



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
Civil Procedure: Rule and Forms for Expedited Hearings on Petitions for Relief From Financial Obligations During Active Military Service	Action Required
	Effective Date
	January 1, 2012
Rules, Forms, Standards, or Statutes Affected	Date of Report
Adopt Cal. Rule of Court, rule 3.1372; adopt forms MIL-010 and MIL-015, and approve form MIL-020	August 3, 2011
	Contact
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Recommended by	
Civil and Small Claims Advisory Committee Hon. Dennis M. Perluss, Chair Hon. Patricia M. Lucas, Vice Chair	

Executive Summary

The Civil and Small Claims Advisory Committee recommends a new rule and new forms to assist servicemembers in filing and courts in handling petitions for the special relief from financial obligations provided to servicemembers called up to active duty. California law provides that when members of the National Guard or the United States military reserves are called to active military service, they may seek relief from financial obligations during their time in service and up to six months after their return. (Mil. & Vet. Code, § 400 et seq.) The law was recently amended to provide that petitions for such relief must be heard within 25 days of filing. (Assem. Bill 2365 [Lieu]; Stats. 2010, ch. 385.)

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2012:

1. Adopt new rule 3.1372, providing that petitions by servicemembers under Military and Veterans Code section 409.3 for relief from financial obligations must be served in the same manner as a summons in a civil action;
2. Adopt *Notice of Petition and Petition for Relief From Financial Obligations During Military Service* (form MIL-010) and *Declaration in Support of Petition for Relief From Financial Obligations During Military Service* (form MIL-015) as mandatory forms; and
3. Approve *Order on Petition for Relief From Financial Obligations During Military Service* (form MIL-020) as an optional form.

The text of the proposed rule is attached at page 7; copies of the proposed forms are attached at pages 8–13

Previous Council Action

The council has not taken any previous actions relating to petitions for relief under Military and Veterans Code section 400 et seq.

Rationale for Recommendation

California law provides that members of the National Guard or reserves who are called for active duty may be temporarily relieved from financial obligations in situations where their active duty materially affects their ability to pay such obligations. (Mil. & Vet. Code, § 409.3.)

Servicemembers seeking to obtain such relief have encountered problems in having their petitions heard and acted on in the short time between the call to active duty and their departure. As a result, in 2010 AB 2365 amended the law to provide that courts must set hearing on such petitions for relief within 25 days of filing. The amendment requires that service of the petition be completed at least 10 days before the hearing date and any opposition due 5 days before the hearing. AB 2365 also provides that no filing fees for these petitions will be imposed. The proposed rule and forms have been developed to assist servicemembers in filing such petitions and courts in handling them. Currently, such petitions are individually drafted, frequently by servicemembers who are self-represented. Use of the forms will ensure that the parties present factual support, if available, for all the required elements of the petitions, in a clear and organized format to aid the court in its review.

Rule 3.1372

The Military and Veterans Code statute specifies *when* the petition must be served but not in what manner. The proposed rule provides that the petition be served in the manner of a summons in a civil action.

The rule proposed here is analogous to the rules regarding service of petitions for injunctions. (Cf. rule 3.1152, regarding scheduling and serving petitions for injunctions in civil harassment

matters.) Rule 3.1152 is in the process of being amended; the rule proposed here is similar to the proposed amended rule.

In addition to addressing the manner of service, the proposed rule contains a provision that memorandums in support or opposition are not required. A legal memorandum, particularly from the petitioning servicemembers, is unnecessary as all legally required assertions are included in the form petitions.

Forms¹

The *Notice of Petition and Petition for Relief From Financial Obligations During Military Service* (form MIL-010) starts with instructions that inform the clerk that no filing fee is required for the petition and that tell the petitioner when the petition must be served. Because no existing summons form provides the notice required under Military and Veterans Code section 409.3—i.e., that a hearing is to be held on a certain date and that the respondent has until five days before that hearing in which to file and serve any opposition, that information has been included on the petition form. A box in item 2 provides notice of time and place of hearing, with an instruction that this information is to be completed by the clerk, who is to set the hearing within 25 days of filing. The form also provides notice to the respondent, in a box outlined for emphasis, that any response must be filed and served no later than five days before the hearing date.

The body of the petition contains statements about the petitioner's military status and the type of financial obligation that petitioner has to respondent, a statement that the obligation is not one for child support (with an instruction directing him or her to the appropriate form for seeking modification of such an obligation), an assertion that the military service has materially affected petitioner's ability to pay the obligation, and an assertion that facts supporting the statements in the petition are included in the declaration filed with it. There is also a prayer for relief, based on the types of relief expressly provided for in Military and Veterans Code section 409.3(d)(1)–(2).

The *Declaration in Support of Petition for Relief From Financial Obligations During Military Service* (form MIL-015) has items to provide factual support for each of the elements required for the court to grant the petition for relief, with instructions that the items should be supported by documentary evidence where available. Each type of documentary support has been assigned an exhibit number: Exhibit A for evidence of active military service, Exhibit B for evidence of financial obligation, and Exhibit C for evidence of financial problems.

¹ Minor changes have been made to the forms originally circulated for comment to reflect a recently enacted legislative amendment to section 409.3. (Assem. Bill 713 [Block]; Stats. 2011, ch. 105.) AB 713 clarifies that the relief may be provided only for financial obligations incurred before the date of the orders issued for a current period of active duty (rather than the date active duty begins) and only if the circumstances of the current military service (rather than any prior military service) materially affects petitioner's ability to pay.

The *Order on Petition for Relief From Financial Obligations During Military Service* (form MIL-020) includes items for findings by the court and a section in which to deny or grant the petition. If the petition is granted, there are several items in which to describe the specific relief provided, described below:

- Item 6a provides that an obligation is to be deferred. It includes space for a detailed description of the obligation being deferred; the date on which deferral begins (beginning of active duty); and the date on which it is to end (date of release from active duty, which will be included in the servicemember's military orders). This date is not always the actual date of relief; a servicemember may be released sooner for various reasons. Hence the order also includes a mandate that, should the servicemember be released sooner, he or she must tell the respondent and begin making payments again on the first of the month following release. This language is based on language in several individually crafted orders that have been issued by courts on such petitions.
- Item 6b provides for extension of the maturity date of an obligation that is paid in installments for a period equal to the amount of time that the petitioner was on active duty, relief provided under section 409.3(d)(1) and (2). This relief may be granted in addition to a deferral during service, in which case the dates of active duty are already set forth in item 6a. This deferral may also be granted to a servicemember who applies within six months of release from active duty, in which case the dates of active service will need to be added here. An item for "other terms" may be used for such information.
- Item 6c is for deferral on obligations not requiring installment payments. The statute is somewhat ambiguous in that it distinguishes between obligations regarding property to be paid in installments (§ 409.3(d)(1)) and "any other obligation, liability, tax, or assessment" (§ 409.3(d)(2)). However, the provisions regarding other obligations in (d)(2) also appear to address obligations with installment payments and imply that all deferred financial obligations will, for example, have rates of interest stated in the terms. It is not clear how this will apply to obligations such as property taxes, insurance premiums, or court judgments that do not include terms for payments over time. Item 6c has been drafted to provide options for the court to use in dealing with obligations that are not paid in installments: require payment in a lump sum at the end of the deferral period, allow payments over a period of time with interest accruing at a rate to be set by the court, or mandate other terms that the court sets forth in the order.
- Item 6d addresses deferrals of obligations to pay income tax, which are addressed in a separate code section that expressly provides that such obligation shall be deferred until six months following release from active duty. (Mil. & Vet. Code, § 409.6.)

Comments Received, Alternatives Considered and Policy Implications

Comments

Comments were received from the Orange County Bar Association and three courts, the Superior Courts of Monterey, San Diego, and Shasta Counties.² All were in general agreement with the proposal, with two courts suggesting minor modifications.³

The Superior Court of Shasta County commented that while the circulated version of the *Notice of Petition and Petition for Relief From Financial Obligations During Military Service* (form MIL-010, item 2) noted the time frame in which the hearing must be set (information provided for the clerks) and the time frame for filing and serving any response (Notice to Respondent), it did not inform the petitioner of the time frame for serving the notice on the respondent. The statute requires that the petition be filed at least 10 days before the hearing. (Mil. & Vet. Code, § 409.3(b).) The committee concluded that this information should be added to the form and have placed it in instructions at the top of the form.

The Superior Court of Monterey County suggested creating an additional blank-page form to use for providing information about the financial obligations at issue. As proposed, the forms instruct the petitioner to attach form MC-025, a generic blank Attachment, should more space be needed to provide any of the required factual information. (See item 4 in the *Declaration In Support Of Petition for Relief From Financial Obligations During Military Service* (form MIL-015).) The committee considered the suggestion, but does not see any advantage to adding another blank attachment form to the Judicial Council set of forms.

In the invitation to comment, specific comments were requested regarding whether the forms should be mandatory or optional. Making the forms mandatory would ensure that appropriate notice is included in all petitions and provide a standard format to ensure that parties provide the court with all necessary information. The Superior Court of San Diego County, the only commentator to respond on this issue, suggested that the forms be made optional, as that would allow parties with complex cases to draft documents that work best for them. However, the committee concluded, in light of the large percentage of self-represented litigants filing these petitions and the experience of some judicial officer committee members who have received petitions in the form of handwritten letters, that the petition forms should be mandatory.

The proposed order form remains optional to allow judicial officers to determine whether to use the form or craft his or her own order. This allows courts with computer-generated orders to program their systems to produce orders in this format if economically feasible, to create individual orders, or to use the forms outside the computerized system.

² The Superior Court of Sacramento County stated that it had reviewed the proposal but had not commented on it.

³ A chart summarizing the comments and the committee's responses is attached at page 14.

Alternatives considered

Alternative 1: Take no action. The forms are not mandated by statute and so the committee considered the alternative of not recommending them at all. Representatives of the Judge Advocate Corps, however, as well as private attorneys who have been representing servicemembers pro bono on petitions for relief, have urged development of such forms, both to simplify filing for the servicemembers and to provide guidance to court clerks in setting the hearings. In addition, members of the committee with experience in handling such petitions in their courtrooms strongly supported development of the forms so that self-represented petitioners would both be more aware of what information was needed to support their petitions and have a format for organizing that information and supporting documents when filing.

Alternative 2. Adopt rule and all forms as mandatory. The committee considered recommending that all the forms, including the order forms, be adopted as mandatory forms. This would ensure consistency across the state in orders generally issued to self-represented parties. The committee concluded that this was unnecessary, particularly in light of the cost it might impose on some courts in adding the form orders to their computerized document systems.

Alternative 3. Adopt rule and forms, and approve order form as optional. For the reasons set forth above, the committee recommends that the council adopt the forms to be used by the parties as mandatory forms and approve the order as an optional form.

Implementation Requirements, Costs, and Operational Impacts

The petition forms are prepared by parties, so adoption will have no direct cost to courts. Some savings may be realized by the courts as a result of standardizing the filing process for self-represented parties.

If a court is one in which all orders are issued by means of an electronic case management system and the court decides to issue the new form order electronically, the court may incur costs in programming the new order form into its system. However, if the form is optional, each court may determine whether it wants to incur this expense.

Attachments

1. Proposed rule 3.1372, at page 7
2. Proposed forms MIL-010, MIL-015, and MIL-020, at pages 8–13
3. Chart of comments, at page 14

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY DRAFT Not approved by the Judicial Council 08.17.11
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT:	
NOTICE OF PETITION AND PETITION FOR RELIEF FROM FINANCIAL OBLIGATION DURING MILITARY SERVICE	CASE NUMBER:

No filing fee or court costs are to be charged for this petition; (Mil. & Vet. Code, § 409.14.)
 The petition must be served in the manner of a summons at least 10 days before the hearing set below.

1. TO (name):
2. A hearing on this petition will be held as follows (clerk to complete; hearing to be set within 25 days of filing):

a. Date:	Time:	<input type="checkbox"/> Dept.:	<input type="checkbox"/> Room:
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- b. Address of court is same as noted above other (specify):

NOTICE TO RESPONDENT

Any response you wish to make to this petition to stay financial obligation must be filed with the court and served on the petitioner no later than **five** days before the date of the hearing in item 2. See Military and Veterans Code section 409.3(b).

3. Petitioner is or was an officer or enlisted member of the National Guard or a reservist of the United States military reserves and (check one):
 - a. has been called or ordered into full-time active duty service in the state or federal armed services or reserves. (Mil. & Vet. Code, § 400.)
 - b. is currently in full-time active duty service in the state or federal armed services or reserves. (Mil. & Vet. Code, § 400.)
 - c. is within six months of having completed full-time active duty in the state or federal armed services. (Mil. & Vet. Code, § 400, 409.3(a).)
4. Petitioner has a financial obligation or liability to respondent that is
 - a. an obligation to purchase real property payable in installment payments or secured by a mortgage or instrument like a mortgage, incurred before the effective date of the orders for petitioner's most current active military service.
 - b. a financial obligation or liability incurred before the effective date of the orders for petitioner's most current active military service.
 - c. a tax or assessment due before or during petitioner's most current active military service.
5. Petitioner is not seeking to stay or defer an obligation to pay child support. (Any request to modify a support order must be made on Notice of Activation of Military Service and Deployment and Request to Modify a Support Order (form FL-398).)
6. Petitioner's ability to pay the financial obligation or liability to respondent has been materially affected by reason of petitioner's most current period of military service.
7. Petitioner's statements above are established by facts set forth in the *Declaration in Support of Petition for Relief From Financial Obligations During Military Service* (form MIL-015) filed with this petition.

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PETITIONER/PLAINTIFF:	CASE NUMBER:
RESPONDENT/DEFENDANT:	

8. a. Petitioner requests a stay of the enforcement of the financial obligation during petitioner's military service.

b. Petitioner also requests the following relief:

- (1) For an obligation secured by real property: extension of the time to pay the obligation to a period equal to the total time remaining on the obligation plus a period of time equal to the period of active military service.
- (2) For obligation other than those involving installment payments for real property, an additional period of time to pay the obligation equal to the period of time in which petitioner is on active military service, during which petitioner is to pay the obligation and any accumulated interest due in equal periodical installments.
- (3) For other relief (*describe relief requested*):

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF ATTORNEY OR PARTY WITHOUT ATTORNEY)



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.)

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i> TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR <i>(Name):</i> _____	FOR COURT USE ONLY DRAFT Not approved by the Judicial Council 08.17.11
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
PETITION OF <i>(Name of petitioner):</i> _____	
DECLARATION IN SUPPORT OF PETITION FOR RELIEF FROM FINANCIAL OBLIGATIONS DURING MILITARY SERVICE	CASE NUMBER: _____

I *(name):* _____ declare as follows:

1. I am or was a member of the National Guard or a reservist of the United States military reserves, and I *(check the applicable boxes)*:
 have been called or ordered into am currently serving am within six months of having completed full-time active duty service in the state or federal armed services or reserves. (Mil. & Vet. Code, § 400(b).)
2. The effective date of the orders for my most current period of military service is:
3. My expected dates and location of full-time active service are as follows *(describe dates [including beginning and release dates] and location in service, with rank, branch, and unit of service):*
4. I have attached as Exhibit A a true and correct copy of *(check one)*: my military orders a certificate attesting to information in item 3 signed by an appropriately authorized officer of my military department branch or unit other documents as evidence of my military service, listed below. *(Bring original of documents to hearing if available.)*
5. The financial obligation or liability from which I am seeking relief is *(identify and describe in detail what obligation or liability to respondent you are seeking relief from, including when they were incurred):*

Continued on form MC-025 *(attach that form if you need more space)*.

6. I have attached as Exhibit B true and correct copies of evidence of the above obligation as follows *(Attach copy of mortgage statement, loan statement, bill, tax bill, or other evidence of your financial obligations or liabilities and list the documents below.)*

PETITIONER/PLAINTIFF:	CASE NUMBER:
RESPONDENT/DEFENDANT:	

7. The following facts show why my ability to pay the financial obligation or liability to respondent has been materially affected by my *most current period of military service*:

Continued on form MC-025 (*attach that form if you need more space*).

8. I have attached as Exhibit C copies of documents that support the above facts. (*List any documents you have attached to support the facts described above*):

9. Number of pages attached to this declaration: _____

I declare under penalty of perjury under the laws of the State of California that the foregoing, including statements on all attachments, is true and correct.

Date:

(TYPE OR PRINT NAME OF DECLARANT)



(SIGNATURE OF DECLARANT)

ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY DRAFT Not approved by the Judicial Council 08.17.11
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
PETITIONER/PLAINTIFF: _____ RESPONDENT/DEFENDANT: _____	
ORDER ON PETITION FOR RELIEF FROM FINANCIAL OBLIGATIONS DURING MILITARY SERVICE	CASE NUMBER: _____

1. The application was duly considered
- a. at a hearing on (date): _____ in Department: _____ of the above-entitled court.
- b. The following persons were present at the hearing:
- (1) Petitioner/Plaintiff (3) Petitioner/Plaintiff's attorney (name): _____
- (2) Respondent/Defendant (4) Respondent/Defendant's attorney (name): _____
- (5) No person appeared

THE COURT FINDS

2. Petitioner is or was an officer or enlisted member of the National Guard or a reservist of the United States military reserves and
- a. has been called or ordered into full-time active duty service in the state or federal armed services or reserves. (Mil. & Vet. Code, § 400.)
- b. is currently in full-time active duty service in the state or federal armed services or reserves. (Mil. & Vet. Code, § 400.)
- c. is within six months of having completed full-time active duty in the state or federal armed services. (Mil. & Vet. Code, §§ 400, 409.3(a).)
- d. none of the above apply to petitioner.
3. Petitioner's ability to pay to respondent a financial obligation or liability incurred before the effective date of the orders for petitioner's most current period of active duty (check one): has has not been materially affected by reason of petitioner's most current military service.
4. Other findings (if any): _____

THE COURT ORDERS

5. The petition for relief is **denied**.
6. The petition for relief is **granted** as follows (check all relief granted):
- a. Petitioner's obligation to pay respondent the financial obligation identified below is deferred (identify financial obligation by creditor, loan number, property address, or other identifying information):
- (1) The deferral of payments begins on (date of beginning of active military service): _____

PETITIONER/PLAINTIFF:	CASE NUMBER:
RESPONDENT/DEFENDANT:	

6. a. (2) The deferral of payments ends on *(date of release from active military service)*:
If petitioner is released from active military service before this end date, petitioner must immediately notify respondent of the date of his or her release and must resume payments on the first day of the month following release.
- b. *On deferral of an obligation requiring installment payments:* The deferred obligations of principal and interest are to be added to the principal balance of the loan identified above and the maturity date is to be extended by a period of time equal to the period in which petitioner is in active military service, with the rate of interest to be as described in the contract.
- Other terms *(if any)*:
- c. *On deferral of an obligation not requiring installment payments:* The deferred obligation described above is to be paid as follows:
- (1) In a lump sum at the end of the deferral period.
- (2) Over a period of time equal to the period of active military service, in equal monthly payments, with interest.
- (3) Other terms *(if any)*: accruing at _____ percent per year
- d. *On deferral of an obligation to pay income tax:* The obligation of petitioner to pay income tax is deferred until six months after the petitioner's release from active military service. (Mil & Vet. Code, § 409.6.)
- (1) Current expected release date is *(date)*:
- (2) Deferral of payments ends on *(date)*: **If petitioner is released from active military service before this end date, petitioner must immediately notify respondent of the date of his or her release and must resume payments on the first day of the month six months following release.**
- (3) No interest will accrue on the tax amounts during the deferral period, and no penalties will be imposed for nonpayment of taxes during that period.
- e. During the period of deferral, respondent may not exercise any remedies otherwise available for petitioner's failure to comply with the terms of the financial obligation. Respondent may not impose fines, penalties, or late charges and may not institute or continue proceedings to attach or foreclose on property securing the obligation.
7. Other orders *(if any)*:

Date:

 JUDGE OF THE SUPERIOR COURT

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Civil Petitions: Adopt Rule and Forms for Expedited Hearings on Petitions for Relief from Financial Obligations During Active Military Service (adopt Cal. Rules of Court, rule 3.1372; and approve forms MIL-010, MIL-015, and MIL-020)

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

	Commentator	Position	Comment	Committee Response
1.	Orange County Bar Association By John Hueston, President	A	No specific comments	No response needed.
2.	Superior Court of Monterey County By Minnie Monarque Deputy Court Executive Officer	AM	Create an additional page blank for financial obligation.	The form instructs the parties to use form MC-025, the generic blank attachment form, if more space is needed to enter information about the financial obligation. See proposed form MIL-020 at item 4. A separate blank attachment form just for MIL forms is unnecessary.
3.	Superior Court of San Diego County By Michael Roddy, Executive Officer	A	The forms should be optional. In all likelihood most will use the forms, but this will allow those with complex cases to be able to draft documents that work best for them.	The committee has concluded that making the forms mandatory will ensure that all the required information will be presented to the court in an easily understandable manner, particularly in light of the large percentage of self-represented litigants expected to use the forms.
4.	Superior Court of Shasta County By John Zeis Asst. Court Executive Officer	AM	Notice of Petition (MIL-010) in item 2 reflects the time frame for hearing, as well as when to file/serve response. Would be helpful to petitioner to reflect when Notice/Petition should be served upon respondent.	The form has been modified in light of this comment.

