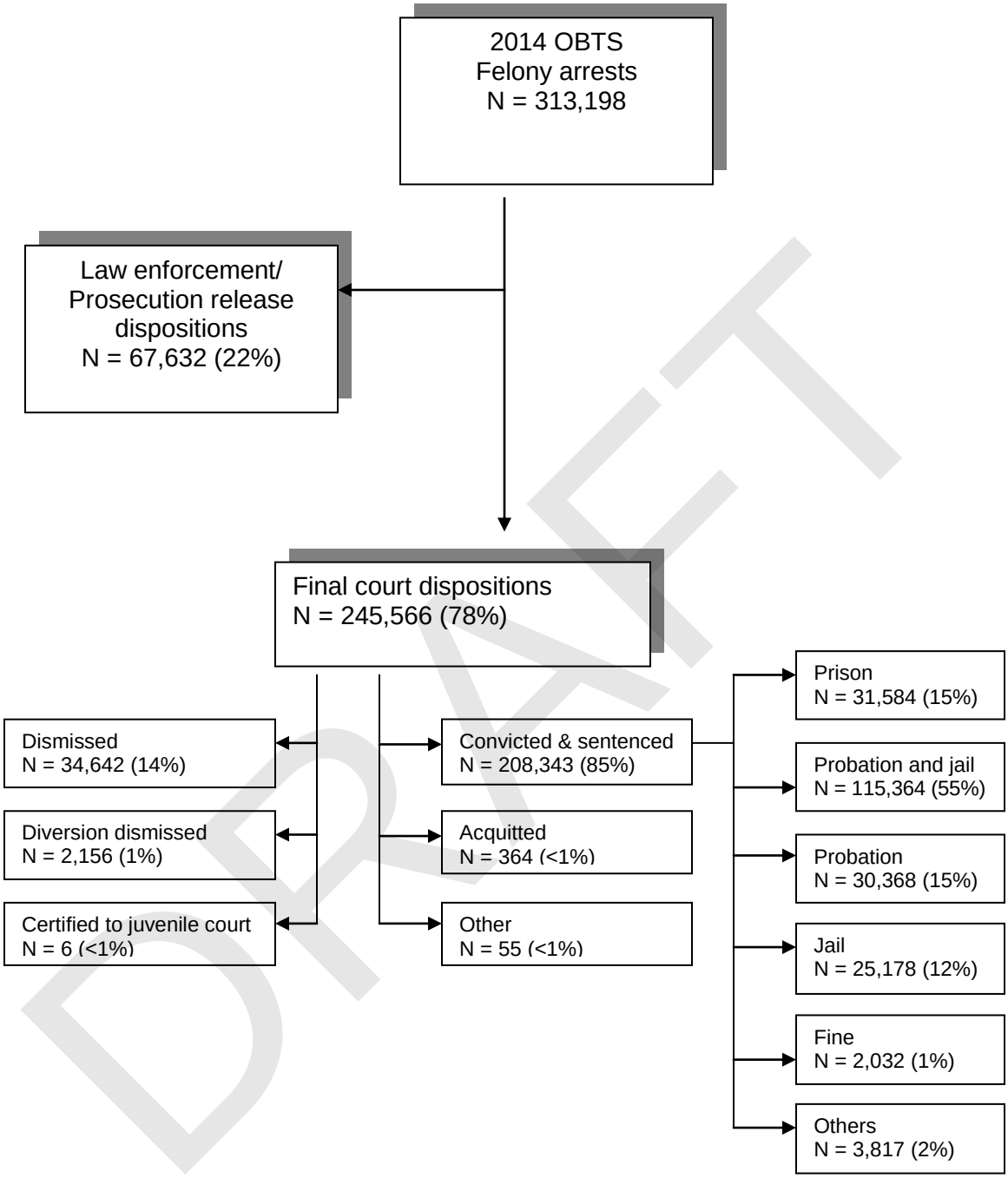
Diagram 1: Numbers of Dispositions at Distinct Case Processing Stages in OBTS



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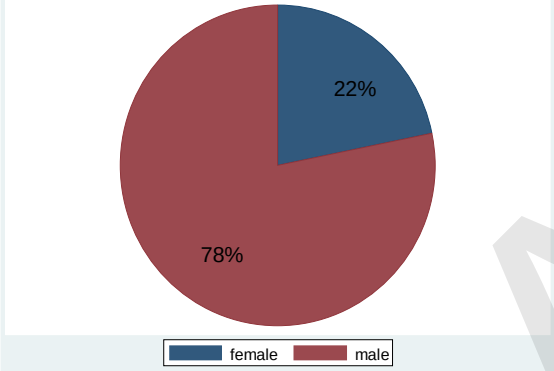
Demographics of Felony Defendants

Following is a demographic profile of the population of felony defendants who received dispositions in 2014 and are documented in the OBTS file.

Gender

Males made up 78 percent of the defendants reported to have received dispositions in 2014; females made up 22 percent (figure 1). These proportions are consistent with those reported by other agencies, such as the Bureau of Justice Statistics of the U.S. Department of Justice in its biennial *Felony Sentences in State Courts* study. At 78 percent, the proportion of felony defendants in the OBTS file who are male is much higher than the proportion of males in the general population of California, which is roughly 50 percent.[4]

Figure 1: Gender of Felony Defendants



Age

The OBTS file contains the date of birth and date of disposition for each felony defendant, which allows us to calculate "age at the time of disposition." This information was classified into the following age categories used by the U.S. Department of Justice: ages 14–19, 20–29, 30–39, 40–49, 50–59, and 60 or older. Persons aged 20–29 (39 percent) and 30–39 (28 percent) were arrested most frequently. Figure 2 shows the complete distribution by age of all felony defendants in the OBTS file.

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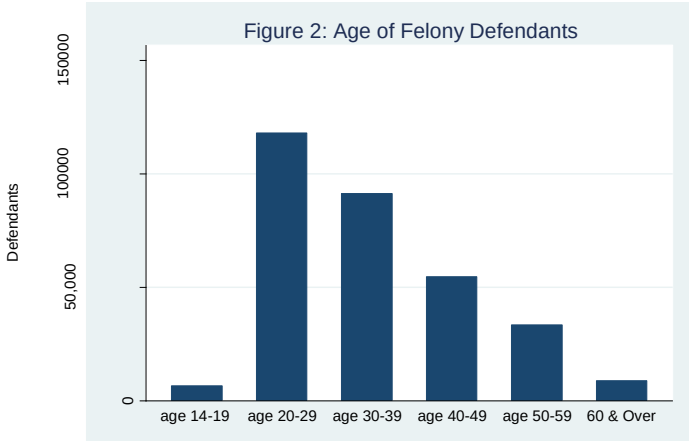
[4] U.S. Census Bureau, "State and County Quick Facts," 2010.



Compared to the California population as a whole, persons aged 20–29 and 30–39 were arrested for felony-level offenses at disproportionately high rates, whereas persons aged 60 or older were arrested at a disproportionately low rate. Persons aged 40–49 were arrested at a rate only slightly higher, while those aged 14–19 and 50–59 were arrested at rates slightly lower than indicated by their proportions in the general population.[5]

Race/Ethnicity

Racial/ethnic data on criminal defendants were reclassified according to the categories used by the U.S. Census Bureau. These categories are identified as Asian/Pacific Islander, Black, White, and Hispanic (figure 3).[6]

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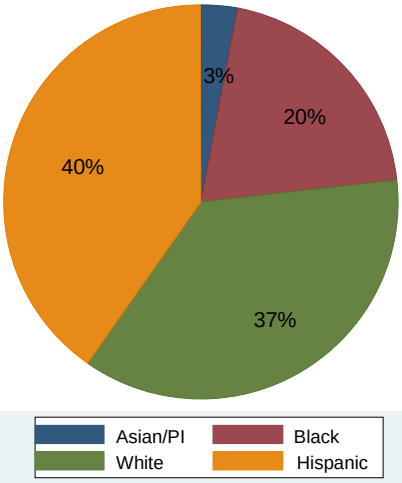
[5] According to the U.S. Census of 2010, the age group distribution of California residents corresponding to the groups presented in figure 2 is as follows: 15–19 years=3.9%; 20–29 years=14.8%; 30–39 years=13.8%; 40–49 years=14.2%; 50–59 years=12.8%; and 60+ years=16%.

[6] Because of their small numbers in the sample, persons identified as "Other/Unknown" in the OBTS file, as well as defendants identified as American Indian or Native American, were removed from the analysis. For the remainder of the report, we use the term "Asian" to refer to the broader category of Asian/Pacific Islander offenders, Black to refer to Black or African American offenders, and Hispanic to refer to Hispanic and Latino offenders.

Figure 3: Race and Ethnicity of Felony Defendants



Hispanics made up the largest percentage of reported felony defendants in 2014 (40 percent), followed by Whites (37 percent) and Blacks (20 percent). Asians (3 percent) represent only a small proportion of the 2014 felony arrest population.

These findings indicate that Blacks were arrested for felony-level offenses at rates significantly higher than their proportion in California's population and Hispanics at rates slightly greater than their share of the population as a whole. Conversely, Asians and, to a lesser extent, Whites were arrested at lower rates compared to their proportions in California's population.[7]

Prior Criminal Record and Type of Offense

Prior Criminal Record

The OBTS file identifies the type of prior record, if any, for each felony arrestee. Information is limited to three categories: whether the arrestee has prior prison commitments, a "miscellaneous" prior record, or no prior record (figure 4). A miscellaneous prior record pertains to a defendant with a criminal record that does not include a prior prison commitment.

Information was missing in the Prior Record field for a significant percentage of records (7 percent). For the records containing valid information, a little over two-thirds (67 percent) of felony arrestees had miscellaneous prior records and 19 percent had one or more prior prison commitments. The remaining 14 percent of felony arrestees in the OBTS file had no identified prior records. In addition to these data limitations, as noted by the DOJ in its documentation of this data set, information on prior records is available only for those defendants who had a first arrest after August 1982.

[7] According to the U.S. Census of 2010, the distribution of California residents based on their ethnic group membership is as follows: Asian=13.9%; Black=6.6%; Hispanic=38.2%; White=39.4%; Other=1.9%.

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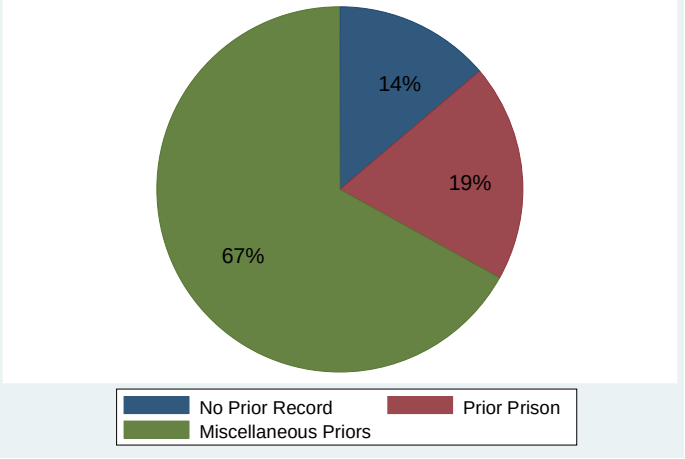
Figure 4: Prior Record of Felony Defendants

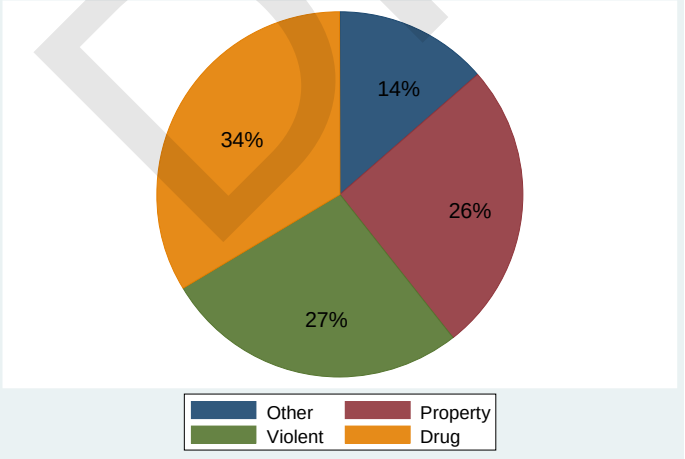


Offense Category

For this analysis, offense data provided at the time of disposition in the OBTS file were reclassified into four major offense groupings: violent, property, drug, and other felony (figure 5). These groupings were based in large part on the categories used by the Bureau of Justice Statistics of the U.S. Department of Justice in its biennial *Felony Sentences in State Courts* study. Examples of the offenses included in the violent offense group are homicide, rape, robbery, and assault; offenses in the property offense group include burglary, theft, forgery, and arson; the drug offense group includes all felony-level drug offenses; and offenses in the other felony offense group include all weapons offenses and a range of other offenses such as vandalism and driving under the influence of drugs or alcohol (DUI).

Similar proportions of defendants were arrested for drug offenses, property offenses, and violent crimes (34, 26, and 27 percent, respectively), while the remaining offenses, classified as "other felony offenses," accounted for 14 percent of all offenses in the OBTS file.

Figure 5: Arresting Crime of Felony Defendants



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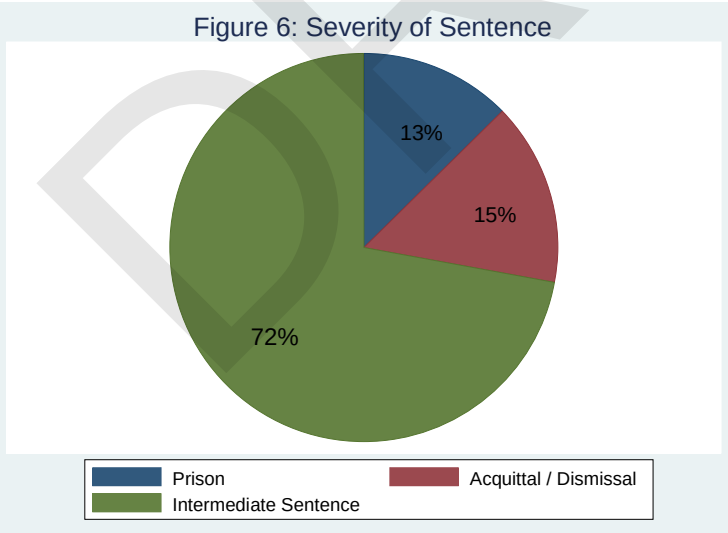
Sentencing Information

The OBTS data file organizes each sentence into a broad sentence category (e.g., prison, jail, probation), referred to hereafter as "severity of sentence." Although information on length of sentence would allow for a more fine-grained analysis, it is still possible to rank the existing categories by severity. For example, a prison sentence can be ranked as the most severe type of sentence among those contained in the OBTS file while, on the other end of the spectrum, acquittal/dismissal of charges can be considered the least severe among possible outcomes.

Nonprison sentences (intermediate sanctions) pose the greatest challenge to the empirical study of sentencing. Intermediate sanctions are harder to compare because no single continuum exists along which all nonprison sentences can be arrayed or ranked. Moreover, intermediate sanctions are often combined in the original DOJ data (e.g., within the "probation and jail" category) to allow for different configurations of offender risk and need. These combinations are not readily disaggregated in the OBTS data, which adds to the difficulty of ranking specific nonprison sentence categories in order of their severity.[8] To address these issues, all intermediate sanctions shown in figure 6—probation and jail, jail, probation, and fine—have been grouped in a new sentence category called "intermediate sentence." The categories of sentence severity used in all the analyses in this section are (in decreasing order of severity) prison, intermediate sentence, and acquittal/dismissal.

The percentages in figure 6 were calculated without controlling for prior record or type of offense. Of the defendants arrested for felony-level offenses, 13 percent received the most severe sentence, prison; and 15 percent received the most favorable outcome, acquittal/dismissal. The remaining 72 percent received an intermediate sentence—including jail, probation, and fine.

Figure 6: Severity of Sentence



[8] These categorizations will likely become even more problematic in future years as dispositions reflecting criminal justice realignment begin to enter the data set.

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Findings

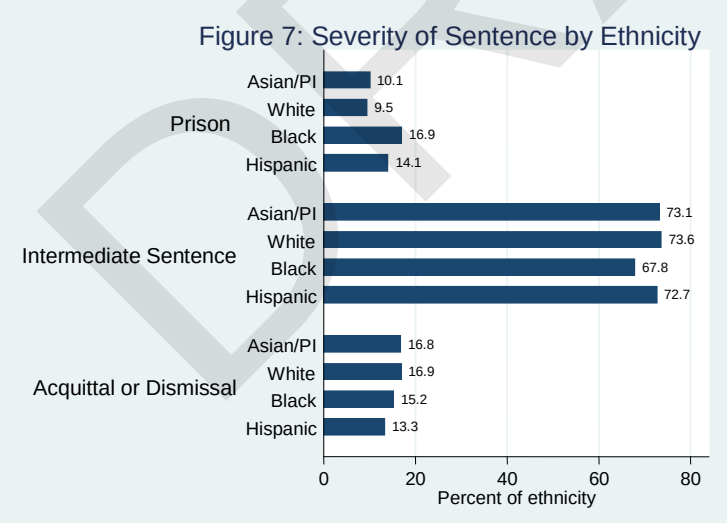
In the following pages we first look at outcomes by the defendants' race/ethnicity without controlling for prior record or type of offense. This information is presented for illustrative purposes only. The second set of analyses controls for prior record and type of offense to ensure that a correlation between criminal history and severity of sentence, or between type of offense and severity of sentence, is not mistakenly interpreted as a correlation between severity of sentence and a defendant's race or ethnicity.

Controlling for the factors that dictate specific sentences mandated by California's sentencing laws allows us to address the critical issue for this mandated study: the degree to which similarly situated offenders receive dissimilar sentences on the basis of their race/ethnicity. All findings discussed in this report are statistically significant unless otherwise noted.

Overall Results When Not Controlling for Prior Record or Type of Offense

Figure 7 illustrates the proportion of defendants from each racial/ethnic group who received any one of the three severity-of-sentence outcomes. This figure does not control for prior record or type of offense.

Black defendants arrested for felony-level offenses were the most likely among the racial/ethnic groups to receive prison sentences. Asians and Whites were the least likely to receive prison sentences. Blacks were the least likely to receive intermediate sentences (i.e., probation and jail, jail, probation or fine). Hispanics were the least likely to be acquitted or to have their cases dismissed.



These data are presented to illustrate the importance of controlling for factors relevant to sentencing, such as prior record and offense type. By grouping defendants based on their prior records and offense types, it becomes possible to compare sentencing outcomes for defendants convicted of similar offenses and having similar criminal histories.

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Overall Results When Controlling for Prior Record and Type of Offense

The following analysis of sentence severity, which controls for prior record and type of offense, shows that no group of defendants systematically received the most severe sentence in a way that was principally related to their race/ethnicity. However, within each category (e.g., defendants with no prior record charged with drug offenses), there were statistically significant differences among racial/ethnic groups in the severity of sentences received.

As a reminder, in the analysis not controlling for prior record and type of offense (see figure 7), Black defendants were more likely than defendants from the other racial/ethnic groups to receive prison sentences. In many of the later analyses controlling for prior record and type of offense, however, the effects of race on sentencing outcomes are more complex.

The figures and supporting text that follow focus on variations within three specific types of felony crimes—violent, property, and drug—committed by offenders with similar prior records. Criminal record types include: no prior record, miscellaneous priors, and one or more prior prison commitments (figures 8 through 10). These figures show that at the statewide level the relationships between racial/ethnic categories and legal indicators are variable. As in previous years the severity of the sentence received appears to be primarily associated with the severity of the defendant's offense and prior record.

In addition to the variability of outcomes that results when the analysis controls for similarly situated offenders, it should be noted that the difference in outcomes for any ethnic group are small to moderate in magnitude for specific outcomes and situations. These differences are highlighted in the explanations accompanying figures 8 through 10.

This analysis shows that both the type of crime and the offender's prior criminal history are the dominant factors in determining sentences. Although each control is slightly different in its distribution and its effect on ethnic groups, we expect to see a strong relationship between the severity of sentence and the offender's prior criminal history. Because this report looks at these relationships proportionally, increases in one type of sentence will correspond to decreases in other types of sentences.

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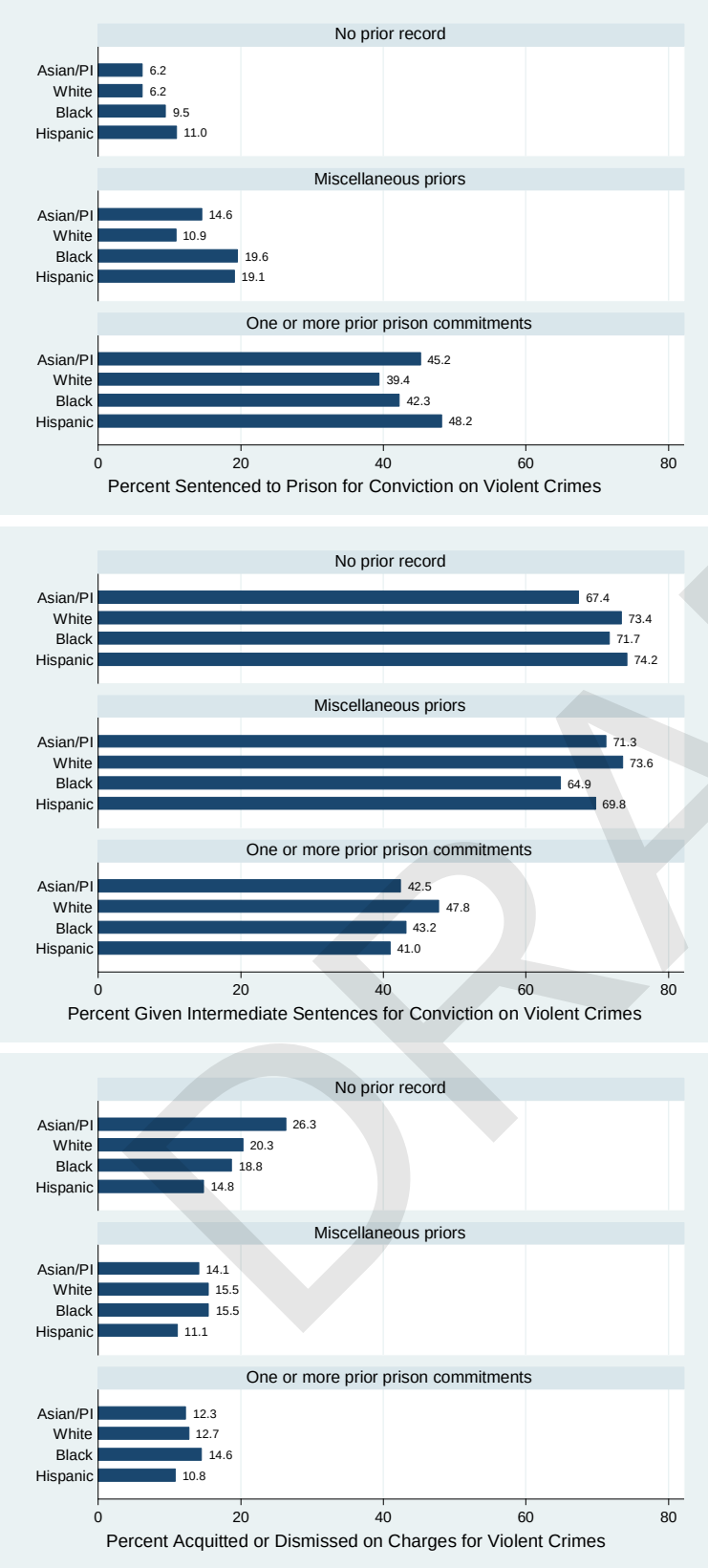
Figure 8: Sentencing of Violent Crimes, Controlling for Prior Record



Focusing first on the sentencing of defendants accused of violent crime, the top panel to the left shows convictions that result in a prison sentence. Although there is variability within each of the categories of prior record, it is also clear that prior record—even in the aggregated categories used for this analysis—has a substantial impact on sentencing outcomes.

In the top panel to the left, the percentage of each group sentenced to prison for a violent crime ranges from 39.4 percent to 48.2 percent for defendants with a prior prison commitment. In contrast, for defendants with no prior record the percentage of groups sentenced to prison for a violent crime was as low as 6.2 percent and not higher than 11.0 percent.

Further, while Asians with a prior prison commitment (45.2%) are more likely than all groups but Hispanics (48.2%) to receive a prison sentence for a violent crime when compared to other defendants with a prior prison commitment, Asians are among the least likely to receive a prison sentence for a violent crime when compared to other defendants with only miscellaneous priors (14.6%) or no prior record (6.2%).

Still focusing on the top panel to the left, while Blacks who have one or more prior prison commitments are less likely than Asians and Hispanics with similar records to receive a sentence to prison (42.3%), they are the most likely to receive a sentence to prison when compared to other defendants with only miscellaneous priors (19.6).

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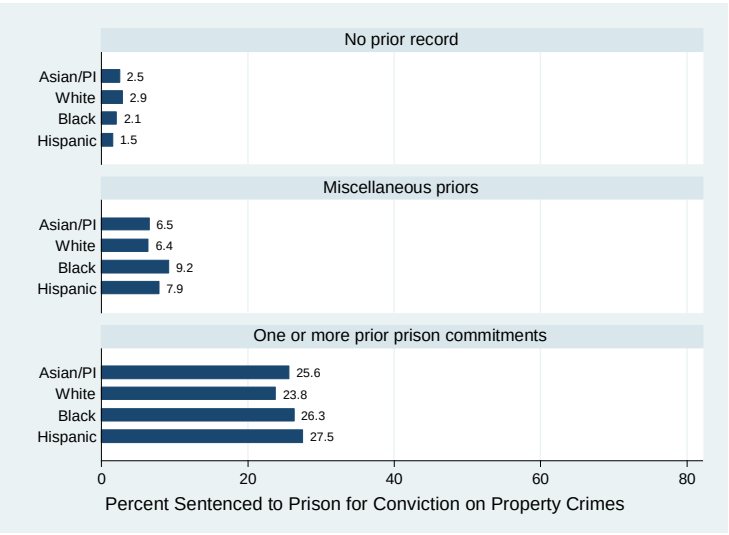
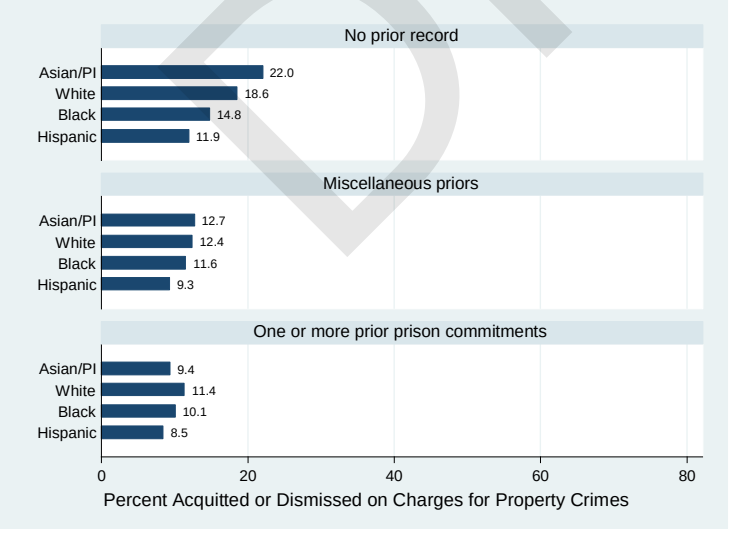
Figure 9: Sentencing of Property Crimes, Controlling for Prior Record





If we now look at sentencing to prison for property crimes, the impact of prior record remains clear, with higher proportions of all groups receiving more severe sentences the more extensive the prior record. While between 23.8 and 27.5 percent of those with a prior prison commitment were sentenced to prison for conviction on a property crime, only between 1.5 and 2.9 percent of those with no prior record were sentenced to prison.

In addition to highlighting the impact of prior record on sentencing outcomes, the set of graphs on this page shows the impact of case type on sentencing. A prison sentence is less likely for those who are convicted of a property crime than it is for those convicted of a violent crime, regardless of prior criminal record (comparing the top panels of this and the previous page).

Turning to the differences across racial/ethnic groups in the top panel to the left, we see that defendants with prior prison commitments are sentenced to prison for property crimes in a pattern that departs somewhat from the pattern for violent crime (presented on the previous page).

For property crimes, Hispanics (27.5%) and Blacks (26.3%) are sentenced to prison at slightly higher rates than Asians (25.6%) and Whites (23.8%) if they have prior prison records. For violent crimes, Hispanics (48.2%) and Asians (45.2%) are sentenced to prison at a somewhat higher level than Blacks (42.3%) and Whites (39.4%) for defendants who have prior prison commitments.

Comparing intermediate sentences for property crimes (middle panel to the left), to those for violent crimes (middle panel on the preceding page), it is clear that higher proportions of defendants in all racial/ethnic groups received intermediate sentences for property offenses.

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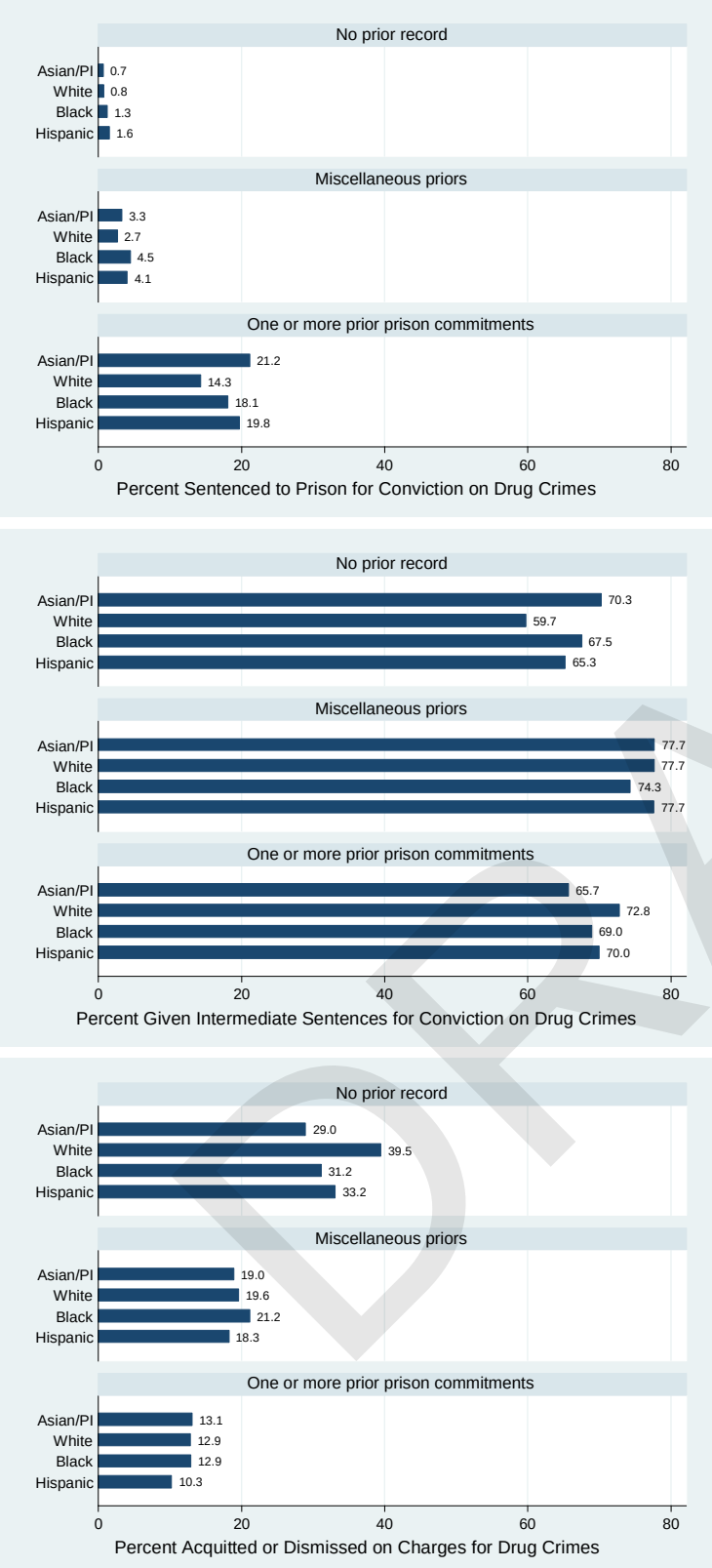
Figure 10: Sentencing of Drug Crimes, Controlling for Prior Record



Turning now to convictions for drug crimes, we once again see that prior record has a significant effect on sentencing outcome, with variability among groups of defendants also present based on their case types.

In the top panel to the left we can see that the percentage of defendants with a prior prison commitment who are sentenced to prison for drug crimes is lower across all groups than it is for defendants with similar criminal histories convicted of property or violent crimes (shown in the top panels of the preceding two pages).

Intermediate sentences remain difficult to interpret, probably because of the variability of outcomes contained within that single category. However, it may be noted that Asians (70.3%) and Blacks (67.5%) were the most likely to receive intermediate sentences if they had no prior record, while Whites (72.8%) and Hispanics (70.0%) were the most likely to receive a sentence of this type if they had one or more prior prison commitments.

Turning to defendants who have been acquitted or had their charges dropped for cases involving drugs (bottom panel to the left), we can see a number of noteworthy patterns. First, defendants with no prior record are much more likely to be acquitted for drug-related felonies than for violent felonies or property-related felonies (bottom panels on the left of the preceding two pages).

Moreover, while Whites with no prior record who were accused of a drug-related felony were acquitted more frequently (39.5%) than other groups with similar criminal records, Blacks with miscellaneous priors were acquitted more frequently (21.2%) than those with similar criminal backgrounds.

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Conclusions

When controlling for prior record and type of offense, we identified differences across racial/ethnic groups in patterns of sentencing, but observed no consistent pattern in the severity of sentence that is principally related to the defendants' race/ethnicity. In contrast, within each of the offense categories (e.g., drug offenses, property crimes) and using the limited controls available we found small to moderate, but statistically significant differences in sentencing outcomes among racial/ethnic groups. However, the lack of data on sentence length and on the specific type of prior records limits the conclusions that can confidently be made about any observed differences in sentencing based on race or ethnicity.

Data on sentence length and specific type of prior record would allow for analysis controlling for a wider array of factors and a more precise comparison of sentencing outcomes for different racial and ethnic groups. As a result, the findings contained in this report cannot be used on their own as an indication of bias, or the lack thereof, in the California criminal justice system. The findings summarize only the broad sentencing information available in the OBTS file maintained by the California Department of Justice. Because of these limitations and those highlighted by CJSC, we encourage the reader to exercise caution in attempting to attribute causes for the observed differences in sentencing among racial/ethnic groups.

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Appendix

Text of Penal Code Section 1170.45

> The Judicial Council shall collect data on criminal cases statewide relating to the disposition of those cases according to the race and ethnicity of the defendant, and report annually thereon to the Legislature beginning no later than January 1, 1999. It is the intent of the Legislature to appropriate funds to the Judicial Council for this purpose.

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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: October 27, 2015

Title
Judicial Council Report to the Legislature: Electronic Recording Equipment

Rules, Forms, Standards, or Statutes Affected
None

Recommended by
Zlatko Theodorovic, Director
Judicial Council Finance

Agenda Item Type
Action Required

Effective Date
October 27, 2015

Date of Report
September 16, 2015

Contact
Patrick Ballard, 818-558-3115
patrick.ballard@jud.ca.gov

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Executive Summary

Judicial Council staff recommends approval of the *Report on Purchase or Lease of Electronic Recording Equipment by Superior Courts (January 1–June 30, 2015)*. Government Code section 69958 requires that the Judicial Council report to the Legislature semiannually on all purchases and leases of electronic recording equipment that will be used to record superior court proceedings.

Recommendation

Staff recommends that the Judicial Council:

1. Approve the *Report on Purchase or Lease of Electronic Recording Equipment by Superior Courts (January 1–June 30, 2015)*; and

2. Direct the staff to submit the report to the Legislature.

Previous Council Action

These reports have routinely been approved by the council and submitted to the Legislature on a semiannual basis. Previous reports can be found at *www.courts.ca.gov/7466.htm*.

Rationale for Recommendation

The semiannual submission of this report to the Legislature is required under Government Code section 69958. The statute requires that each superior court report to the Judicial Council about all purchases and leases of electronic recording equipment that will be used to record superior court proceedings, specifying all of the following:

(a) The Superior Court in which the equipment will be used.
(b) The types of trial court proceedings in which the equipment will be used.
(c) The cost of purchasing, leasing, or upgrading the equipment.
(d) The type of equipment purchased or leased.

Comments, Alternatives Considered, and Policy Implications

This report was not circulated for comment. The information in the report to the Legislature was reported to the Judicial Council by the superior courts.

Implementation Requirements, Costs, and Operational Impacts

Implementing the recommendations in this report results in no costs or operational impacts.

Attachments and Links

1. *Report on Purchase or Lease of Electronic Recording Equipment by Superior Courts (January 1–June 30, 2015)*

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MR. MARTIN HOSHINO
Administrative Director, Judicial Council

September 16, 2015

Ms. Diane F. Boyer-Vine
Legislative Counsel
State of California
State Capitol, Room 3021
Sacramento, California 95814

Mr. Daniel Alvarez
Secretary of the Senate
California State Senate
State Capitol, Room 400
Sacramento, California 95814

Mr. E. Dotson Wilson
Chief Clerk of the Assembly
State Capitol, Room 3196
Sacramento, California 95814

Re: *Report on Purchase or Lease of Electronic Recording Equipment by Superior Courts (January 1–June 30, 2015)* as required by Government Code section 69958

Dear Ms. Boyer-Vine, Mr. Alvarez, and Mr. Wilson:

The Judicial Council respectfully submits this report, as required by Government Code section 69958, to provide information to the Legislature regarding superior court purchases and leases of electronic recording equipment during the period of January 1, 2015, through June 30, 2015. As required by statute, for each purchase or lease of equipment, the report specifies the name of the court, the types of proceedings for which the equipment will be used, the cost of the equipment, and the types of equipment purchased or leased.

Government Code section 69957 requires the courts to obtain advance approval from the Judicial Council before purchasing or leasing any electronic recording technology or equipment. Approval for purchase or lease of the equipment is subject to the equipment being used only in the

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manner and for the purposes authorized under that section. All 58 superior courts were surveyed regarding their purchase or lease of the equipment to ensure that all purchases were made with the required authorization. During the January 1 through June 30, 2015, period, seven courts purchased electronic equipment or related items for use in court proceedings. Six of the courts submitted a Request to Purchase form and received authorizations for their purchases, during the period. One of the six courts submitted two separate request forms. The seventh court purchased the equipment during the period, and submitted the form and received approval after the end of the period. One final court that had received approval during the previous reporting period (July 1 through December 31, 2014), but did not purchase the equipment during that period, decided not to purchase equipment at this time.

The Superior Court of Amador County spent $6,309 to purchase two FTR Reporter Software packages (version 5.6) with FTR Log Notes and one FTR Reporter Software (version 5.6.2) with Log Notes software, FTR Player, and FTR Manager. The purchase was an upgrade to existing software. The software is used to make an official record in infractions.

The Superior Court of Kern County spent $9,902 to purchase two FTR Touch hardware and software packages with two DMX-8 Mixers. The purchase was not a replacement or upgrade to existing equipment. The equipment will be used to make an official record in small claims, limited civil, infractions, and misdemeanor cases.

The Superior Court of Orange County spent $9,990 to purchase four Presonus FP109 8-Channel Mixers and four Court Audio, Audio Trax SW981-8, and 8-Channel Recording Software Systems. The equipment was not a replacement or upgrade to existing equipment. The equipment will be used to make an official record in infraction, misdemeanor, limited civil, and small claims cases.

The Superior Court of Sacramento County spent $14,753 to purchase two Liberty Digital Recorders with four-channel software LCR-004 and two Liberty MX6/4 Mixers and assorted cables and cartridges. The equipment was not a replacement or upgrade to existing equipment. The equipment will be used to make an official record in traffic misdemeanors and infractions, and to monitor subordinate judicial officers, hearing officers, or temporary judges in small claims, traffic misdemeanor and infractions, and limited civil unlawful detainer matters.

The Superior Court of San Benito County spent $4,414 to purchase one FTR Reporter Software version 5.6 audio only with Log Notes and headset PSP-01399-GR56-2E and one FTR DMX-4 4-channel USB Mixer PHP-40499-HZ10-2E. The equipment was not a replacement or upgrade

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to existing equipment. The equipment will be used to make an official record in misdemeanor and infraction cases.

The Superior Court of San Bernardino County spent $4,089 to purchase one FTR Touch FTR IT-6000 hardware and software with one DMX-4 4-channel Mixer. The equipment is not a replacement or upgrade of existing equipment. The equipment will be used to make an official record in infractions, misdemeanor, small claims, limited civil, and landlord/tenant cases that fit within the definition of limited civil.

The total amount spent by these seven courts on the purchase of electronic recording equipment during the reporting period was $49,457.

If you have any questions related to this report, please contact Zlatko Theodorovic, Director, Judicial Council Finance, at 916-263-1397.

Sincerely,

Martin Hoshino
Administrative Director
Judicial Council of California

MH/VM
cc: Margie Estrada, Policy Consultant, Office of Senate President pro Tempore Kevin de León
Fredericka McGee, Special Assistant to Assembly Speaker Toni G. Atkins
Anita Lee, Senior Fiscal and Policy Analyst, Legislative Analyst's Office
Tina McGee, Executive Secretary, Legislative Analyst's Office
Tiffany Garcia, Program Budget Analyst, Department of Finance
Peggy Collins, Principal Consultant, Joint Legislative Budget Committee
Benjamin Palmer, Chief Counsel, Senate Judiciary Committee
Julie Salley-Gray, Consultant, Senate Budget and Fiscal Review Committee
Jolie Onodera, Consultant, Senate Appropriations Committee
Matt Osterli, Consultant, Senate Republican Fiscal Office
Mike Petersen, Consultant, Senate Republican Policy Office
Alison Merrilees, Chief Counsel, Assembly Judiciary Committee

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Chuck Nicol, Principal Consultant, Assembly Appropriations Committee
Marvin Deon, Consultant, Assembly Budget Committee
Allan Cooper, Consultant, Assembly Republican Office of Policy & Budget
Paul Dress, Consultant, Assembly Republican Office of Policy & Budget
Zlatko Theodorovic, Director, Finance, Judicial Council
Cory Jasperson, Director, Governmental Affairs, Judicial Council
Peter Allen, Senior Manager, Communications, Judicial Council
Yvette Casillas-Sarcos, Administrative Coordinator, Governmental Affairs, Judicial Council

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MR. MARTIN HOSHINO
Administrative Director, Judicial Council

Report Summary

Report title: *Report on Purchase or Lease of Electronic Recording Equipment by Superior Courts (January 1–June 30, 2015)*

Statutory citation: Government Code section 69958

Date of report: September 16, 2015

The Judicial Council has submitted a report to the Legislature in accordance with Government Code section 69958, which requires the Judicial Council to report to the Legislature, on a semiannual basis, regarding all purchases and leases of electronic recording equipment that will be used to record superior court proceedings. The report must specify the name of the court, the types of proceedings for which the equipment will be used, the cost of the equipment, and the types of equipment purchased.

The following summary of the report is provided under the requirements of Government Code section 9795.

For the period January 1, 2015, through June 30, 2015, seven courts purchased or leased electronic recording equipment or related items at a cost of $49,457 to create an official record in various court proceedings or to monitor subordinate judicial officers in certain types of cases as authorized by law. Information about this transaction is discussed in the report.

The full report can be accessed here: www.courts.ca.gov/7466.htm.

A printed copy of the report may be obtained by calling 415-865-7553.

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 26, 2015

Title
Judicial Council Report to the Legislature: Status of the Phoenix Program, 2014

Rules, Forms, Standards, or Statutes Affected
None

Recommended by
Curt Soderlund, Chief Administrative Officer
Judicial Council

Agenda Item Type
Action Required

Effective Date
October 26, 2015

Date of Report
September 11, 2015

Contact
Olivia Lawrence, 916-263-2541
olivia.lawrence@jud.ca.gov

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Executive Summary

The staff of the Judicial Council recommends that the Judicial Council approve the report entitled *Status of the Phoenix Program, 2014* to be sent to the chair of the Joint Legislative Budget Committee, the chair of the Senate Committee on Budget and Fiscal Review, and the chair of the Assembly Committee on Budget, as required by Government Code section 68511.8(a).

Recommendation

The staff of the Judicial Council recommends that the Judicial Council, effective October 26, 2015:

1. Approve the report entitled *Status of the Phoenix Program, 2014*; and

2. Direct the staff of the Judicial Council to submit the report to the Legislature.

Previous Council Action

The report on the Phoenix System[1] has been required and submitted pursuant to Government Code section 68511.8 since 2003–2004.

Rationale for Recommendation

Government Code section 68511.8(a) requires that the Judicial Council annually report, until project completion, on the status of the Court Accounting and Reporting System, which is now known as the Phoenix Financial System (the financial component of the Phoenix System; see footnote 1).

Comments, Alternatives Considered, and Policy Implications

Since this report is required by the above referenced section of the Government Code, no alternatives were considered. This report is not required to circulate for public comment.

Implementation Requirements, Costs, and Operational Impacts

Submission of this mandated report to the Legislature does not involve any implementation requirements, costs, or operational impacts for the trial courts.

Attachments and Links

1. *Status of the Phoenix Program, 2014*

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[1] The Phoenix System consists of two components: the Phoenix Financial System and the Phoenix Human Resources System, which are together referred to as the "Phoenix System."

JUDICIAL COUNCIL OF CALIFORNIA

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Chair of the Judicial Council

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Curt Soderlund
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Primary Author of Report

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MR. MARTIN HOSHINO
Administrative Director, Judicial Council

September 9, 2015

Report Summary

Report title: *Status of the Phoenix Program, 2014*

Statutory citation: Sen. Bill 1102 (Stats. 2004, ch. 227, Sec. 60)
Code section: Gov. Code § 68511.8(a)

Date of report: October 2015

The Judicial Council has submitted its annual status report to the Legislature, in accordance with Government Code section 68511.8, on the Phoenix Program.

This status report includes a description and discussion of major activities undertaken in 2014 for the Phoenix Program, project accomplishments to date, and annual revenues and expenditures for these projects.

The following summary of the report is provided under the requirements of Government Code section 9795.

The Phoenix Program's primary focus in 2014 was on continuing to provide each trial court full comprehensive administrative support. This report presents annual service metrics for the various fiscal and human capital management areas the program supports. These areas specifically include Accounts Payable, General Ledger, Purchasing, Payroll, and Trust and Treasury Services. The Phoenix Program provides daily administrative support to all 58 trial courts.

The full report can be accessed here: *www.courts.ca.gov/7466.htm*

A printed copy of the report may be obtained by calling 916-263-2541.

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MR. MARTIN HOSHINO
Administrative Director,
Judicial Council

September 8, 2015

Hon. Mark Leno
Chair, Senate Budget and Fiscal Review Committee
State Capitol, Room 5019
Sacramento, California 95814

Hon. Shirley N. Weber
Chair, Assembly Committee on Budget
State Capitol, Room 6026
Sacramento, California 95814

Re: *Status of the Phoenix Program, 2014*

Dear Senator Leno and Assembly Member Weber:

The Judicial Council respectfully submits this report on the status of the Phoenix Program, as required by Government Code section 68511.8(a). That section specifies that until project completion, the Judicial Council shall provide an annual status report to the chairperson of the budget committee in each house of the Legislature and to the chairperson of the Joint Legislative Budget Committee with regard to the CCMS and the Court Accounting and Reporting System, which is now referred to as the Phoenix Financial System. The final report on the CCMS project was issued in December 2012 at the conclusion of the project. It can be found online at www.courts.ca.gov/7466.htm.

The Phoenix Program's primary focus in 2014 was on continuing to provide each trial court full comprehensive administrative support. This report provides annual service metrics for the various fiscal and human capital management areas the program supports. These areas specifically include Accounts Payable, General Ledger, Purchasing, Payroll, and Trust and Treasury Services. The Phoenix Program provides daily administrative support to all 58 trial courts.
Within existing resources, implementation of the Phoenix Human Resources System (formerly referred to as the Courts Human Resources Information System (CHRIS)) was extended to 2 additional small courts since the last report, bringing the total of courts on the system through

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December 2014 to 10. Because of budgetary constraints, deployment to the remaining 48 courts will not resume until additional resources are secured.

If you have any questions, please contact Curt Soderlund, Judicial Council Chief Administrative Officer, at curt.soderlund@jud.ca.gov or 916-263-5512.

Sincerely,

Martin Hoshino
Administrative Director
Judicial Council of California

MH/CS/ol
Attachment
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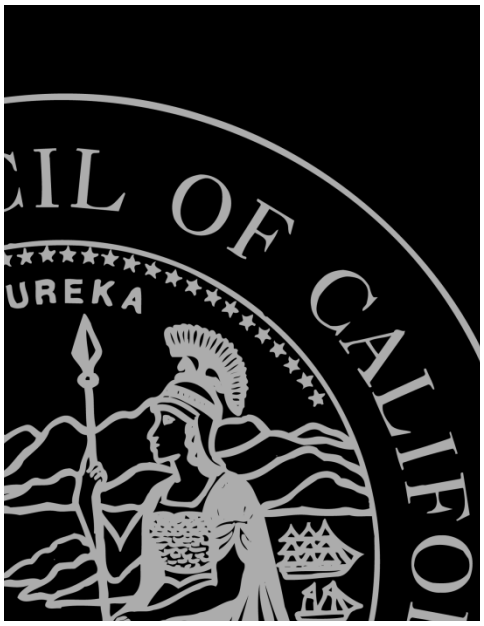

Status of the Phoenix Program 2014

REPORT TO THE LEGISLATURE
OCTOBER 2015

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JUDICIAL COUNCIL
OF CALIFORNIA

Summary

Government Code section 68511.8 requires the Judicial Council to report annually on the status of the California Court Case Management System (CCMS) and the Court Accounting and Reporting System (now referred to as the Phoenix Financial System). The statute specifically requires the report to include, but not be limited to, all of the following:

1. Project accomplishments to date;
2. Project activities underway;
3. Proposed activities; and
4. Annual revenues and expenditures to date in support of these projects, which shall include all costs for the Judicial Council of California and incremental court personnel, contracts, and hardware and software.

This report is submitted consistent with that reporting requirement. As the Phoenix System incorporates human resources services as well, the information provided on Phoenix covers both financial and human resources services. The final report on the CCMS project was issued in December 2012 at the conclusion of that project and can be found at *www.courts.ca.gov/7466.htm*.

Prior reports on the status of CCMS and Phoenix included background on each of the programs as well as descriptions of the vision, capabilities, and benefits of these systems. Those sections are omitted from this year's report to avoid duplication, and to focus the current report on changes, updates, progress, and general status in 2014. For additional background information, all prior years' reports are available at *www.courts.ca.gov/7466.htm*.

Phoenix Program

The Phoenix Program includes the support and deployment of an Enterprise Resource Planning (ERP) system on an SAP technical platform, as well as professional financial and human resources services for California's 58 trial courts. This system is equivalent to the executive branch's efforts to deploy an ERP system with FI$CAL and the 21st Century (MyCalPAYS) Project. The Phoenix Financial System and the Phoenix Human Resources System (together referred to as the Phoenix System) replace systems and support previously provided to the courts by counties and private entities. This coordinated system provides end users with seamless interaction between the input and retrieval of financial information and support for human resources. The Judicial Council successfully deployed the financial system component of this new technology platform to all 58 courts between 2002 and 2009. In addition, 10 of the 58 courts have implemented the fully integrated system by deploying the human resources system as well.

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Phoenix Financial System

The Phoenix Financial System enables the courts to produce a standardized set of monthly, quarterly, and annual financial statements that comply with existing statutes, rules, and regulations, prepared in accordance with generally accepted accounting principles. The Judicial Council has been providing professional accounting and business services to the trial courts using the Phoenix Financial System since 2002, with all 58 courts utilizing the services since July 2009. The Phoenix Financial System provides immediate access to data, enabling courts to make informed business decisions, thus improving day-to-day operations.

This year, the Phoenix Program primarily focused on continuing to provide each trial court full comprehensive administrative support. The Phoenix Program is organized by areas of service provided to the courts, namely a Shared Services Center and a Center of Excellence.

The Shared Services Center comprises six units that support a diverse range of services including a centralized treasury system, accounting and financial services, trust accounting services, and human capital management services. These units are the central points of contact for trial courts using the Phoenix System.

The four financial services units perform collaboratively in support of the courts on the Phoenix Financial System. In the recent fiscal year, the:

Accounts Payable Unit

- Posted 246,000 payments
- Issued 198,000 operations and trust checks
- Issued 252,000 jury checks
- Issued 46,000 electronic payments
- Issued approximately $2.5 billion of accounts payable
- Issued 4,800 IRS Tax Form 1099-MISC to court vendors for tax year 2013

General Ledger Unit

- Reconciled approximately 232 bank accounts monthly
- Prepared/assisted in preparation of Year-End Financial Reports for all 58 courts
- Provided training on accounting and/or the Phoenix System to courts
- Assisted 58 courts with creating/reviewing/loading budgets into the Phoenix System
- Monitored over 90 General, Special Revenue, Grant, Capital Project, and Fiduciary Funds
- Monitored over 100 General Ledger accounts for all 58 courts
- Parked and posted over 15,500 journal entries
- Assisted courts with completion of year-end close/open and preparation of year-end reports

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- Performed 4 court visits to assist with reconciliations and staff training
- Assisted 58 courts with completion of 1% fund balance calculations
- Assisted 58 courts with completion of Schedule 1 reports
- Assisted courts with grant reconciliations and preparation of invoices for reimbursement

Phoenix Purchasing Support Services Unit

- Processed 11,192 purchase orders (PO) with a value of $385,246,454.00 for all trial courts using the Phoenix System
- Reviewed and released 1,176 purchase orders in the Phoenix System
- Created 701 purchase orders, valued at $5,847,854, for 21 courts participating in the Virtual Buyer Program
- Maintained over 61,000 Vendor Master Data Records
- Processed an average of 131 Vendor Master Data Records (new and changes) weekly
- Processed 78 vendor garnishments
- Managed 1,126 surplus material postings

Trust and Treasury Services Unit

- Reconciled and processed 74,557 deposits totaling $4 billion
- Processed 829 electronic funds transfers (EFTs), totaling $994 million, through Bank of America online
- Reviewed and reconciled 58 Daily Cash Reports providing cash balances for all 240 Bank of America bank accounts, including 193 zero-balance sweep accounts
- Reviewed 75,374 trust disbursements entered by court staff totaling $126 million
- Processed 4,381 trust disbursements and transfers totaling $43 million
- Calculated interest on 462 court case trust account disbursements
- Performed monthly interest allocations for all trust and distribution Bank of America bank accounts

The Shared Services Center provides centralized administrative services to the trial courts on the Phoenix System and promotes best practices and operational consistency statewide. The center provides this diverse range of financial and human capital management services on a daily basis.

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Accomplishments to Date[1]

The accomplishments of each system are detailed below.

Table 1: Phoenix Financial System

Accomplishment	Date Completed
The AOC surveyed trial courts to determine interest in a statewide trial court financial system.	Early 2001
The AOC launched the implementation of the Phoenix Financial System (then known as the Court Accounting and Reporting System). The Superior Court of Stanislaus County became the first court to use the new system.	Dec 2002
A five-year statewide rollout schedule was released, detailing the trial courts in line for transition to the Phoenix Financial System from fiscal year (FY) 2003–2004 through FY 2008–2009.	Feb/Mar 2003
Six trial courts were added to the system: the Superior Courts of Lake, Madera, Placer, San Luis Obispo, Siskiyou, and Tulare Counties.	FY 2003–2004
The Phoenix Financial System was installed at 10 trial courts: the Superior Courts of Alameda, Calaveras, Contra Costa, Kings, Merced, Modoc, San Benito, San Bernardino, Tehama, and Yolo Counties—bringing to 17 the number of courts on the statewide system.	FY 2004–2005
The position of assistant director of the Office of Trial Court Financial Services, in the AOC Finance Division, was established to oversee the Phoenix Financial System on the courts' behalf. This position was filled in November 2004.	Jul 2004
The system was implemented in an additional 14 courts— the Superior Courts of Colusa, El Dorado, Fresno, Humboldt, Kern, Marin, Napa, Plumas, San Joaquin, Santa Cruz, Solano, Sonoma, Trinity, and Ventura Counties—bringing to 31 the number of courts on the statewide system.	FY 2005-2006
The Phoenix Financial System product was migrated to the newest version of MySAP (4.7c) for the statewide financial system, adding new functionality and reporting capabilities for use by the trial courts.	Apr 2005
Quarterly Phoenix Financial System user group meetings were held to enable the courts to network with the AOC, to improve the level of services received from the accounting processing center, to serve as a forum to raise concerns regarding the functionality of the statewide system, and to help build professional relationships with the newly formed Office of Trial Court Financial Services.	2005

[1] Only the 2014–2015 entries in each of the following charts are new; all entries for prior-year accomplishments are carried over unchanged from prior reports.

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Accomplishment	Date Completed
A comprehensive governance structure for the Phoenix Financial System was established, encompassing a steering committee composed of AOC Finance, Human Resources, and Information Services divisions and the three regional administrative directors.	Apr 2005
The function of the Treasury Services unit was expanded to include trust accounting services, cash management, and banking services.	May 2005
A contractor was selected as a result of an RFP to study the court trust accounting processes, analyze court business requirements, and identify processing gaps between MySAP and the Phoenix Financial System environment to assess the latter's readiness to include the trust accounting business processes within the statewide system.	Jun 2005
A study was conducted of the trial court cashiering processes to determine the impact of pending and subsequently chaptered legislation affecting the collection of civil assessment and uniform civil filing fees (Assem. Bill 139, Stats. 2005, ch. 74; Assem. Bill 145, Stats. 2005, ch. 75).	Jul 2005
The Business Process Management section in the Finance Division was established to provide planning and leadership for the Phoenix Financial System and to develop a strategic direction for the system and its future use by the courts.	Dec 2005
Based on a study of business requirements and a functional gap analysis beginning in June 2005, the 12-member trial court working group and the AOC resolved to develop a new civil and criminal bail trust processing computer application for statewide implementation within SAP's Public Sector Collections and Disbursement module. This new trust system application will be fully integrated with the Phoenix Financial System, which is also a SAP application. The development of this trust processing and accounting module is underway.	Jun 2006
The Phoenix Financial System was implemented in an additional 13 courts—the Superior Courts of Alpine, Amador, Glenn, Imperial, Inyo, Lassen, Mariposa, Mono, Riverside, Sacramento, San Francisco, Shasta, and Sierra Counties—bringing to 44 the number of courts on the statewide system.	FY 2006–2007
The project was renamed from Court Accounting and Reporting System to Phoenix Financial System, a component of the Phoenix Program that incorporates the Phoenix Financial System and the Phoenix Human Resources System.	Jul 2006
The SAP technical infrastructure was expanded to support higher system availability for users and the statewide implementation of the remaining courts. The new infrastructure also complies with higher security standards established by the AOC.	Dec 2006
The Phoenix Financial System was implemented in 5 additional courts— the Superior Courts of Butte, Monterey, San Diego, San Mateo, and Santa Barbara Counties—bringing to 49 the number of courts on the statewide system since its inception.	Jul 2007

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Accomplishment	Date Completed
The services provided to the courts by Phoenix Financial Services increased significantly as more courts were added to the system. The Accounts Payable Unit processed approximately 20,000 jury checks per month and printed and issued 20,000 operations checks per month on behalf of the trial courts to pay their bills. The General Ledger and Reports Unit balanced 147 trial court bank accounts per month, and the Trust Services Unit tracked $500 million in trust monies for the trial courts annually. These numbers reflect the support provided to 49 trial courts on the Phoenix Financial System during that period.	FY 2007–2008
The AOC participated in an RFP process for a system upgrade (both financial and human resources), beginning in July 2008 with a 12-month preparation and testing period before implementation. The upgrade ensures the continuance of technical support of the system software and provides added system functionality such as enhanced statewide reporting and other features.	Jan 2008
The Phoenix Financial System was deployed to the Superior Courts of Del Norte and Mendocino Counties.	Jan 2008
The Phoenix Financial System was deployed to the Superior Courts of Nevada, Sutter, Tuolumne, and Yuba Counties.	Apr 2008
The Phoenix Financial System was live in all 58 courts, with deployment to the Superior Courts of Los Angeles, Orange, and Santa Clara Counties. In the 58th and final court, the Superior Court of Los Angeles County, implementation is occurring in phases because of the size and complexity of the court.	Jul 2008
The AOC received additional resources for the Phoenix Program through the budget change proposal process to assist with the development and deployment of the project.	Jul 2008
As a result of the RFP process in January 2008, contract services were obtained to assist with a system functionality assessment in preparation for the second phase of the project specific to a system software upgrade and its redeployment. EPI-USE America, Inc. was selected to assist in the final deployment of the Phoenix Financial System to the Superior Court of Los Angeles County and implementation of the Phoenix Human Resources System to the 52 remaining trial courts. That company will also perform the planned Phoenix Financial System SAP upgrade and redeployment to all 58 courts.	Jul 2008
Statistics indicated a significant increase in services provided to the 58 courts on the Phoenix Financial System. The Accounts Payable Unit processed approximately 231,000 jury checks per month and also printed and issued 175,000 operation checks per month on behalf of the trial courts to pay their bills. The General Ledger and Reports Unit balanced 228 trial court bank accounts per month, and the Trust Services Unit tracked more than $1 billion in trust monies for the trial courts annually.	Oct 2008
Statewide regional forums were held in an effort to ensure that the vision, goals, and objectives of the Phoenix Program were conveyed to stakeholders, affording them the opportunity to provide essential input for various aspects of the project.	Oct 2008

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Accomplishment	Date Completed
The project's Blueprint Phase was completed in preparation for the SAP software upgrade from version 4.7 to 6.0 in collaboration with court staff.	Mar 2009
The testing and development for the planned statewide software upgrade was completed.	Apr 2009
The Phoenix Financial System software upgrade was successfully launched. The financial component of the Phoenix System was upgraded, migrating from SAP version 4.7 to 6.0. This statewide effort encompassed many months of planning and collaboration between Phoenix Program staff and court subject matter experts and users, as well as lengthy software testing and development and included new functionality.	Jul 2009
The Superior Court of Los Angeles County's phased implementation on the Phoenix Financial System neared completion—a significant milestone that marked the final deployment of this component statewide. The size and complexity of this court presented challenges overcome through the successful partnering of AOC and superior court staff. Plans are currently being developed to complete this effort in 2010.	Jul 2009
The Procurement Program was initiated in the courts. The Procurement Program provides the courts with the option to elect a specific scenario to review and approve their internal purchase orders using the Phoenix Financial System, ensuring that there are checks and balances in place to meet the requirements of the *Trial Court Financial Policies and Procedures Manual*.	Aug 2009
Preparation began for the launch of SECUDE, security software designed to protect the data transmitted between the Phoenix System and SAP environments using a single sign-on configuration. This software will be installed on all finance and human resources users' desktops in each court.	Feb 2010
The Bank Account Consolidation project was launched with the goal of seamlessly consolidating the structure of AOC-administered bank accounts, creating cost savings opportunities for the courts, and simplifying the overall cash management process. The collective cost savings is estimated at $600,000 per year. The phased implementation is planned to take place over seven months.	Feb 2010
The Phoenix Program's flexible reporting project was launched to enhance the Phoenix System's reporting solution to offer faster, more user-friendly, and more flexible online analytical functionality. Court staff benefit by faster data retrieval and an enhanced user interface.	Mar 2010
The deployment of Solution Manager to the Phoenix production landscape was a continuous-improvement initiative designed to increase effective support for the courts, the AOC, and the underlying information technology infrastructure. The initiative centralizes the handling of court-reported systems issues and allows for quick resolution and tracking. It supports a repository of project and maintenance documentation organized by business process and it allows for systems monitoring for the application and its related infrastructure and hardware.	Apr 2010

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Accomplishment	Date Completed
Efforts to finalize an encryption solution for a single sign-on for the courts were completed. SECUDE was successfully deployed to all 58 courts.	July 2010
The first phase of the Bank Account Consolidation project was successfully concluded in all 58 courts as a cost savings measure to reduce banking fees on AOC-administered bank accounts.	Aug 2010
The Phoenix team worked with the Superior Court of Los Angeles County to modify the 2009 version of the data upload process for their general ledger accounts on the Phoenix System. The new process allows the court to load detailed information from its legacy system (eCAPS) into the Phoenix System, providing a complete picture of the court's financial activity. The Los Angeles court remains on its county system for certain other functions, including procurement and financial investment.	Sept – Dec 2010
Efforts for the update and revision of the current *Trial Court Financial Policies and Procedures Manual* began with a late-2011 anticipated release date for the 8th edition.	Dec 2010
New functionality for a Uniform Civil Fee System (UCFS) and Phoenix System interface was developed resulting in the automation of the daily bank balance and capital bank balance reports for each trial court. This interface is used by Treasury Services to determine trial court bank balances to verify that a court has a cash balance sufficient to cover the distribution of fees, and also generates reports for the State Controller's Office and various entities that receive the distributed funds.	Feb 2011
The Phoenix System was reconfigured to enable it to capture court interpreter–specific data including language spoken, case type, and type of proceeding as well as associated interpreter costs, including mileage and per diem rates, to enhance the courts' ability to manage resources and better plan for accommodating local language trends. The Court Interpreter Data Collection program is being offered to the courts as an optional system feature.	May 2011
The AOC is developing interfaces between the Phoenix System and the California Court Case Management System (CCMS). The goal is to gain the ability to extract financial data from CCMS and load it directly into the Phoenix Accounting Module for accounting and reporting purposes.	June 2011
Pursuant to Senate Bill 78 and Public Contract Code section 19209 (Mandatory Reporting of Judicial Branch Contracting Information), the Phoenix Financial System has been modified to capture information regarding all trial court vendors or contractors receiving payments. This technical solution will provide the AOC with the ability to generate reports semiannually as mandated by statute.	June 2011

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Accomplishment	Date Completed
In compliance with GASB Statement 54, *Fund Balance Reporting and Governmental Fund Type Definitions*, the Judicial Council updated the fund balance policy at the October 2010 business meeting and directed that fund balances be reported using the five distinct classifications of Nonspendable, Restricted, Committed, Assigned, and Unassigned. The Phoenix System was configured to accommodate the council's directive, establishing five GASB General Ledger categories for reporting year-end reserve amounts.	July 2011
New project codes were established in the Phoenix System to help courts that want to track their expenses related to initiatives including Traffic Amnesty, the Criminal Justice Realignment Act, and Judicial Branch Contract Law for both one-time and ongoing costs.	Nov 2011
All Phoenix environments both in the AOC Development and California Courts Technology Center (CCTC) Data Centers were successfully upgraded to the latest version of SAP software (EHP 5).	Nov 2011
The complete Disaster Recovery Technical Recovery Plan including network, vendor, and bank interfaces, security, and Phoenix Production data and system recovery was successfully executed.	Nov 2011
Completed product acceptance testing of the payment and disbursement interface with CCMS V4. This interface automates the recording of deposit information and requests for trust money disbursement, which will reduce trial court staff time in recording this information in the Phoenix System.	Mar 2012
The Server Decommission and Consolidation project will remove several servers from the Phoenix environment by both consolidating functionality from multiple boxes to fewer boxes, and through an advance virtualization strategy. Projected savings for both hardware one-time expenses and ongoing costs will be realized once the project is complete.	Mar 2012
Phase II of the Bank Account Consolidation project was launched. Historically, the trial courts maintained separate bank accounts with Bank of America. Leveraging functionality in the Phoenix System to keep funds separated, all courts can now be part of a single BOA account. This transition results in significant banking fee savings for the trial courts. The conversion of operations bank accounts has already occurred. This phase II project is to consolidate trust and distribution accounts. The current schedule has all courts converted to this new structure by the end of July 2012.	Mar 2012
Assistance was provided to the Superior Court of Alpine County with its effort to assume administrative functions previously provided by a private certified public accounting firm. Processes are now in place at the court and within Phoenix to fully manage budgetary and financial transactions, employee timekeeping and payroll, and all associated compliance reporting.	Mar 2012

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Accomplishment	Date Completed
Phoenix Business Warehouse Reporting was delivered. New summary financial reporting was developed for court users and management to help meet new fund balance reporting requirements. Annual year-end training was announced and offered to court users. The invitations for training were met with great response, and additional sessions were added to satisfy demand.	Apr 2012
Twenty-seven courts have deployed the new Bank Account Consolidation Phase II structure, and according to the current schedule, the 15 remaining courts with trust and/or distribution accounts will be converted to this new structure by the end of July 2012.	May 2012
As of July 2, all courts were live on the new Bank Account Consolidation Phase II structure. This transition results in significant banking fee savings for the trial courts.	July 2012
The Storage Area Network (SAN) Conversion from Platinum to Nickel and Decommission of Expired Non-Production Servers projects were launched. Phoenix realized CCTC hosting expense savings as the result of two technical cost-savings initiatives. First, Phoenix spearheaded the prototype for SAN conversion of all non-production environments from the more expensive Platinum SAN to Nickel. This program produces savings without impacting any of the courts' production environments. The second evaluated current non-production environments and proposed both consolidation and decommission impacting four Phoenix non-production servers providing ongoing savings and a reduction of capital asset expenses.	July 2012
The Bulk Mailing Software Program was implemented. This is a bulk mailing software program that takes print jobs from the Phoenix System and pre-sorts them by zip code. This new software and sorting process results in a reduction in postage from $0.45 to $0.38 per item. In the four-month period from April to August 2012, Phoenix processed approximately 104,000 pieces of mail using this software and saved the courts nearly $7,300. There are plans to incorporate additional mail items from Phoenix over the next couple of months, increasing the pre-sorted mail from about 20,800 pieces to about 37,300 pieces monthly.	Aug 2012

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Accomplishment	Date Completed
The accounts payable module in the Phoenix System was configured to leverage an automated payment service offered by Bank of America (BOA). This payment service allows vendors to be paid via BOA's electronic payment network via commercial credit card or Automated Clearing House (ACH) instead of more costly paper check issuance. As a benefit of the Comprehensive Payment Solution program, BOA will share a portion of the credit card association fee proceeds with the courts in the form of a rebate. Once the program is fully operational, the total rebate value across all courts has been estimated at $700,000. With recent assistance from the Kern, Orange, and Riverside superior courts, payments were successfully completed to pilot vendors. The vendor enrollment campaign has begun on a larger scale and the plan is to begin using the ePayables product to make payments to additional vendors over the next several weeks.	Sept 2012
The Phoenix Grant funds structure was consolidated reducing over 50 individual grant funds (38 of which are active) to 5 grant funds (AOC, Federal, State, Local, Private). This streamlines processing and reporting on grant-related transactions for court and AOC users of the Phoenix System.	Sept 2012
The Phoenix Program was recently awarded SAP's Customer Center of Expertise (COE) Primary certificate. This was the result of a successful certification audit conducted by SAP, assuring that all obligatory functions performed by the program's COE met or exceeded industry standards.	Sept 2012
The Phoenix System was configured to allow for mail time on checks processed, providing the courts the ability to take advantage of discounts offered by vendors for timely payment.	Nov 2012
Orange Superior Court Bulk Purchase Order Interface project, successfully implemented for the court, enables the automated submittal of bulk purchase order data from its local CMS system for posting to the Phoenix Financial application.	Nov 2012
The Phoenix 2012 Disaster Recovery exercise was completed successfully and encompassed a full system recovery.	Dec 2012
Migration of 35+ Phoenix System interfaces to Axway FTP Services: Efforts began to migrate all current Phoenix System interfaces to an upgraded file transfer service for all participating courts and vendor providers.	Jan 2013
Migration of all Phoenix back-end systems to Linux: The proof of concept for the migration from Solaris to Linux operating systems in the development environment is complete. Planning for implementation in all of the CCTC environments is underway. This two-phase project platform transition will save the Phoenix Program in one-time and ongoing expenses with no impacts to performance or operations and maintenance.	Jan 2013
Judicial Branch Contracting Law (JBCL) Report: Per Senate Bill 78, the Legislature requires the bi-annual submission of the JBCL report. The JBCL report contains all	Jan 2013

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Accomplishment	Date Completed
payments and contracts from the 58 trial courts for the reporting period of June 2012 through December 2012. For the first time, this very large and comprehensive report was generated by the Phoenix System, freeing the courts from the responsibility of individually preparing and submitting separate financial reports.	
Replacement of Phoenix Encryption Services: Phoenix uses encryption services to encrypt data from the courts' desktops to the CCTC to ensure that sensitive data is protected. This replacement would have been necessary under any circumstance because the existing encryption tool for Phoenix would no longer have had support after November 2013. The technical team completed evaluation and selection of a new encryption service and began initial implementation in the development environments. The project began CCTC implementation in the Spring 2013 quarter with court desktop changes beginning in the March 2013 time frame.	Mar 2013
Worked with Alameda Superior Court staff to transition an interest-bearing trust to Phoenix. Court began depositing to and disbursing from the interest-bearing trust through the Phoenix System on April 5, 2013.	Apr 2013
Worked with Riverside Superior Court staff to provide accounting for an interface that brought over the court's bail trust so the court could begin depositing to and disbursing from the bail trust through the Phoenix System.	Apr 2013
The new encryption tool, Netweaver Single Sign-on, was implemented. This implementation was complex as it required customization to the Phoenix System's current infrastructure and required updates to the desktops of the end users.	July 2013
A new Business Warehouse report has been created in the Procurement Module named the Multi-Year Contract Report. This report differentiates between contracts for a single fiscal year and contracts that cross over multiple fiscal years. Its purpose is to assist the courts in tracking contract activity for blanket and contract purchase orders by pulling information from data fields used in the JBCL report and other relevant fields in the system.	Aug 2013
The final phase of the Comprehensive Payment Solution campaign was concluded. The Paymode and e-Payables payment processing programs were implemented and began to generate associated quarterly rebates for the trial courts.	Aug 2013
Phoenix System Audit: All requested data and documentation has been forwarded to the Bureau of State Audits as requested and is currently under review. The focus of the audit is to ensure that the Phoenix System possesses the proper level of checks and balances for all processes.	Aug 2013
Staff implemented several system changes to the Phoenix System Purchase Order functionality to streamline Judicial Branch Contract Law reporting.	Sep 2013
The Trial Court Administrative Services Office, in collaboration with the Information Technology Services Office, has created case management systems (CMS) integration standards which describe how CMSes should interface with the Phoenix Financial System. These standards are being distributed to courts for use in the development of	Sep 2013

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Accomplishment	Date Completed
their technology vendor contracts.	
The Trial Court Administrative Services Office and the Information Technology Services Office worked with the Bureau of State Audits as they audited Phoenix System security and controls. A significant portion of this effort is to develop a business and technical solution to allow the BSA auditors access to all data in the Phoenix System. The teams successfully implemented a judicial branch licensed tool that connects ACL Audit Software (used by BSA, as well as the AOC Internal Audit Services Office) to the Phoenix SAP database to assist the auditors with the extraction of the data necessary to complete their review by December 2013.	Sep 2013
The Trial Court Administrative Services Office and the Information Technology Services Office are working on the migration of all Phoenix backend systems to Linux. As part of the cost-saving effort and hardware upgrade, Phoenix is moving from a Solaris/Sparc to a Linux/x86 platform. The Proof of Concept (POC) for the migration from Solaris/Sparc to Linux/x86 in the Sandbox and Development environment is complete. Planning for implementation for all Phoenix CCTC environments is underway. This two-phase platform transition will save the Phoenix Program one-time and ongoing expenses, with no impacts on performance, operations or maintenance. This project is expected to go live in the first half of 2014.	Oct 2013
The technical development effort for the new Riverside Superior Court trust account interfaces is complete. The court is currently completing file modifications and will go live once the development is finalized. The interfaces are in production stage.	Oct 2013
Reporting of Contract and Payment Data: The Phoenix Purchasing Support Unit provided training and one-on-one support to the superior courts in preparing the contract data portion of the required Judicial Branch Contracting Law semiannual report to the Legislature for period January 1 – June 30, 2014. This report is based on data generated from the Phoenix Financial System.	June 2014

Phoenix Human Resources System

The Phoenix Human Resources System provides a comprehensive information system infrastructure that supports trial court human resources management and payroll needs. Designed for integration with the Phoenix Financial System and first deployed in July 2006, the system offers standardized technology for human resources administration and payroll processing, provides consistent reporting, ensures compliance with state and federal labor laws, collects data at the source, provides central processing, and provides manager and employee self-service functions to the courts.

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The human resources/payroll services component of the Shared Services Center comprises two units that provide HR Structure, Personnel Administration, Organizational Management, Benefits, Time Management, Payroll, and Employee and Manager Self-Service.

The HR Payroll Services Unit and the Payroll Financial Services Unit work collaboratively in support of the courts on the Phoenix Human Resources System, as well as those utilizing other payroll service providers. This recent fiscal year, the:

Payroll Financial Services Unit:

- Reconciled payroll and third party remittance postings for 10 courts weekly (courts using the Phoenix HR system)
- Assisted with payroll file postings and reconciliations for 48 courts daily (courts not yet converted to the Phoenix HR system)
- Reconciled payroll benefit liabilities and expenditures for 33 courts monthly
- Validated 200 system changes
- Conducted 13 continuous and advanced training workshops
- Received and responded to approximately 20,000 court payroll and tax inquiries
- Printed and distributed 60,380 checks and remuneration statements (e.g., employee payments)
- Prepared 380 benefit reconciliations for 8 courts in 2013 calendar year
- Prepared 66 payroll quarterly tax filings and corrections for 8 courts in 2013 calendar year
- Reconciled 48,146 employee tax records for 8 courts in 2013 calendar year
- Printed and mailed 3,439 Wage and Tax Statements (W-2s) for 10 HR courts

Although only 10 courts currently utilize the Phoenix HR System, all 58 courts receive assistance with the financial aspects of payroll matters through these Shared Services Center units.

HR Payroll Services Unit (in support of the 10 courts currently on the payroll system):

- Reviewed 461 tested system changes
- Created 2 new quick references, 34 work instructions and 20 internal quick references
- Updated the Court Reference Manuals for all 10 courts and created new ones where needed
- Provided 220 main payrolls and 588 off-cycle payrolls for the 10 HR courts
- Processed 105,526 Direct Deposit Checks
- Responded to approximately 10,000 inquiries from a combination of e-mails and phone calls
- Processed payroll for 198 assigned judges

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- Processed 1,144 Organizational Action Requests for 10 HR courts

Table 2: Phoenix Human Resources System[2]

Accomplishment	Date Completed
A steering committee formed by the AOC voted to support the Court Human Resources and Information System (CHRIS) project and defined the project scope.	Nov 2004
The AOC completed the development and configuration of a CHRIS prototype.	Jun 2005
CHRIS was renamed as the Phoenix Human Resources System, which joined the Phoenix Financial System as part of an integrated system designed to serve the financial, human resources, and payroll needs of the trial courts.	Jun 2006
First installed in the Superior Court of Sacramento County, the Phoenix Human Resources System enabled electronic management of personnel administration, organizational management, payroll, time management, benefits administration, training and event tracking, and compensation administration.	Jun 2006
Five additional courts—the Superior Courts of Lake, Riverside, Santa Cruz, Siskiyou, and Stanislaus Counties—went live on the Phoenix HR System.	Jan 2007
Further deployment of the Phoenix Human Resources System was temporarily halted pending an upgrade of the system to be conducted during fiscal year 2008–2009 and until additional resources are provided for this component of the project.	Jul 2008
Scheduled to begin after the planned upgrade to the SAP system in 2009, the deployment of the Phoenix Human Resources System to the remaining 52 courts will include additional modules such as recruitment, performance management, personnel cost planning, and e-learning.	Jan 2009
The project's Blueprint Phase was completed in preparation for the SAP software upgrade from version 4.7 to 6.0 in collaboration with court staff.	Mar 2009
The testing and development for the planned statewide software upgrade was completed.	Apr 2009
The Phoenix System software was successfully upgraded in the six courts using the Phoenix Human Resources System, migrating from SAP version 4.7 to 6.0.	May 2009
Preparation for the statewide deployment of the Phoenix Human Resources System continues. The Global Blueprint phase determines the manner in which the payroll system will be designed and implemented in each of the remaining 51 courts based on the system requirements gathered as part of the extensive planning process. The recent budget reductions have had a significant impact on this critical step, but rather than ceasing the effort completely the Phoenix Program has slowed momentum and extended project completion to future fiscal years, contingent on the availability of resources.	Jul 2009

[2] Entries for prior year accomplishments are carried over unchanged from prior reports.

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Accomplishment	Date Completed
The Phoenix Human Resources System was initiated in the Superior Court of San Bernardino County. The AOC was approached by the court regarding implementation of the payroll system after receiving notification from San Bernardino County that it would no longer provide the court with payroll services for approximately 1,200 employees. Implementation efforts began in August, and the Trial Court Administrative Services Division anticipates payroll activities to begin in June 2010.	Aug 2009
The Phoenix Maintenance and Operations Stabilization project was launched. The staff of the Phoenix Program collaborated with the six courts already on the system to carry out the redesign of specific technical elements of existing payroll, benefits, and time management functions to ensure the creation of a more stable Human Capital Management (HCM) system with the goal of enhanced flexibility and automation statewide.	Dec 2009
Refinement of the SAP database, comprising information about trial court bargaining contracts and other similar data, continues. Staff will develop additional reports that can be extracted from the database as management tools.	Jan 2010
The Phoenix Steering Committee reached consensus on a number of guidelines for best practices that have an impact on financial and payroll matters. The finalized best practices were shared with the trial courts over the next few months.	Jan 2010
The Phoenix HR System pilot for implementation of the HR system continued in the Superior Court of San Bernardino County. Program staff continued to configure the system according to the business rules necessary to support the day-to-day operations in the court. The system configuration is 50 percent complete.	Feb 2010
The Phoenix Program launched an initiative to further assist the courts in the area of benefits administration. An online benefits enrollment function will be added to the Phoenix Employee Self-Service (ESS) portal to assist court HR staff in administering qualified life and work events in compliance with federal regulations.	Mar 2010
The AOC completed redesign of specific technical elements of existing payroll, benefits, and time management functions, with the goal of enhanced flexibility and automation in the Phoenix HR System.	Mar 2010
Preparation and testing for the implementation of the Phoenix HR System in the Superior Court of San Bernardino County were successfully completed.	May 2010
The Phoenix Program's Education Support Unit completed the Personnel Administration for Administrators and HR Analysts training for the Superior Court of San Bernardino County in anticipation of their Phoenix HR System launch. Additional training sessions on the payroll attributes of the system were conducted for 1,100 court staff through August 2010.	Jun 2010
Parallel testing was successfully completed in the Superior Court of San Bernardino County. The Phoenix System and the court's legacy system were tested within the same time frame using the same data to ensure that no discrepancies existed in any of the payroll configurations.	Jun 2010

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Accomplishment	Date Completed
The Phoenix Program implemented a number of improvements within the SAP application for the Phoenix System, reconfiguring the HR component by incorporating the redesign of specific technical elements with the goal of enhancing flexibility and automation uniformly among the courts on the system.	Jul 2010
Before the launch of the Phoenix HR System, Superior Court of San Bernardino County system users engaged in user acceptance testing to determine that the system meets all mutually agreed upon requirements. This testing was successfully completed.	Jul 2010
Phoenix Program staff collaboratively worked with court staff to successfully and seamlessly implement the Phoenix HR System in the Superior Court of San Bernardino County. A total of seven courts benefit from a fully integrated financial and human resources management system. The configuration utilized for the implementation at San Bernardino will serve as a blueprint for any future deployments made to the courts.	Aug 2010
The AOC previously manually logged directly into the CalPERS ACES system to upload and otherwise send data directly for payroll reporting. The ACES system has been decommissioned. A set of myCalPERS interfaces will automate data transfer between the Phoenix System and the new myCalPERS system. All technical automation components were deployed November 2011 along with retirement file extraction for four (4) Phoenix payroll courts.	Oct 2011
The deployment of the Phoenix HR System to the San Bernardino Superior Court served as an exercise in configuration that will represent a template for future deployments to the balance of the courts. The AOC awaits resources for the continuance of the system deployments.	Oct 2011
The Phoenix functional and technical teams collaborated on identification, testing, and implementation of appropriate critical year-end updates, including last-minute changes dictated by the Temporary Payroll Tax Cut Continuation Act of 2011. Implementation of these updates made it possible to process court employee payrolls with the most current reduced tax rates rather than wait to correct deductions in future payrolls, as the State Controller's Office was unfortunately forced to do.	Dec 2011
The Phoenix Program established the Phoenix Payroll Advisory Working Group that includes the court executive and human resources officers of the seven courts currently on the Phoenix HR System. This group meets monthly to discuss any proposed Phoenix HR System modifications in the interest of fully understanding the overall effect and impact any implemented change may have on each court. The Phoenix Payroll Advisory Working Group also reviews and comments on Best Practices for HR processing in the Phoenix System.	Jan 2011

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Accomplishment	Date Completed
Phoenix staff worked with executives of the Phoenix Steering Committee, and the Phoenix Human Resources Courts' Working Group to compile a set of Best Practice Guidelines for administration of certain human resources and payroll functions. These guidelines have helped to cement a common understanding of these functions from administrative and legal points of view, and will assist Phoenix with explanations of these common problem areas as the Phoenix Human Resources/Payroll System is deployed to remaining trial courts. The Best Practice Guidelines are available on the judicial branch website and will be continually updated and improved as needed.	Mar 2012
Phoenix myCalPERS development effort was completed. Interfaces with myCalPERS for employee retirement, 457 savings plans, and the Judges' Retirement System for courts that are currently using the Phoenix Human Resources/Payroll System, are now live. Work with trial courts and CalPERS on the remaining conversion issues has been completed. Transition assistance to courts that subscribe to CalPERS but are not yet on the Phoenix Human Resources/Payroll System is being provided.	June 2012
The application and testing of critical system-wide year-end updates began. This is an annual two-to-three month project that incorporates technical and functional resources at the AOC and courts to ensure compliance with changes to tax reporting requirements and software maintenance and support agreements.	Oct 2012
Requirements gathering and configuration to accommodate the implementation of the new Employee Pension Reform Act for the seven Phoenix payroll courts began. Phoenix Program staff attended a meeting with the Sacramento County Retirement System and the Sacramento Superior Court to discuss requirements under the act for new employees hired on or after January 1, 2013.	Nov 2012
Eight new benefit plans and several rate changes were implemented for all courts on the Phoenix HR Payroll System.	Nov 2012
Time and Payroll Management: New system configuration was implemented to o Administer a new furlough program at Stanislaus Superior Court; o Validate accounting codes in timesheet entry according to new financial reporting rules; and o Allow update of Phoenix HR Payroll for employee payments made outside the system.	Nov 2012
The Phoenix System underwent configuration changes meant to encompass necessary pension reform components for the seven Phoenix HR courts. Final requirements were also gathered for system configurations related to JRS pension reform.	Dec 2012
The system reconfigurations covering all of the tax changes expiring on December 31, 2012 were completed to ensure accurate tax calculations.	Dec 2012

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Accomplishment	Date Completed
The Portal Upgrade project was completed for all environments. This system upgrade enhances the human resources Employee Self Service/Manager Self Service (ESS/MSS) services by improving performance, and transports the system to a more current, stable and supportable software platform.	Dec 2012
Phoenix HR/Payroll Courts: The 2012 annual payroll tax process was successfully completed with the distribution of 3,668 Wage and Tax Statements (W-2s) to the employees of eight Superior Courts: Alpine, Lake, Riverside, Sacramento, San Bernardino, Santa Cruz, Siskiyou, and Stanislaus.	Jan 2013
The annual 1099's for all 58 court vendor and juror payments over $600, including interest payments of $10 or more, were compiled, printed, and distributed prior to the IRS deadline of January 31st. In total, 5,163 1099-MISC forms and 260 1099-INT forms were distributed to court payees. The 1099 process included year-end Phoenix System updates and customization that successfully combined different payment types and uploaded juror data into IRS required forms and files.	Jan 2013
Migration of 35+ Phoenix System Interfaces to Axway FTP Services: Efforts to migrate all current Phoenix System interfaces to an upgraded file transfer service for all participating courts and vendor providers was completed in January.	Jan 2013
The Portal Upgrade Project: This project is underway for all environments. This system upgrade enhances the human resources Employee Self Service/Manager Self Service (ESS/MSS) services by improving performance and transports the system to a more current, stable, and supportable software platform.	Feb 2013
Three new Riverside Superior Court interfaces: The technical development effort for the new Riverside Superior Court interfaces is complete. The project is expected to wrap up at the end of March once the court completes necessary file modifications.	Mar 2013
The Phoenix HR System was deployed to the Alpine Superior Court with the first payroll processed on June 14, 2013. Alpine is the 8th court to implement the system.	Jun 2013
The Trial Court Administrative Services Office began working with Yuba Superior Court on automating their HR and payroll services using the Phoenix System with an anticipated launch date of April 2014.	Oct 2013
The planning and development of the inclusion of four new vendors participating in the Stanislaus Superior Court's open enrollment cycle was completed. The deployment of these new system interfaces was scheduled for October 2013.	Oct 2013
The Phoenix HR System was successfully implemented in the Yuba Superior Court in April 2014 making it the ninth court to utilize the AOC's human resources management system for their payroll needs. Their first payroll was processed in May 2014 and the transition from their county's system was seamless.	Apr 2014
The Phoenix deployment team began work on the implementation of the Phoenix payroll system in Lassen Superior Court in May 2014 and anticipates completion in	May 2014

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Accomplishment	Date Completed
October 2014.	
The Phoenix HR System was successfully implemented in the Lassen Superior Court in September 2014 making it the 10th court to utilize the Judicial Council's human resources management system for their payroll needs.	Sep 2014

Center of Excellence

The Phoenix Program's Center of Excellence (COE) performs complex analysis of the technical aspects of accounting/human resources/payroll processes, business procedures, and operations to produce efficiencies and promote consistency in trial court administrative functions. It also assists in formulation of new or revised policies and/or procedures to meet court administrative and business operations needs, and implements automated processes where possible. The COE includes a technical unit that maintains the SAP environment and programming. SAP technical skills are a unique field in the Information Technology industry.

The Phoenix System runs on SAP Enterprise Resource Planning (ERP) software that integrates accounting, procurement, accounts payable, budgeting, human resource management, and payroll processing. This integration provides extreme efficiencies because accounting postings and personnel actions are automated based on industry and judicial branch standards. While this efficiency is recognized by all the trial courts, it does require the coordination of many skill sets to properly configure the system. Experts with knowledge in accounting, HR/payroll, SAP functional configuration, and technical development/architecture all exist within the COE. The Center of Excellence managed several improvement projects to enhance court finance/HR and procurement administration.

This recent fiscal year, the COE:

- Deployed the Phoenix HR System to the Yuba Superior Court in May 2014
- Deployed the Phoenix HR System to Lassen Superior Court in September 2014
- Developed and deployed new standards to existing HR interfaces: SBCERA, SCERS, and Great West Life
- Upgraded and deployed Employee Self Services for all HR courts on the Phoenix System
- Published additional procurement reports to the Business Warehouse providing a more robust solution for courts to monitor and reconcile purchasing activities
- Upgraded the Phoenix online help site to version 5.0 and restructured the HR online help. Total documents affected by both projects: 1,595
- Developed the Business Process Repository: Revisited, refined, and documented core Business Processes, including:
    - HR and Payroll Process documents created or amended: 39

    - HR and Payroll Configuration and Functional Specification documents created or amended: 154
    - Finance and Procurement Process documents created or amended: 9
    - FI and Procurement Configuration and Functional Specification documents created or amended: 99
- Implemented automatic transfer of check information to and from SAP to Riverside Superior Court's Bail Trust Checking (BTC) system
- Automated tracking of courts' Small Business and Seller's Permit Certification
- Processed 1,611 tickets for issues ranging from adding system users or authorization-level modifications to major configuration changes

Funding

The Phoenix Program is or has been funded by the Judicial Administration Efficiency and Modernization Fund, the Trial Court Improvement Fund, the State Trial Court Improvement and Modernization Fund, the Trial Court Trust Fund, the state General Fund, and reimbursements from and expenses incurred directly by the trial courts.

Challenges Facing the Phoenix Program

Courts continue to express interest in various specific functions of the financial and human resources system. Within existing resources, the Phoenix Program has extended the implementation of the payroll system to 2 additional small courts since the last report, bringing the total of courts currently on the system to 10. While there are several other larger courts requesting payroll services and the benefit of a fully integrated system, the program can only accommodate deploying small courts on the payroll system with existing resources. To fully continue expansion to serve more courts, additional judicial branch funding is needed.

Total Phoenix Program Funding and Expenses to Date

The attachment summarizes Phoenix Program revenues and expenses to date as well as projected expenditures through FY 2014–2015. Estimates reflect the full deployment of the Phoenix Financial System in all 58 superior courts and full deployment of the Phoenix Human Resources System in 10 courts.

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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: October 27, 2015

Title
Juvenile Dependency: Proposed Allocation for Fiscal Year 2015–2016 for Juvenile Dependency Counsel Collections Program

Rules, Forms, Standards, or Statutes Affected
N/A

Recommended by
Trial Court Budget Advisory Committee
Hon. Laurie M. Earl, Judge of the Superior Court of Sacramento County, and Cochair of the Trial Court Budget Advisory Committee

Zlatko Theodorovic, Director and Chief Financial Officer, Judicial Council Finance, and Cochair of the Trial Court Budget Advisory Committee

Agenda Item Type
Action Required

Effective Date
October 27, 2015

Date of Report
September 15, 2015

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Executive Summary

The Juvenile Dependency Counsel Collections Program (JDCCP) is a program under which courts collect reimbursements from parents and other responsible persons liable for the cost of dependency-related legal services to the extent that those persons are able to pay. The Trial Court Budget Advisory Committee recommends that the council allocate $872,692 remitted through the JDCCP in fiscal year 2014–2015 to the trial courts, according to the methodology adopted by the council at its August 23, 2013 meeting.

Recommendation

The Trial Court Budget Advisory Committee (TCBAC) recommends that the Judicial Council, effective October 25, 2015:

1. Allocate $872,692 remitted through the Juvenile Dependency Counsel Collections Program (JDCCP) in fiscal year (FY) 2014–2015 to the trial courts as outlined in Attachment A.

2. If the recommended JDCCP funding allocation in Attachment A receives the council's approval, the TCBAC recommends that the council direct staff to notify courts regarding the remaining balance of JDCCP funding allocated in FY 2013–2014 and FY 2014-2015, and the amount of any new allocations in FY 2015–2016. Any portion of a court's allocated funds not distributed should be carried forward for distribution to the court in FY 2015–2016 and subsequent years.

The recommended allocation outlined in Attachment A has been determined using the methodology approved by the council at its August 23, 2013 meeting.[1]

Previous Council Action

At its October 26, 2012 meeting, the Judicial Council adopted the JDCCP Guidelines[2], which fulfilled the council's legislative mandate to "establish a program to collect reimbursements from the person liable for the costs of counsel appointed to represent parents or minors pursuant to Welfare & Institutions Code section 903.1 in dependency proceedings." (Welf. & Inst. Code, § 903.47(a).)[3] As required by statute, the Guidelines include a statewide standard for determining an obligated person's ability to pay reimbursement as well as policies and procedures to allow courts to recover costs associated with implementing the program.

At its August 23, 2013 meeting, the council adopted amendments to the Guidelines by adding current section 14, which addressed the outstanding issue of how the Judicial Council could equitably allocate the funds remitted through the JDCCP among the trial courts in compliance with the statutory mandate that the funds be used to reduce court-appointed attorney caseloads. Section 14 of the JDCCP Guidelines describes the allocation methodology, which considers each court's participation in the program and each court's percentage of the statewide court-appointed counsel funding need.

The council then allocated funds remitted through the JDCCP for the first time since the JDCCP's inception at the February 20, 2014 Judicial Council meeting.[4] At this meeting, the

[1] Report to the Judicial Council, August 23, 2013, *http://www.courts.ca.gov/documents/jc-20130823-itemF.pdf*.

[2] The Guidelines took effect January 1, 2013, and are published as Appendix F of the California Rules of Court. *http://www.courts.ca.gov/documents/appendix_f.pdf*.

[3] Report to the Judicial Council. October 26, 2012, *http://www.courts.ca.gov/documents/jc-20121026-itemA20.pdf*.

[4] Report to the Judicial Council, February 20, 2014, *http://www.courts.ca.gov/documents/jc-20140220-itemJ.pdf*.

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council approved an allocation of $2.3 million to eligible trial courts using the methodology in section 14 of the JDCCP guidelines. This allocation represented funds collected from January 2010 through June 30, 2013. At the October 28, 2014 Judicial Council meeting, the council again approved an allocation of $525,139 to eligible trial courts.[5] This allocation represented funds collected July 2013 through June 30, 2014. Any portion of a court's allocated funds not spent and distributed has been carried forward for distribution to the court in FY 2015–2016 and subsequent years, even if a court is not eligible for an allocation in the current fiscal year.

Rationale for Recommendation

The estimates of courts' funding needs are computed using the Caseload Funding Model (CFM) approved by the council in 2007 and 2008.[6] The CFM estimates that the total funding required to enable each full-time equivalent, appointed dependency attorney to represent no more than 188 clients at a given time—the maximum caseload permissible to ensure the adequate and competent representation required by statute—is higher than the current state allocation. The current base allocation for court-appointed dependency counsel is $103.7 million, less than the estimated need.

In FY 2014–2015, the trial courts have remitted a cumulative $872,692, excluding administrative costs and monies recovered to offset their cost of collections, through the JDCCP to the TCTF. These funds are part of the overall TCTF fund balance available for use in 2015–2016 and beyond. Statute requires the Judicial Council to allocate the monies remitted through the JDCCP to the trial courts for use to reduce court-appointed attorney caseloads to the council's approved standard.

For a court to be eligible to receive an allocation of these funds, it must meet the participation and funding need requirements described in section 14 of the JDCCP Guidelines.[7] Every court that has satisfied those requirements receives an allocation. Each eligible court's allocated share of the JDCCP funds is equivalent to its share of the aggregate funding need of all the eligible courts. Attachment A displays the recommended allocation amount for each court.

Comments, Alternatives Considered, and Policy Implications

None.

[5] Report to the Judicial Council, October 28, 2014, http://www.courts.ca.gov/documents/jc-20141028-itemK.pdf

[6] The CFM uses data collected in the 2002 Caseload Study to calculate the amount of time a court-appointed attorney would spend working on each stage of a juvenile dependency case. Because the basic elements of a dependency case remain the same as they were in 2002, the constants in the CFM remain valid indicators of attorney workload per case. The variable inputs in the CFM—total clients and attorney salaries—are updated periodically to reflect changing conditions.

[7] As described in section 14 of the JDCCP Guidelines, a court has demonstrated its participation in the program by submitting an annual report required by section 13 of the program guidelines and adopting a rule or policy to inquire regarding a responsible person's ability to reimburse the cost of appointed counsel at each dispositional hearing.

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Implementation Requirements, Costs, and Operational Impacts

None.

Relevant Strategic Plan Goals and Operational Plan Objectives

The JDCCP aligns with Goal II established by the Judicial Council. Goal II specifies that "[t]he judiciary must maintain its status as an independent, separate, and equal branch of government… The judiciary will unify in its advocacy for resources and policies that support and protect independent and impartial judicial decisionmaking in accordance with the State Constitution and the law. The branch will maintain the highest standards of accountability for its use of public resources and adherence to its statutory and constitutional mandates." The courts' collective efforts to implement the JDCCP—and the funds allocated from their collections efforts—demonstrate the branch's adherence to statutory and constitutional mandates, as well as highlight the judiciary's unity in advocating for much needed resources.

Attachments

1. Attachment A: Recommended Allocation per Court of $872,692 in Collections Generated by the Juvenile Dependency Counsel Collections Program

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Recommended Allocation per Court of $875,692 in Collections Generated by the Juvenile Dependency Counsel Collections Program

Attachment A

	Funding Analysis										
Court	Estimated Funding Need per Caseload Funding Model (CFM) Col. A	Estimated Funding Need as Percentage of Statewide Need (Col. A Total) Col. B	Allocation of CAC Base Funding in FY 14-15 Col. C	Allocation as a Percentage of Total CAC Base Funding in FY 14-15 (Col. C Total) Col. D	Eligible for JDCCP Funding[1] Col. E	Funding Need of Eligible Courts Col. F	Need as a % of Total Need of Eligible Courts (Col. F Total) Col. G	Recommended Allocation of FY 14-15 JDCCP Collections $872,692 Col. K	Allocated to Courts in FY 13-14 & FY 14-15 $2,840,138.97 Col. L	FY 13-14 & FY 14-15 Allocation Spent through 8/31/15 Col. M	FY 13-14 & FY 14-15 Allocation Remaining Col. N
Alameda	$3,568,391.25	2.50%	4,037,391.42	3.52%	N	-	0.00%	-	-	-	-
Alpine*	$0.00	0.00%	-	0.00%	N	-	0.00%	-	-	-	-
Amador	$108,977.36	0.08%	115,232.82	0.10%	N	-	0.00%	-	-	-	-
Butte	$857,644.89	0.60%	664,922.53	0.58%	Y	857,644.89	0.89%	7,788.04	26,476.96	-	26,476.96
Calaveras	$267,542.13	0.19%	123,939.87	0.11%	Y	267,542.13	0.28%	2,429.48	5,737.02	-	5,737.02
Colusa†	$54,656.35	0.04%	38,470.84	0.03%	Y	54,656.35	0.06%	496.32	293.14	-	293.14
Contra Costa	$2,783,093.72	1.95%	3,030,406.45	2.64%	N	-	0.00%	-	-	-	-
Del Norte	$173,163.98	0.12%	214,730.47	0.19%	N	-	0.00%	-	-	-	-
El Dorado	$634,259.75	0.44%	788,644.04	0.69%	N	-	0.00%	-	-	-	-
Fresno	$3,090,382.13	2.16%	2,900,593.50	2.53%	N	-	0.00%	-	-	-	-
Glenn	$170,096.83	0.12%	90,417.17	0.08%	Y	170,096.83	0.18%	1,544.60	5,261.47	5,261.00	0.47
Humboldt	$531,239.24	0.37%	543,896.35	0.47%	N	-	0.00%	-	-	-	-
Imperial	$657,410.15	0.46%	591,127.67	0.52%	N	-	0.00%	-	-	-	-
Inyo	$36,325.76	0.03%	72,277.40	0.06%	N	-	0.00%	-	-	-	-
Kern	$3,019,074.60	2.11%	2,347,547.69	2.05%	Y	3,019,074.60	3.14%	27,415.41	111,083.91	111,084.00	(0.09)
Kings	$835,680.19	0.59%	354,778.66	0.31%	Y	835,680.19	0.87%	7,588.59	19,983.69	19,984.00	(0.31)
Lake	$239,288.90	0.17%	296,119.41	0.26%	N	-	0.00%	-	-	-	-
Lassen	$109,312.69	0.08%	106,890.87	0.09%	N	-	0.00%	-	-	-	-
Los Angeles	$59,680,829.60	41.81%	40,230,156.50	35.07%	Y	59,680,829.60	62.10%	541,945.69	1,780,277.05	1,448,983.18	331,293.87
Madera	$646,944.56	0.45%	225,443.30	0.20%	Y	646,944.56	0.67%	5,874.73	16,068.83	-	16,068.83
Marin	$269,602.68	0.19%	388,488.02	0.34%	N	-	0.00%	-	-	-	-
Mariposa	$37,799.72	0.03%	38,070.02	0.03%	N	-	0.00%	-	1,817.86	-	1,817.86
Mendocino	$543,733.58	0.38%	711,060.06	0.62%	N	-	0.00%	-	-	-	-
Merced	$1,086,997.22	0.76%	738,248.37	0.64%	Y	1,086,997.22	1.13%	9,870.73	32,783.77	-	32,783.77
Modoc	$23,497.12	0.02%	16,089.69	0.01%	Y	23,497.12	0.02%	213.37	-	-	-
Mono	$17,297.98	0.01%	13,956.28	0.01%	N	-	0.00%	-	103.62	104.00	(0.38)
Monterey	$788,774.34	0.55%	434,540.70	0.38%	Y	788,774.34	0.82%	7,162.65	19,795.72	15,927.00	3,868.72
Napa	$327,052.78	0.23%	212,285.18	0.19%	Y	327,052.78	0.34%	2,969.88	9,391.29	-	9,391.29
Nevada	$190,277.81	0.13%	226,123.46	0.20%	N	-	0.00%	-	-	-	-
Orange	$5,940,684.83	4.16%	6,418,278.21	5.60%	N	-	0.00%	-	-	-	-
Placer	$817,300.25	0.57%	518,086.51	0.45%	Y	817,300.25	0.85%	7,421.69	21,945.48	-	21,945.48
Plumas	$79,175.27	0.06%	154,059.11	0.13%	N	-	0.00%	-	-	-	-
Riverside	$10,704,510.37	7.50%	6,080,321.99	5.30%	Y	10,704,510.37	11.14%	97,204.80	327,502.87	-	327,502.87
Sacramento	$4,795,003.68	3.36%	5,205,426.30	4.54%	N	-	0.00%	-	-	-	-
San Benito	$190,277.81	0.13%	89,163.23	0.08%	Y	190,277.81	0.20%	1,727.86	6,334.31	-	6,334.31
San Bernardino	$8,847,918.22	6.20%	4,963,161.38	4.33%	Y	8,847,918.22	9.21%	80,345.58	242,055.83	2,641.00	239,414.83
San Diego	$7,437,299.56	5.21%	9,408,199.40	8.20%	N	-	0.00%	-	-	-	-
San Francisco	$2,946,535.55	2.06%	3,761,098.38	3.28%	N	-	0.00%	-	-	-	-
San Joaquin	$2,714,055.11	1.90%	2,982,578.46	2.60%	N	-	0.00%	-	-	-	-
San Luis Obispo	$783,022.49	0.55%	699,248.41	0.61%	N	-	0.00%	-	-	-	-
San Mateo	$1,164,714.03	0.82%	554,581.81	0.48%	Y	1,164,714.03	1.21%	10,576.46	29,275.16	29,275.00	0.16
Santa Barbara	$1,221,970.01	0.86%	1,557,378.94	1.36%	N	-	0.00%	-	-	-	-
Santa Clara	$3,610,995.66	2.53%	4,508,063.17	3.93%	N	-	0.00%	-	-	-	-

Recommended Allocation per Court of $875,692 in Collections Generated by the Juvenile Dependency Counsel Collections Program

Attachment A

	Funding Analysis										
Court	Estimated Funding Need per Caseload Funding Model (CFM) Col. A	Estimated Funding Need as Percentage of Statewide Need (Col. A Total) Col. B	Allocation of CAC Base Funding in FY 14-15 Col. C	Allocation as a Percentage of Total CAC Base Funding in FY 14-15 (Col. C Total) Col. D	Eligible for JDCCP Funding[1] Col. E	Funding Need of Eligible Courts Col. F	Need as a % of Total Need of Eligible Courts (Col. F Total) Col. G	Recommended Allocation of FY 14-15 JDCCP Collections $872,692 Col. K	Allocated to Courts in FY 13-14 & FY 14-15 $2,840,138.97 Col. L	FY 13-14 & FY 14-15 Allocation Spent through 8/31/15 Col. M	FY 13-14 & FY 14-15 Allocation Remaining Col. N
Santa Cruz	$664,719.84	0.47%	863,288.87	0.75%	N	-	0.00%	-	-	-	-
Shasta	$932,733.52	0.65%	681,817.68	0.59%	Y	932,733.52	0.97%	8,469.90	28,641.28	28,641.00	0.28
Sierra	$3,064.84	0.00%	13,758.53	0.01%	N	-	0.00%	-	-	-	-
Siskiyou	$185,933.73	0.13%	245,373.43	0.21%	N	-	0.00%	-	-	-	-
Solano	$920,126.17	0.64%	875,639.32	0.76%	N	-	0.00%	-	-	-	-
Sonoma	$1,209,365.54	0.85%	1,137,764.28	0.99%	N	-	0.00%	-	-	-	-
Stanislaus	$1,143,397.34	0.80%	1,107,189.42	0.97%	N	-	0.00%	-	-	-	-
Sutter	$256,010.15	0.18%	143,904.29	0.13%	Y	256,010.15	0.27%	2,324.76	9,407.66	-	9,407.66
Tehama	$341,729.86	0.24%	163,859.07	0.14%	Y	341,729.86	0.36%	3,103.16	10,364.15	-	10,364.15
Trinity	$124,126.09	0.09%	93,829.12	0.08%	Y	124,126.09	0.13%	1,127.16	692.88	-	692.88
Tulare	$1,735,722.06	1.22%	954,552.93	0.83%	Y	1,735,722.06	1.81%	15,761.63	49,300.85	-	49,300.85
Tuolumne	$205,269.40	0.14%	110,593.02	0.10%	Y	205,269.40	0.21%	1,864.00	7,054.13	-	7,054.13
Ventura	$2,100,302.42	1.47%	1,151,974.74	1.00%	Y	2,100,302.42	2.19%	19,072.29	59,142.74	59,142.36	0.38
Yolo	$592,744.21	0.42%	404,106.64	0.35%	Y	592,744.21	0.62%	5,382.55	17,813.12	-	17,813.12
Yuba	$331,544.67	0.23%	200,854.61	0.18%	Y	331,544.67	0.34%	3,010.67	1,534.17	-	1,534.17
Unallocated			100,000.00			-					
Total	**$142,749,600.00**		**114,700,000.00**			**96,103,693.66**	**100.00%**	**872,692.00**	**2,840,138.96**	**1,721,042.54**	**1,119,096.42**
Reserved for admin.								**233,390.00**	**528,653.00**		
Total collected								**1,106,082.00**	**3,368,791.96**		

1. A court is eligible for an allocation if the court has met both the *Funding Need* and *Participation* requirements described in section 14 of the JDCCP Guidelines. This table indicates a court's eligibility to receive an allocation based on the *Funding Need* criteria. Courts that meet the *Funding Need* criteria must also meet the *Participation* requirements in order to receive an allocation.

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 27, 2015

Title
Court Adoption and Permanency Month: Judicial Council Resolution

Rules, Forms, Standards, or Statutes Affected
None

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
October 27, 2015

Date of Report
September 17, 2015

Contact
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Executive Summary

The Family and Juvenile Law Advisory Committee recommends adopting a resolution proclaiming November to be Court Adoption and Permanency Month. As it has since 1999, in observance of National Adoption Month, the Judicial Council can recognize the ongoing efforts of California's juvenile courts and their justice partners to provide children and families with access to fair, understandable judicial proceedings leading to timely, well-informed, and just permanency outcomes. The resolution will also give courts the opportunity to hold special events finalizing adoptions from foster care and raising community awareness of the importance of finding safe, stable, and permanent homes for every child or youth in foster care.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council adopt the attached resolution, effective October 27, 2015, proclaiming November 2015 to be Court Adoption and Permanency Month.

Previous Council Action

The Judicial Council first declared November to be Court Adoption and Permanency Month in California in 1999. Since that successful observance, the council has continued to reaffirm this declaration, demonstrating its commitment to judicial procedures and collaborative practices that promote timely case resolution and permanency for children and youth in foster care. The council's Family and Juvenile Law Advisory Committee, other advisory groups, and council staff have worked to implement council and legislative directives relating to adoption and permanency, as well as to support the juvenile courts and their local justice partners each November to highlight both ongoing and special adoption and permanency efforts.

This year, Governmental Affairs staff worked with Assemblymember McCarty's office to restart the annual tradition of the Legislature declaring November Court Adoption and Permanency month. In an overwhelming show of support for the importance of permanency for foster youth, the bill passed both houses unanimously.

Rationale for Recommendation

Each year in California, nearly half a million[1] reports are made of child abuse and neglect, and approximately 23,400[2] children enter foster care for the first time. Currently, about 62,900[3] children in the state are living apart from their families in child welfare–supervised, out-of-home care. Thirty-eight percent of these children have been in foster care for more than two years; 9,800 children remain in "temporary" care after more than five years.[4] Twenty-four percent of the youth in care are transitional age youth aged 16–20.[5] Of the more than 26,000 children who were able to leave foster care in the fiscal year ending June 30, 2014, 57 percent were reunited with their families, 22 percent were adopted, and 6 percent were emancipated.[6] Permanent placement of a child in a committed relationship intended to last a lifetime—with the child's family if that is possible or another loving family if it's not—is the goal of the juvenile court process. Children and families deserve access to a timely, understandable, and fair process that actively engages them, as well as the placement agency, in the work needed to achieve this goal. It is critical that California's courts continue to learn and implement new strategies to ensure that each child leaves foster care as quickly as possible with one or more lifelong connections to a

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[1] Barbara Needell et al., *Child Welfare Services Reports for California* (2014), retrieved September 29, 2014, from the University of California, Berkeley, Center for Social Services Research website at *http://cssr.berkeley.edu/ucb_childwelfare*. Specific reports on referrals are at *http://cssr.berkeley.edu/ucb_childwelfare/allegations.aspx*.

[2] *Ibid.* Specific reports on first entries to care are at *http://cssr.berkeley.edu/ucb_childwelfare/entries.aspx*.

[3] *Ibid*. Specific point-in-time reports on children in child welfare–supervised foster care are at *http://cssr.berkeley.edu/ucb_childwelfare/PIT.aspx*.

[4] *Ibid*. Specific reports on the amount of time in care are at *http://cssr.berkeley.edu/ucb_childwelfare/PIT.aspx*.

[5] *Ibid.* Specific reports on the age of youth in care at http://cssr.berkeley.edu/ucb_childwelfare/PIT.aspx

[6] *Ibid*. Specific reports on exits from foster care are at *http://cssr.berkeley.edu/ucb_childwelfare/exits.aspx*. The remaining 13 percent were placed in guardianships or other types of placement.

caring adult and that the courts continue to promote the placement of every child in a safe, loving, permanent home.

The state has been working on innovative programs to improve the lives of foster children. One initiative—a collaboration of the California Department of Social Services (CDSS), Judicial Council staff, and other state organizations—provides training to help family members or significant others maintain a permanent and responsible role in a youth's life. Experience shows that without permanent connections, youth leaving foster care face even more overwhelming odds against a successful adulthood.[7]

Court Adoption and Permanency Month is one way California courts can raise awareness, demonstrate commitment, and bring about changes in the court system to stabilize children's lives. The month of November was selected to coincide with National Adoption Month, when government agencies and nonprofit organizations highlight innovative efforts to promote permanency, including adoption, and to raise awareness of the need for safe, permanent homes for children in foster care.

Since Court Adoption and Permanency Month was initiated in 1999, many individual California courts have dedicated specific adoption days in November—including Adoption Saturdays and Adoption Fridays—as well as other events, to clear their backlogs of adoption cases. The Judicial Council encourages courts to do so as circumstances permit.

The Judicial Council also encourages courts with no backlog of adoption cases to hold adoption celebrations or commemorate other permanent connections for foster children and to institute local system programs as part of the statewide November effort to raise awareness of adoption and permanency.

Many local courts—in conjunction with county social services, local nonprofit agencies, and others—celebrate and highlight Court Adoption and Permanency Month in November and throughout the year. Events honoring permanent connections for foster children this year include the following:

- ***Alameda County***
  The Superior Court of Alameda County will join with the Alameda County Social Services Agency to finalize a full calendar of adoptions in celebration of the county's 16th annual Adoption Day.

- ***Los Angeles County***
  Los Angeles will celebrate its fifth adoption of a child from the delinquency system, only the eighth such adoption in the state, on Thursday, November 5, 2015.

[7] Cal. Dept. of Soc. Services, *Improving the Lives of California's Children and Families*: *Accountability in Action* (rev. Aug. 2004).

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- ***Placer County***
  Placer County and PlacerKids will be holding their 14th annual National Adoption Day celebration. There will be music, food, balloons, face painting, crafts, and much more as they celebrate many of their children finding forever homes.

- ***San Bernardino County***
  San Bernardino County Children and Family Services and the San Bernardino County Juvenile Dependency Court will collaborate on their 19th annual Adoption Finalization Celebration. This year, hundreds of family members, Children and Family Services staff, Court staff, and members of the community will come together to finalize 80 to 100 adoption ceremonies. The celebration will include music, lunch, children's activities, games, and photo opportunities.

- ***San Diego County***
  The Superior Court of San Diego County, the county Health and Human Services Agency, and other partners will celebrate National Adoption Day on Friday, November 20, 2015, at Juvenile Court Central. As every year, the court will dedicate two courtrooms to finalizing adoptions and will fill the lobby area full of fun and festivities. This year's event will include live music, refreshments, and plenty of picture taking. A clown will paint faces and make balloon figures while everyone enjoys lots of goodies donated by various organizations. Each child also receives a special gift bag with various goodies. Families often spend the afternoon rather than leaving after their adoption hearing.

- ***Santa Clara County***
  The Superior Court of Santa Clara County will celebrate its 10th Annual Adoption Day on November 20, 2015, by finalizing adoptions for approximately 20 families.

- ***Tulare County***
  The Superior Court will host an Adoption Day event to celebrate families whose adoptions have been finalized since last November. The event will be held on November 20, 2015, and will include a presentation by the Board of Supervisors and a celebration at Roller Town.

Many California courts also support the Heart Gallery program, which raises community awareness through professional photography exhibits of children and youth in foster care who need adoptive families and permanent lifelong relationships. The number of Heart Galleries continues to grow throughout the nation, with California locations in Alameda, Fresno, Kern, Los Angeles, Orange, Riverside, Sacramento, San Bernardino, San Diego, San Francisco, San Luis Obispo, San Mateo, Santa Barbara, Shasta, and Solano Counties.

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A wide variety of resources on adoption and permanency are available on the California Dependency Online Guide website, maintained by council staff in the Center for Families, Children & the Courts (CFCC). These materials provide ideas, resources, and best practices for collaboration among courts and their communities to raise awareness of the necessity for safe and permanent homes for all foster children. Available materials on permanency and adoption include articles; research reports; more than 50 California cases; manuals, including the *Court Adoption and Permanency Resource Guide* (2006); toolkits on concurrent planning, family engagement, and other permanency topics; and links to online courses, fact sheets, and resource libraries. The materials are searchable by type of document or by topic, such as adoptability, adoption assessments, concurrent planning, and permanency. The California Dependency Online Guide is available free of charge to all California judicial officers, attorneys, and child welfare professionals, and it is currently used by more than 4,000 subscribers.

Comments, Alternatives Considered, and Policy Implications

The annual resolution declaring November as Court Adoption and Permanency Month continues to be well received and celebrated by courts, court-connected professionals, and the adoption and permanency community. It does not require circulation for comment as part of an official invitation to comment cycle.

The Judicial Council could choose not to proclaim November 2015 to be Court Adoption and Permanency Month and instead rely on the resolutions of 1999 through 2014 to promote adoption and permanency activities in November. However, the Family and Juvenile Law Advisory Committee believes that a new resolution each year highlights the ongoing critical need to seek permanence for foster children.

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Implementation Requirements, Costs, and Operational Impacts

Court Adoption and Permanency Month is a voluntary program. Every court can participate at a level it considers appropriate to its jurisdiction. Suggested commemorative events range from no-cost activities for promoting adoption and permanency to higher-cost, system-wide programs.

Participation by families in any special event or project in any court is also voluntary. The emphasis on the month of November is not intended as a rationale for scheduling adoption hearings just so they coincide with a special event. Each case should be heard as soon as it can be calendared, and the families involved should be offered the opportunity to participate in a court's later-occurring event.

Attachments and Links

1. Judicial Council resolution proclaiming November 2015 to be Court Adoption and Permanency Month

JUDICIAL COUNCIL OF CALIFORNIA

RESOLUTION

Whereas, consistent with its commitment to support practices and procedures that promote access to justice and improved case outcomes for California's children and families, the Judicial Council has recognized November as Court Adoption and Permanency Month every year since 1999;

Whereas nearly half a million incidents of child abuse and neglect are reported each year in California, and about 23,400 children each year enter child welfare–supervised foster care for the first time;

Whereas nearly 62,900 children in California live apart from their families in child welfare–supervised out-of-home care;

Whereas 38 percent of the children in foster care in California have lived apart from their families for two or more years;

Whereas 24 percent of the youth in care are transitional-age youth aged 16 to 20;

Whereas, of the more than 26,000 California children who left foster care in 2014, 57 percent were reunited with their families, 22 percent were adopted, and 6 percent exited foster care without reunifying or obtaining a permanent home by the time they reached the age of majority;

Whereas local courts and communities throughout California have created programs promoting permanency that have resulted in a reduction in the number of children waiting to live in safe, stable, and permanent homes;

Whereas the Judicial Council has endeavored to support these programs by creating resources—including children's activity books, orientation videos, and written materials for parents—to encourage parents and children in the dependency process; and

Whereas the Judicial Council remains committed to working with the Governor, the Legislature, and local courts and communities to ensure that every abused or neglected child finds a safe, stable, and permanent home with a loving family as quickly as possible;

Now, therefore, be it resolved that I, Tani G. Cantil-Sakauye, Chief Justice of California, on behalf of the Judicial Council of California, do hereby proclaim November 2015 to be Court Adoption and Permanency Month, during which the courts and their communities are encouraged to join in activities to promote permanency.

In witness whereof,
I have hereunto set my hand this 27th day of October, 2015

Attest:

TANI G. CANTIL-SAKAUYE
Chief Justice of California and
Chair of the Judicial Council of California

MARTIN HOSHINO
Administrative Director,
Judicial Council

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 27, 2015

Title
Realignment of Stat Trial Court Improvement and Modernization Fund Expenditures

Submitted by
Zlatko Theodorovic, Director and Chief Financial Officer

Agenda Item Type
Information Only

Date of Report
September 18, 2015

Contact
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Executive Summary

Upon recommendation of the Trial Court Budget Advisory Committee, at the April 17, 2015, Judicial Council meeting, the Council approved the consideration of shifting certain costs away from the State Trial Court Improvement and Modernization Fund (IMF) beginning in 2016-17. This action would permanently shift approximately $2.867 million in expenditures to the Judicial Council's General Fund appropriation to support core central costs of the Court Interpreters Program, Treasury Services-Cash Management, Audit Services, Uniform Civil Fees, and Regional Office Assistance Group and $17,000 in expenditures to the Trial Court Trust Fund, Program 45.45-Court Interpreter appropriation to support the Domestic Violence Family Law Interpreter Program. This memorandum provides staff's assessment of (1) whether it is appropriate to shift these expenditures to alternative fund sources, and (2) whether sufficient ongoing expenditure authority exists within the Judicial Council's General Fund appropriation and Program 45.45-Court Interpreter Trial Court Trust Fund appropriation to support the shift of these costs.

Previous Council Action

The Trial Court Budget Advisory Committee (TCBAC) has been charged by the council to make recommendations to the Judicial Council on annual allocations from the IMF. At the March 23, 2015, meeting, TCBAC made several recommendations regarding the 2015-16 allocations for

the IMF. The recommendation included allocating $59.372 million in 2015-16 from the IMF for various programs and projects, elimination of funding for various projects and programs starting in 2015-16 or 2016-17, and shifting costs for various programs to either other judicial branch funds, courts, or other sources. The Judicial Council approved TCBAC's recommendations and directed staff to evaluate the possibility of shifting funding for specified programs from the IMF to alternative funding sources.

Methodology and Process

Recommendation #11 stated that the Judicial Council consider shifting the costs of translating domestic violence forms under the Domestic Violence – Family Law Interpreter Program to the TCTF Program 45.45 Court Interpreter Appropriation. TCBAC believes the budget act language that specifies what the TCTF Program 45.45 appropriation can be used for permits the use of the appropriation for the cost of translating domestic violence forms. Recommendation #12 stated that the Judicial Council consider shifting the "core central office" costs of the Court Interpreters Program – Testing, Development, Recruitment, and Education, Treasury Services – Cash Management, Audit Services, Uniform Civil Fees, and Regional Office Assistance Group programs to the Judicial Council's General Fund appropriation. TCBAC believes the programs that they identified as "core central office" functions, those typically performed by a central administrative office, and initially funded under the council's statewide administrative infrastructure initiative (excluding the CIP program), should not be funded from the IMF. The 2015-16 allocations for these programs are as follows:

Program	Total
Domestic Violence – Family Law Interpreter Program	$17,000
Subtotal, Recommendation #11	**$17,000**
Court Interpreters Program (Testing, Development, etc.)	$143,000
Treasury Services – Cash Management	$238,000
Audit Services	$660,000
Uniform Civil Fees	$366,000
Regional Office Assistance Group	$1,460,000
Subtotal, Recommendation #12	**$2,867,000**
Total, All Programs	**$2,884,000**

Program Descriptions

Domestic Violence – Family Law Interpreter Program. The translation of forms used for Domestic Violence Restraining Orders is vital to ensure that non-English speaking or LEP litigants understand the forms and procedures related to requesting or responding to a restraining order. Because restraining orders seek to prevent further harm and violence to protected parties and can detrimentally affect a restrained party's fundamental rights and liberties, it is imperative that all information and forms published by the Court be interpreted and translated on an ongoing basis as laws change.

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Court Interpreters Program. Ensures access to the courts for persons with limited English proficiency or those who are deaf or hard-of-hearing, by developing programs and practices that enhance the quality of interpretation and increase the availability of qualified interpreters in the courts.

Treasury Services – Cash Management. The centralized treasury system offers a broad spectrum of banking services to enable the trial courts to maximize their return on investments by pooling invested funds on a statewide basis. Daily cash management is one of the vital functions included in the array of services offered by the statewide treasury function.

Audit Services. The unit conducts risk assessments, develops audit programs, performs audits of the judicial branch entities, assists state and external auditors, and recommends improvements based on audit results, thereby playing a key role in meeting the branch's oversight responsibilities.

Uniform Civil Fees System. The Uniform Civil Fees System supports the centralized reporting, distribution, and legislatively-mandated reporting of uniform civil fees collected by all 58 superior courts. The system generates reports for the State Controller's Office and various entities that receive the distributed funds.

Regional Office Assistance Group. The Regional Office Assistance Group provides oral and written legal advice to the trial courts on issues related to court administration, labor and employment law, business transactions, and procurements of goods and services.

Fiscal Status of the Trial Court Trust Fund

The Budget Act of 2015 eliminated the $20 million transfer from the IMF to the TCTF and included up to $66.2 million General Fund to backfill fee and assessment revenues that support courts' base allocation. The projected 2015-16 ending fund balance in the TCTF is $20.6 million. Excluding about $17.0 million in restricted fund balance, approximately $3.7 million remains as unrestricted fund balance. At this time, it is estimated that the TCTF may have a revenue shortfall of approximately $5.6 million in 2015-16.

Fiscal Status of the State Trial Court Improvement and Modernization Fund

Based on up-to-date revenue and expenditure data, the IMF is expected to have a projected 2015-16 ending fund balance of -$11.1 million, with a structural deficit of -$15.9 million, primarily due to declining revenues and the depletion of fund balance. TCBAC noted that any new proposal or program costs that relied on IMF funding must include information on alternative funding options. If the Judicial Council approved all of the recommendations for the 2015-16 IMF allocations, the 2015-16 ending fund balance is still expected to be negative (-$1.7 million). Further, assuming revenues continue at the same levels as expected for 2015-16, it is anticipated

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that the 2016-17 ending fund balance will also be negative unless further reductions to allocations are made.

TCBAC's Recommendation #11 – Consider shifting expenditures for the Domestic Violence – Family Law Interpreter Program to Program 45.45-Court Interpreters appropriation.

Provisional language in the annual Budget Act imposes limits on the use of Program 45.45 funds. The language provides that:

"The funds appropriated in Schedule (4) shall be *for payments to contractual court interpreters, and certified or registered court interpreters* employed by the courts for services provided during court proceedings and other services related to pending court proceedings, including services provided outside a courtroom, *and the following court interpreter coordinators*: 1.0 each in counties of the 1st through the 15th classes, 0.5 each in counties of the 16th through the 31st classes, and 0.25 each in counties of the 32nd through the 58th classes. . . ."

Judicial Council staff believes that translation of forms, though a critical language access service, does not fall under the limiting language of what may be funded out of Program 45.45. Translation of forms is not a payment to a contractual court interpreter or certified or registered court interpreter for services provided during court proceedings or related to court proceedings, nor funding for court interpreter coordinators.

TCBAC's Recommendation #12 - Consider shifting the "core central office" costs of the Court Interpreters Program – Testing, Development, Recruitment, and Education, Treasury Services – Cash Management, Audit Services, Uniform Civil Fees, and Regional Office Assistance Group programs to the Judicial Council's General Fund appropriation.

In 2012-13, 2013-14 and 2014-15, Program 30-Judicial Council indicated savings of $2.2 million, $3.5 million, and $1.3 million, respectively. As the branch grappled with budget reductions in previous years, the Judicial Council was conservative in both hiring practices and spending, leading to a slightly higher level of savings in 2012-13 and 2013-14. The Judicial Council's budget has since stabilized somewhat and staff believe that ongoing savings will be significantly less in the out years. It is expected that the majority of the Judicial Council offices will begin to fill some of the critical positions held vacant. While staff have been able to maintain the most primary of functions, other essential tasks have been set aside. Additionally, the Judicial Council is expected to absorb annual rent cost increases until an augmentation is provided in the following fiscal year, leading to even less anticipated savings. Beginning January 1, 2016, the new compensation structure for the new classifications will go into effect. While it is estimated that there may be some minor General Fund savings within the Judicial Council in the first year of implementation, it is projected that there may be cost increases as eligible salaries are adjusted in future years. Finally, as the comprehensive review of the services offered by the Judicial Council is completed, to the extent workload and staffing

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priorities change and services and functions are realigned, the Judicial Council must maintain flexibility to adapt quickly to changes. Any commitment of Judicial Council funding from outside sources limits the Council's ability to implement changes and enhance the needs of our customers.

Policy and Cost Implications

This request would permanently shift $2.884 million from the State Trial Court Improvement and Modernization Fund to other funding sources and is comprised of two components:

(1) $17,000 from the State Trial Court Improvement and Modernization Fund to Program 45.45-Court Interpreter Program appropriation within the Trial Court Trust Fund.

(2) $2.867 million from the State Trial Court Improvement and Modernization Fund to the Judicial Council's General Fund appropriation.

While these programs provide valuable services to support trial court operations, Judicial Council staff believes that translation of forms does not fall under the limiting language of what may be funded out of Program 45.45-Court Interpreters. Further, while there is no statutory impediment to shifting the "core central office" costs of Court Interpreters Program – Testing, Development, Recruitment, and Education, Treasury Services – Cash Management, Audit Services, Uniform Civil Fees, and Regional Office Assistance Group programs to the Judicial Council appropriation, an analysis of the Judicial Council's General Fund appropriation indicates there is not sufficient ongoing available appropriation authority to absorb the cost of these services.

Possible Recommendations

Analyze all services/programs funded from the State Trial Court Improvement and Modernization Fund and Trial Court Trust Fund. In many cases, expenditures from the IMF are for services provided directly to trial courts free of charge, but are a necessary function of court operation. As indicated in Chapter 4 of the January 2015 audit by the California State Auditor, the Auditor recommended that the Judicial Council should evaluate services provided to the trial courts and consider implementing a fee-for-service model. If Judicial Council determines these services are critical, an evaluation of all programs funded from the IMF could be undertaken. For example, services such as accounting and accounts payable currently funded from the IMF may be more appropriately funded by the trial courts. If the Judicial Council determines these and other services are critical and necessary to court operations, the Judicial Council may consider shifting the costs of these services to the trial courts, alleviating the burden on both the IMF and TCTF.

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on XXXXXXXX

Title
Court Security: Report on Screening Equipment Replacement for Fiscal Year 2014–2015

Agenda Item Type
Information Only

Date of Report
August 21, 2015

Submitted by
Judicial Council Staff
Martin Hoshino, Administrative Director
Edward Ellestad, Acting Manager, Security Operations

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Executive Summary

The Screening Equipment Replacement Program has been in operation since fiscal year 2006–2007 and provides $2.286 million in funding from the Trial Court Trust Fund to replace outdated or malfunctioning screening equipment in the trial courts. Each year the Administrative Director approves the list of entrance screening equipment to be funded that year through this program. This report updates the council on the entrance screening equipment that was replaced in fiscal year 2014–2015 using that funding.

Previous Council Action

On July 25, 2013, the Judicial Council approved the allocation of $2.286 million from the Trial Court Trust Fund for the Security Equipment Replacement Program managed by the Judicial Council Office of Security. This amount has been allocated to the program each year since fiscal year (FY) 2006–2007. In December 2007, the Judicial Council delegated to the Administrative Director the authority to approve the expenditures of these funds.

On October 25, 2013, in its review of appropriate delegations to the Administrative Director, the Judicial Council maintained this delegation but required an annual report to the council on the screening equipment replaced in that year.

Policy and Cost Implications

Since FY 2006–2007, the Security Operations unit has managed the Screening Equipment Replacement Program to replace aged and malfunctioning entrance screening equipment in trial courts. As a result of limited funding and improvements in the life cycle of the equipment, in recent years, program funding has also been used to support extensions of service agreements that accompanied the initial purchase. Such agreements provide a cost-effective means to maintain the equipment for a longer life span and reduce costs for replacement equipment.

Equipment is generally replaced on an eight-year cycle. Replacement could happen sooner, if the equipment gets very heavy use or breaks down and cannot be repaired, or later, if it is used little and remains in working condition. The program spends approximately $36,000 for each x-ray unit and $5,600 for each magnetometer, including the delivery, installation, and training, as well as five years of on-site service coverage and estimated sales tax. After the expiration of the five-year service agreement, service agreements are renewed annually at a cost $4,200 per year for an x-ray machine and $900 per year for a magnetometer. The cost of some x-ray machine service agreements may vary based on model type.

In FY 2014 – 2015 the option to receive an advance against the total reimbursement amount was implemented and was utilized by seventeen courts. This reduced the burden on their cash flow and allowed them to make the recommended purchases earlier in the fiscal year. Also, instead of allocating equipment purchase amounts using an estimated amount, the costs were calculated using the tax rates for each location, resulting in fewer funds left unspent at the end of the cycle.

The program budget has not changed since the program began, but costs and the amount of equipment have increased. To address the resulting budget shortfall, some equipment was replaced ahead of schedule prior years, and some was delayed for replacement in FY 2014 – 2015. In order to more evenly spread the number of units due for replacement in any given cycle, the replacement period is being extended from eight to ten years. This change will take place over an estimated three year period.

Table 1 details the expenditures from the Screening Equipment Replacement Program for fiscal year 2014–2015, including the name of the court that received the equipment, the type(s) of equipment, and the actual expenditures. Total expenditures for the fiscal year were $2,275,488. The balance that went unspent, $10,512 will not be retained in the Security Equipment Replacement Program but will revert to the Trial Court Trust Fund.

Table 1. Screening Equipment Replacement Program Expenditures for FY 2014–2015

County Name	Purchase Type	No. of Items Purchased	Cost Per Item ($)	Amount Expended ($)
Alameda	Magnetometer Service Agreement Extension	7	900	6,300

County Name	Purchase Type	No. of Items Purchased	Cost Per Item ($)	Amount Expended ($)
	X-ray Service Agreement Extension	8	4,200	33,600
Alpine	Magnetometer Service Agreement Extension	1	1,200	1,200
Butte	Magnetometer Service Agreement Extension	1	900	900
	X-ray Service Agreement Extension	3	4,200	12,600
	X-ray Service Agreement Extension	2	6,500	13,000
	Equipment Transfer	1	1,853	1,853
Colusa	Magnetometer Service Agreement Extension	1	900	900
	X-ray Service Agreement Extension	1	4,200	4,200
Contra Costa	X-ray Service Agreement Extension	1	4,200	4,200
Del Norte	Magnetometer Service Agreement Extension	2	900	1,800
	X-ray Service Agreement Extension	1	4,200	4,200
El Dorado	Magnetometer	4	5,527	22,107
	X-ray	4	34,674	138,697
Fresno	Magnetometer Service Agreement Extension	9	900	8,100
	X-ray Service Agreement Extension	7	4,200	29,400
	X-ray	1	35,062	35,062
Humboldt	Magnetometer Service Agreement Extension	1	900	900
	X-ray Service Agreement Extension	1	4,200	4,200

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County Name	Purchase Type	No. of Items Purchased	Cost Per Item ($)	Amount Expended ($)
	Magnetometer	1	5,569	5,569
	X-ray	1	35,068	35,068
Imperial	Magnetometer Service Agreement Extension	1	900	900
Inyo	Magnetometer Service Agreement Extension	2	900	1,800
	X-ray Service Agreement Extension	3	4,200	12,600
Kern	Magnetometer Service Agreement Extension	10	900	9,000
	X-ray Service Agreement Extension	4	4,200	16,800
Kings	Magnetometer Service Agreement Extension	3	900	2,700
	X-ray Service Agreement Extension	3	4,200	12,600
Lake	Magnetometer Service Agreement Extension	1	900	900
	X-ray Service Agreement Extension	1	4,200	4,200
	Magnetometer	2	5,533	11,066
	X-ray	1	32,675	32,675
Los Angeles	Magnetometer Service Agreement Extension	6	900	5,400
	X-ray Service Agreement Extension	25	4,200	105,000
Madera	Magnetometer	3	5,583	16,748
	X-ray	3	35,808	107,423
Mendocino	X-ray	1	34,997	34,997
Merced	Magnetometer	6	5,533	33,196
	X-ray	3	34,799	104,398

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County Name	Purchase Type	No. of Items Purchased	Cost Per Item ($)	Amount Expended ($)
Modoc	X-ray Service Agreement Extension	1	4,200	4,200
Mono	Magnetometer Service Agreement Extension	1	900	900
	X-ray Service Agreement Extension	2	4,200	8,400
	Magnetometer	1	5,543	5,543
Monterey	Magnetometer Service Agreement Extension	1	900	900
	X-ray Service Agreement Extension	1	4,200	4,200
	Magnetometer	6	5,575	33,447
	X-ray	3	34,920	104,760
Napa	Magnetometer Service Agreement Extension	2	900	1,800
Nevada	Magnetometer Service Agreement Extension	2	900	1,800
	X-ray Service Agreement Extension	2	4,200	8,400
Orange	Magnetometer Service Agreement Extension	2	900	1,800
	X-ray Service Agreement Extension	5	4,200	21,000
	Magnetometer	1	5,533	5,533
Placer	Magnetometer Service Agreement Extension	1	900	900
	Magnetometer	2	5,509	11,018
Riverside	Magnetometer Service Agreement Extension	32	900	28,800
	X-ray Service Agreement Extension	10	4,200	42,000
	X-ray	3	34,653	103,958

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County Name	Purchase Type	No. of Items Purchased	Cost Per Item ($)	Amount Expended ($)
	Equipment Transfer	1	2,911	2,911
Sacramento	Magnetometer Service Agreement Extension	3	900	2,700
	X-ray Service Agreement Extension	2	4,200	8,400
	X-ray	1	33,772	33,772
San Diego	Magnetometer Service Agreement Extension	15	900	13,500
	X-ray Service Agreement Extension	11	4,200	46,200
San Francisco	Magnetometer	3	5,567	16,705
	X-ray	1	35,183	35,183
San Joaquin	Magnetometer Service Agreement Extension	1	900	900
	X-ray Service Agreement Extension	3	4,200	12,600
	Magnetometer	5	5,545	27,725
	X-ray	4	35,303	141,212
	Equipment Transfer	1	4,500	4,500
San Luis Obispo	Magnetometer Service Agreement Extension	1	900	900
	X-ray Service Agreement Extension	4	4,200	16,800
	Magnetometer	3	5,533	16,598
San Mateo	Magnetometer Service Agreement Extension	1	900	900
	X-ray Service Agreement Extension	1	4,200	4,200
	X-ray	3	34,944	104,831
Santa Barbara	Magnetometer Service Agreement Extension	11	900	9,900
	X-ray Service Agreement	6	4,200	25,200

County Name	Purchase Type	No. of Items Purchased	Cost Per Item ($)	Amount Expended ($)
	Extension			
Santa Clara	X-ray Service Agreement Extension	11	4,200	46,200
Shasta	Magnetometer Service Agreement Extension	3	900	2,700
	X-ray Service Agreement Extension	3	4,200	12,600
	Magnetometer	1	5,509	5,509
Siskiyou	Magnetometer Service Agreement Extension	1	900	900
	Magnetometer	1	5,509	5,509
Solano	Magnetometer Service Agreement Extension	2	900	1,800
	X-ray Service Agreement Extension	4	4,200	16,800
	Magnetometer	2	5,563	11,125
	X-ray	1	34,838	34,838
Sonoma	Magnetometer Service Agreement Extension	2	900	1,800
	Magnetometer	1	5,569	5,569
	X-ray	3	35,026	105,077
Stanislaus	Magnetometer Service Agreement Extension	4	900	3,600
	X-ray Service Agreement Extension	5	4,200	21,000
Sutter	Magnetometer	2	5,509	11,018
	X-ray	2	34,893	69,786
Tehama	Magnetometer Service Agreement Extension	1	900	900
	X-ray Service Agreement Extension	1	4,200	4,200

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County Name	Purchase Type	No. of Items Purchased	Cost Per Item ($)	Amount Expended ($)
Trinity	X-ray Service Agreement Extension	1	4,200	4,200
Tulare	Magnetometer Service Agreement Extension	3	900	2,700
	X-ray Service Agreement Extension	1	4,200	4,200
Tuolumne	X-ray Service Agreement Extension	3	4,200	12,600
	Magnetometer	3	5,533	16,598
Ventura	Magnetometer Service Agreement Extension	6	900	5,400
Yolo	X-ray Service Agreement Extension	1	2,100	2,100
	X-ray	2	34,752	69,504
Yuba	Magnetometer Service Agreement Extension	2	900	1,800
	X-ray Service Agreement Extension	1	4,200	4,200
		Total Expended		**$2,275,488**
		Total Budget		**$2,286,000**
		Unspent Funds		**$10,512**

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