



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 28, 2011

Title	Agenda Item Type
Unlawful Detainer: Answer to Unlawful Detainer Complaints	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Revise form UD-105	January 1, 2012
Recommended by	Date of Report
Civil and Small Claims Advisory Committee Hon. Dennis M. Perluss, Chair Hon. Patricia M. Lucas, Vice Chair	August 12, 2011
	Contact
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Executive Summary

The Civil and Small Claims Advisory Committee recommends revising *Answer—Unlawful Detainer* (form UD-105) to add a new affirmative defense established by the Legislature in 2010 in unlawful detainer actions for victims of domestic violence, sexual assault, or stalking. This revision is necessary to respond to a legislative mandate that the Judicial Council shall, on or before January 1, 2012, create a new form or revise an existing form to enable parties to assert the new affirmative defense. (Code Civ. Proc., §1161.3(e).)

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council approve the revised *Answer—Unlawful Detainer* (form UD-105), effective January 1, 2012, to include a new affirmative defense added by new legislation and, at the same time, make minor formatting revisions to facilitate electronic assembly of the form in the future.

The revised form is attached at pages 6–7.

Previous Council Action

The Judicial Council approved *Answer—Unlawful Detainer* (form UD-105) in 1981 and has made various revisions to the form since then. Because the affirmative defense created by Senate Bill 782 is new, the Judicial Council did not previously include it in unlawful detainer answer form.

Rationale

Legislative implementation

Code of Civil Procedure section 1161.3 (Sen. Bill 782 [Yee]; Stats. 2010, ch. 626) was added by legislation creating an affirmative defense to an eviction based on the tenant's having been the victim of domestic violence, sexual assault, or stalking. The statute¹ provides methods of documenting the domestic violence, sexual assault, or stalking. (§ 1161.3(a)(1).) It authorizes eviction on three days' notice if either (1) the tenant allows the perpetrator to visit the property, or (2) the landlord reasonably believes that the presence of the perpetrator poses a physical threat to others or to a tenant's right to quiet possession.(§1161.3(b).)

The statute mandates that the Judicial Council shall, on or before January 1, 2012, develop a new form or revise an existing form that may be used by a party to assert in the responsive pleading the grounds stated in this section as an affirmative defense to an unlawful detainer action. (§1161.3(e).) The revisions to form UD-105 recommended in this report implement that mandate.

Changes to Judicial Council form UD-105

Statutory compliance. The proposal would add a new affirmative defense to form UD-105 item 3, which states various affirmative defenses that the tenant may plead. New item 3i provides: "Plaintiff seeks to evict defendant based on acts against defendant or a member of defendant's household that constitute domestic violence, sexual assault, or stalking" and includes a parenthetical explanation of the documentation requirements of the new defense. This addition meets the legislative requirement in Code of Civil Procedure section 1161.3(e).

Revised caption. Currently, form design must take into account the need to make the forms compatible with electronic forms generation and assembly, while still making them workable for self-represented litigants who handwrite them. To this end, the caption box on form UD-105 has been revised to capture information in separately identified fields for attorney or party name, state bar number, law firm name, street address, city, state, and zip code. Previously, this information was entered in undifferentiated and unlabeled open text lines.

This change will allow the form to better integrate with computerized case management systems that need to receive each item of caption data separately in order to populate other forms and

¹ Unless otherwise indicated, all statutory citations hereafter are to the Code of Civil Procedure.

documents with the data. It will also facilitate integration of the form into an automated document assembly process.

Overflow instructions. Overflow instructions have been added at items 2b(1), 2b(2), 4b, 4c, and 5e. Overflow instructions alert the user to create an attachment if the response for the item will exceed the available space on the face of the form. The current Judicial Council forms overflow format is to place the entire answer on the attachment page rather than to split the answer between the face of the form and an attachment page. Therefore, the box at form item 3j (now 3k) indicating that the answer is “continued” on an attachment page has been replaced with a statement indicating that the complete response is on the attachment form. The current format is also to place the overflow instruction before the field so that the user will consider whether an attachment will be needed before starting to enter the answer in the field. These changes also facilitate providing for overflow within an automated document assembly process.

Short title. The short title for party names formerly at the top of page 2 of the form has been deleted. Judicial officers report that there is no need for this component, and legal aid attorneys report that providing the information can be burdensome when assisting with a large number of cases. The case number item remains at the top of the second page.

Comments, Alternatives Considered, and Policy Implications

Comments

The proposed revised form was circulated for public comment in spring 2010. Comments were received from seven commentators, including three superior courts (for Modoc, Monterey, and San Diego Counties)², Bay Area Legal Aid, the Orange County Bar Association, a commissioner from the Superior Court of Riverside County, and a private individual.³

All the commentators except for the private individual generally supported the proposed revisions, although most suggested some modification, as discussed below.

Comments on the statement of the new affirmative defense. In addition to seeking comments on the revisions generally, comments were solicited on the language that should be added to the form describing the new affirmative defense. In conformance with the other items for affirmative defenses on the form, the text for item 3i provides a summary description of the defense, without including a detailed list of all elements that must be proven. The Invitation to Comment asked for comments on whether the phrase “in violation of Code of Civil Procedure section 1161.3” should be added to the end of the proposed item to essentially incorporate the other elements of the statutory defense into the item.

² The Superior Court of Sacramento County noted that it had reviewed the proposal but had no comment to make.

³ A chart summarizing the comments and the committee’s responses to each is attached at pages 8–13.

Both the Orange County Bar Association and the Superior Court of Monterey County thought that a reference to the code section should be added. Bay Area Legal Aid and Commissioner Pamela Thatcher from the Superior Court of Riverside County disagreed. Commissioner Thatcher stated that such a reference may make self-represented litigants, who may be unaware of what the statute requires, hesitate to check the affirmative defense even when it is applicable. The legal aid commentator was also concerned about the burden on self-represented litigants. That commentator also saw no need to add the statutory reference when none of the other defenses included such a reference and noted that if the intent was to ensure that the defendant understood the documentation required to make such a defense, the intent would be better served by adding instructions to that effect in the form. The committee agreed and has modified item 3i to include such instructions.

The Superior Court of San Diego County noted a concern that the language in item 3i does not constitute a defense, but only reiterates that the defendant has been accused of being involved with domestic violence. However, item 3i states that the eviction is “*based on acts against*” the tenant or the tenant’s family that constitute domestic violence or one of the other listed wrongful acts. This language comports with the statute, which prohibits a landlord from terminating a tenancy based on such acts. (§ 1161.3.)

Mr. Russell Haberman, the private individual commenting on the proposal, disagreed with the proposed revision to the form on the ground that the new language does nothing to cure or improve what he views as a problem with the entire unlawful detainer process. Most of Mr. Haberman’s concerns are outside the scope of the current proposal. His objection that it does not make sense to make stalking or the other crimes a defense to an eviction is one that may have been appropriate to make to the legislation but is not relevant at this point, with the legislation already in place and the Judicial Council mandated to provide a form for the new affirmative defense.

Other Comments. The Superior Court of San Diego County requested that the form be revised and made into a plain language form in light of its extensive use by self-represented litigants. This proposal is beyond the scope of the current proposal but can be considered by the committee in the future.

Commissioner Thatcher suggested some further revisions to the form based on her experience with unlawful detainers. The committee declined the commentator’s suggestions to rearrange various items on the form, but agreed with her suggestion that the language requiring that each defendant without an attorney filing the answer sign the document be repeated at the end of the form. The form has been revised to repeat that language as suggested.

Alternatives Considered

Although the committee briefly considered not recommending any action on this form, it concluded that the forms need to be revised in light of the legislative mandate that the council

either create a new form to be used by tenants to assert the new defense or revise a current form. (§ 1161.3(e).) The committee concluded that revising the current form was more efficient and simpler than creating an entirely new form.

Implementation Requirements, Costs, and Operational Impacts

Form UD-105 is prepared by parties, so the revisions should impose no significant costs on the courts. Should a court choose to provide copies of forms upon request, the court may incur the expense of creating or copying the blank forms.

Attachments

1. Form UD-105, at pages 6–7
2. Comment chart, at pages 8–13

ATTORNEY OR PARTY WITHOUT ATTORNEY		FOR COURT USE ONLY	
NAME	STATE BAR NO.	08.18.11 Not Approved by the Judicial Council	
FIRM NAME:			
ADDRESS:			
CITY:	STATE: ZIP CODE:		
E-MAIL ADDRESS (Optional):	TELEPHONE NO.:		
ATTORNEY FOR (Name):	FAX NO. (Optional):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF			
STREET ADDRESS:			
MAILING ADDRESS:			
CITY AND ZIP CODE:			
BRANCH NAME:			
PLAINTIFF:			
DEFENDANT:			
ANSWER—UNLAWFUL DETAINER		CASE NUMBER:	

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

answers the complaint as follows:

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

- a. Defendant generally denies each statement of the complaint. (Do not check this box if the complaint demands more than \$1,000.)
- b. Defendant admits that all of the statements of the complaint are true EXCEPT:
- (1) Defendant claims the following statements of the complaint are false (state paragraph numbers from the complaint or explain below or on form MC-025): Explanation is on MC-025, titled as Attachment 2b(1)

- (2) Defendant has no information or belief that the following statements of the complaint are true, so defendant denies them (state paragraph numbers from the complaint or explain below or on form MC-025):
- Explanation is on MC-025, titled as Attachment 2b(2)

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

- a. (nonpayment of rent only) Plaintiff has breached the warranty to provide habitable premises.
- b. (nonpayment of rent only) Defendant made needed repairs and properly deducted the cost from the rent, and plaintiff did not give proper credit.
- c. (nonpayment of rent only) On (date): before the notice to pay or quit expired, defendant offered the rent due but plaintiff would not accept it.
- d. Plaintiff waived, changed, or canceled the notice to quit.
- e. Plaintiff served defendant with the notice to quit or filed the complaint to retaliate against defendant.
- f. By serving defendant with the notice to quit or filing the complaint, plaintiff is arbitrarily discriminating against the defendant in violation of the Constitution or the laws of the United States or California.
- g. Plaintiff's demand for possession violates the local rent control or eviction control ordinance of (city or county, title of ordinance, and date of passage):
- (Also, briefly state in item 3k the facts showing violation of the ordinance.)
- h. Plaintiff accepted rent from defendant to cover a period of time after the date the notice to quit expired.
- Plaintiff seeks to evict defendant based on acts against defendant or a member of defendant's household that constitute domestic violence, sexual assault, or stalking. (A temporary restraining order, protective order, or police report not more than 180 days old is required naming you or your household member as the protected party or a victim of these crimes.)
- j. Other affirmative defenses are stated in item 3k.

CASE NUMBER: []

3. AFFIRMATIVE DEFENSES (cont'd)

k. Facts supporting affirmative defenses checked above (identify facts for each item by its letter from page 1 below or on form MC-025):

[] Description of facts is on MC-025, titled as Attachment 3k.

4. OTHER STATEMENTS

a. [] Defendant vacated the premises on (date):
b. [] The fair rental value of the premises alleged in the complaint is excessive (explain below or on form MC-025):

[] Explanation is on MC-025, titled as Attachment 4b.

c. [] Other (specify below or on form MC-025 in attachment):

[] Other statements are on MC-025, titled as Attachment 4c.

5. DEFENDANT REQUESTS

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

[] All other requests are stated on MC-025, titled as Attachment 5e.

6. Number of pages attached: _____

UNLAWFUL DETAINER ASSISTANT (Bus. & Prof. Code §§ 6400—6415)

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

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

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

Signature lines for defendant or attorney with arrows pointing to the right.

VERIFICATION

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

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

Signature line for defendant with arrow pointing to the right.

SP11-05

Unlawful Detainer: Form to Be Used to Answer Unlawful Detainer Complaint (revise form UD-105)

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

Commentator	Position	Comment	Committee Response
<p>1. Bay Area Legal Aid By Protima Pandey, Staff Attorney San Francisco, California</p>	<p>AM</p>	<p>Comment is requested on whether the phrase “in violation of Code of Civil Procedure section 1161.3” should be added to the end of the proposed item 3i, to essentially incorporate the other elements of the statutory defense into the item.</p> <p>We are of the opinion that there is no need to include the specific code section at the end of the proposed item. Our reasons are:</p> <ol style="list-style-type: none"> 1. None of the other affirmative defenses on UD-105 mention the specific code section that contains the statutory defense. 2. Pro per litigants will be burdened with looking up the statutory definition in order to ensure that the specific code section mentioned does apply. Most pro per litigants do not have the ability to access statutes within the short time period available for filing an answer to an eviction. 3. If the intent of adding the phrase “in violation of Code of Civil Procedure section 1161.3” is to ensure that the defendant understands what documentation is required for them to successfully use this defense, it is better to explain the documents rather than to reference the code section. 4. The Judicial Council should consider adding the following phrase in parenthesis and in italics on the form: <i>(A temporary restraining order, emergency protective order or a police report not more than 180 days old is required naming you or your household member as the protected party</i> 	<p>The committee has concluded that further information about the affirmative defense is appropriate, but, in light of this and other comments determined that adding the statutory reference was unnecessary. The committee has instead modified item 3i to include a parenthetical with instructions concerning the documentation that is required by the new statute.</p>

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2. Russell Haberman Long Beach, California	N	<p><i>or a victim of the above-stated crimes.)</i></p> <p>The proposed changes to the form are of a good intent, but misguided, let me explain. California tenants have to be the most vulnerable, and abused segment of our community. Being the unlawful detainer poster child, I feel that I have the experience to address the court on this matter. Three years ago I was forced to sell my home that I owned out right, and began to rent. My first landlord a realtor and her two attorneys conspired to defraud me before they even met me. My third and present landlord is trying to do the same thing. My second landlord forced me to finish an addition to his property at a great out of pocket expense and then tried to sell the property two months short of the lease expiring and then tried to have me incarcerated on false charges in order to not have to pay me the security deposit due to the unethical conduct of most people in the California real estate industry, coupled by the burdensome task of moving and finding a new place to live, with the addition of being hindered with credit and background checks, also (this is the biggy) <i>having to fight litigation and the sheriff while all of your possessions are in storage is absolutely inhumane.</i> It's true there are tenants from hell, yet anyone who would legislate a three-day eviction probability is calloused, and short minded. I cannot tell you about the UD proceedings because my response letter to the charges was destroyed by the court, and the</p>	<p>The committee appreciates the commentator's time in reviewing the proposed form, but notes that the comments do not address the content of the proposed revision to the form, which is mandated by statute. Revisions to the entire unlawful detainer process as suggested by the commentator are beyond the scope of this proposal.</p>

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		<p>court did not feel it necessary to invite me to my own hearing and the state bar thought that the blatant transgression of my constitutional guarantees was well within thier legal parameters. Unlawful detainer is a bizarre stretch of civil litigating powers and needs to be overhauled. the proposed changes to the form is a cover up, it is the same as saying that a person is exempt from paying capital gains taxes if they are being stalked. It doesn't make sense.</p> <p>If you would be so kind as to let me make one more comment: When an unlawful detainer occurs, in my case it was the unwillingness to pay the last month rent on a one year lease. a public record is created upon filing. This filing record shows up immediately and disables the tenant from ever renting or leasing any property in the entire United States FOREVER! If you log onto any property management website, the first announcement you will see says "If you have ever had an Unlawful Detainer filed against you, whether you won or lost your case, you need not apply" I was stuck in a hotel with my three cats for ten weeks before I found a landlord that was so out of the loop and desperate that I waved 5g's in his face and he leased me the house. But each and every time I need to rent from this time forward I will always be denied. large price for missing a payment especially when my landlord had committed so many crimes and acts of violence against me while attempting to steal all of my resources. Presuming that a landlord is honest is like</p>	

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3. Orange County Bar Association By John Hueston, President	AM	Paragraph 3i (Affirmative Defenses) should be modified to add at the end of the sentence: "in violation of Code of Civil Procedure section 1161.3." This will incorporate the terms of the statute upon which the defense is based.	The committee has concluded that further information about the affirmative defense is appropriate, but, in light of other comments determined that adding the statutory reference was unnecessary. The committee has instead modified item 3i to include a parenthetical with instructions concerning the documentation that is required by the new statute.
4. Superior Court of Modoc County By Ronda Gysin Court Operations Manager	A	No specific comments.	No response required.
5. Superior Court of Monterey County By Diana Valenzuela Operations Manager	AM	There is further clarification needed to 3i. as a pro per litigant can potentially miss altogether that this affirmative defense relates specifically to CCP 1161.3 and they must meet the elements for the protection to apply. Our proposal: "Plaintiffs demand for possession violates Code of Civil Procedure 1161.3 as Plaintiff seeks to terminate the tenancy based on acts committed by others of domestic violence, sexual assault or stalking against Defendant."	The committee has concluded that further information about the affirmative defense is appropriate, but, in light of other comments determined that adding the statutory reference was unnecessary. The committee has instead modified item 3i to include a parenthetical with instructions concerning the documentation that is required by the new statute.
6. Superior Court of San Diego County By Michael M. Roddy, Executive Officer	AM	We request that this form be revised and made into a plain language form. More often than not, UD defendants are not represented by an attorney, and this form is not easy for the layperson to understand. Item 3i: The way this item is currently worded, it does not appear to be a defense. It seems to	Revising the form to a plain language form is beyond the scope of this proposal. The committee will consider that suggestion in the future. The committee has concluded that the statement in item 3i does describe an affirmative defense.

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7. Hon. Pamela Thatcher Commissioner Superior Court of Riverside County	AM	<p>just reiterate that they have been accused of being involved with DV. Should this be reworded and made into a defense?</p> <p>Attachment statements for items 4(b), 4(c), and 5(e): Should be consistent with the attachment statements on item 2 and say "Complete Answer is specified (or explained/stated) in Attachment xx."</p> <p>I handle UDs every day, and base my comments on that experience. Most of the answers are submitted by pro per defendants with little or no assistance. The telephone no. is one of the most important items of information, and it would be more helpful if the state bar no. was below the city, with the telephone no. back at the top in its original location; if we could add a space for an apartment no. that would be helpful--the reason many defendants do not receive the clerk's notice of trial is because the defendants fail to also include their apartment nos. on their answers.</p> <p>In Paragraph no. 1 the language parenthetically appearing on the necessity of signatures would be better on page two where the signature lines are, as it was in the original form, rather than expecting a pro per to realize this direction refers to signatures on a subsequent page;</p> <p>Paragraph 3 for affirmative defenses could move the subparagraph h below subparagraph d, so all payment issues on the three day notice are</p>	<p>The attachment statements have been modified in light of this comment to provided greater consistency.</p> <p>The committee has concluded that the arrangement of items in the attorney/party information box should remain consistent with other forms.</p> <p>The committee has further modified the form to reiterate this statement on the final page in light of this comment.</p> <p>The committee has determined that the list of affirmative defenses should remain in the current order.</p>

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		<p>grouped together;</p> <p>I do not believe that we need to reference the code section for the new subparagraph i re: domestic violence because we do not reference code sections for any of the other affirmative defenses and pro pers may not understand that reference and it may cause some to not want to check the box because they would not fully understand the reference.</p>	<p>The committee has concluded that further information about the affirmative defense is appropriate, but, in light of this and other comments determined that adding the statutory reference was unnecessary. The committee has instead modified item 3i to include a parenthetical with instructions concerning the documentation that is required by the new statute.</p>