Judicial Council *of* California

RULES COMMITTEE
MINUTES OF OPEN VIDEOCONFERENCE MEETING

October 22, 2026

12:10 to 1:40 p.m.

Members Present: Hon. Tamara L. Wood (Chair), Hon. Michael Rhoads (Vice-Chair), Ms. Marta A. Alcumbrac, Hon. Bunmi O. Awoniyi, Hon. Benjamin J. Cassady, Mr. Chad Finke, Hon. Mary J. Greenwood, Hon. Ricardo R. Ocampo, Mr. Craig M. Peters, and Ms. Alekxia L. Torres Stallings

Members Absent: Hon. Nicole C. Bershon, Hon. Rodney A. Cortez, and Mr. Charles Johnson,

Rules Committee Staff Present: Kristin Burford, Benita Downs, and Eric Long

Advisory Bodies Chairs and Staff Present: Hon. Maria Lucy Armendariz, Hon. Tari L. Cody, Hon. Allison M. Danner, Hon. Aaron W. Heisler, Hon. Stephanie E. Hulsey, Hon. Lisa B. Lench, Hon. Ioana Petrou, Hon. Lisa Rodriguez, Deanna Adams, Jenny Grantz, Sarah Jacobvitz, Stephanie Lacambra, Eric Long, Kara Portnow, Jamie Schechter, Corby Sturges, and Jeremy Varon

Other Judicial Council Staff Present: James Barolo, Audrey Fancy, Anna Maves, Lollie Roberts, and Shayla Taylor

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 12:14 p.m., and Ms. Downs took roll call.

Approval of Minutes

The advisory body reviewed and approved minutes of the August 25, September 9, and September 10, 2026, Rules Committee meetings and the October 1, 2026, action by email.

DISCUSSION AND ACTION ITEMS (ITEMS 01–08)

APPELLATE

Item 01

Appellate Advisory Committee

The committee reviewed the proposed 2026–2027 annual agenda of the Appellate Advisory Committee.

Action: The committee unanimously approved the 2026–2027 annual agenda of the Appellate Advisory Committee, with the revisions to new/one-time project no. 3 as presented at the meeting.

CALIFORNIA CIVIL JURY INSTRUCTIONS (CACI)

Item 02

Advisory Committee on Civil Jury Instructions (CACI) Annual Agenda

The committee reviewed the proposed 2026–2027 annual agenda of the Advisory Committee on Civil Jury Instructions.

Action: The committee unanimously approved the 2026–2027 annual agenda of the Advisory Committee on Civil Jury Instructions.

CALIFORNIA CRIMINAL JURY INSTRUCTIONS (CALCRIM)

Item 03

Advisory Committee on Criminal Jury Instructions (CALCRIM) Annual Agenda

The committee reviewed the proposed 2026–2027 annual agenda of the Advisory Committee on Criminal Jury Instructions.

Action: The committee unanimously approved the 2026–2027 annual agenda of the Advisory Committee on Criminal Jury Instructions.

CIVIL AND SMALL CLAIMS

Item 04

Civil and Small Claims Advisory Committee

The committee reviewed the proposed 2026–2027 annual agenda of the Civil and Small Claims Advisory Committee.

Action: The committee unanimously approved the 2026–2027 annual agenda of the Civil and Small Claims Advisory Committee.

CRIMINAL

Item 05

Criminal Law Advisory Committee Annual Agenda

The committee reviewed the proposed 2026–2027 annual agenda of the Criminal Law Advisory Committee.

Action: The committee unanimously approved the 2026–2027 annual agenda of the Criminal Law Advisory Committee.

FAMILY AND JUVENILE

Item 06

Family and Juvenile Law Advisory Committee

The committee reviewed the proposed 2026–2027 annual agenda of the Family and Juvenile Law Advisory Committee.

Action: The committee unanimously approved the 2026–2027 annual agenda of the Family and Juvenile Law Advisory Committee.

PROBATE AND MENTAL HEALTH

Item 07

Probate and Mental Health Advisory Committee

The committee reviewed the proposed 2026–2027 annual agenda of the Probate and Mental Health Advisory Committee.

Action: The committee unanimously approved the 2026–2027 annual agenda of the Probate and Mental Health Advisory Committee.

TRAFFIC

Item 08

Traffic Advisory Committee Annual Agenda

The committee reviewed the proposed 2026–2027 annual agenda of the Traffic Advisory Committee.

Action: The committee unanimously approved the 2026–2027 annual agenda of the Traffic Advisory Committee.

ADJOURNMENT

There being no further business, the meeting was adjourned at 1:11 p.m.

Approved by the advisory body on enter date.

Rules Committee Action Request Form

Item number: 01

Rules Committee Meeting Date: November 10, 2026

Action requested: Recommend JC approval (has circulated for comment)

Title of proposal: Jury Instructions: Civil Jury Instructions (Release 50)

Proposed rules, forms, standards, or jury instructions (include amend/revise/adopt/approve/etc.)**:**
Adopt CACI Nos. 2590, 2591, 2592, VF-2720, VF 2721, 3075, and 4355; and revise CACI Nos. 451, 712, 2548, 2721, and 3704.

Advisory committee or other entity submitting the proposal:
Advisory Committee on Civil Jury Instructions

Staff contact (name, phone, and email)**:**
Eric Long, 415-865-7691, eric.long@jud.ca.gov

Annual agenda approved by Rules Committee on: October 22, 2026
Project description from annual agenda: 1. Maintenance—Case Law; 2. Maintenance—Legislation; 3. Maintenance—Comments from Users; 4. New Instructions and Expansion into New Subject Matter Areas, 5. Maintenance—Sources and Authority; 6. Maintenance—Secondary Source

Implementation Date and Circulation Notes: (If requesting an effective date other than January 1 or a special invitation-to-comment cycle, please explain.) Anticipated to be effective upon approval by the Judicial Council

Additional Information for Rules Committee: (To facilitate Rules Committee's review of your proposal, please include any other relevant information.)

Information for JC staff (Complete the following for proposals recommending forms.)

- **Form Translations** (check all that apply)
  Proposal includes forms that: ☐ staff requests be translated, ☐ are required by statute to be translated.
  Provide citations to code that mandates translation:
- **Website Content** (check all that apply)
  ☐ New or revised form descriptions are needed for the California Courts website. (If checked, form descriptions should be approved by a supervisor after council approval.)
  ☐ Changes or additions to self-help guide website are needed.

(Revised 2026)

Judicial Council of California

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 26-173

For business meeting on December 11, 2026

Jury Instructions: Civil Jury Instructions (Release 50) [Draft]

Judicial Council Report Details

Rules, Forms, Standards, or Statutes Affected
Judicial Council of California Civil Jury Instructions (*CACI*)

Recommended by
Advisory Committee on Civil Jury Instructions
Hon. Ioana Petrou, Chair

Report Type
Action Required

Effective Date
December 11, 2026

Date of Report
October 26, 2026

Contact
Eric Long, 415-865-7691
eric.long@jud.ca.gov

Executive Summary

The Advisory Committee on Civil Jury Instructions recommends approval of new and revised civil jury instructions and verdict forms prepared by the committee. Among other things, these changes bring the instructions up to date with developments in the law over the previous six months. Upon Judicial Council approval, the instructions will be published in the official 2027 edition of the *Judicial Council of California Civil Jury Instructions* (*CACI*).

Recommendation

The Advisory Committee on Civil Jury Instructions recommends that the Judicial Council, effective December 11, 2026, approve for publication under California Rules of Court, rules 2.1050 and 10.58:

1. Seven new instructions and verdict forms: CACI Nos. 2590, 2591, 2592, VF-2720, VF-2721, 3075, and 4355; and

2. Five revised instructions: CACI Nos. 451, 712, 2548, 2721, and 3704.

A table of contents and the proposed new and revised civil jury instructions and verdict forms are attached at pages 6–42.

Relevant Previous Council Action

The Judicial Council adopted in 2003 what is now rule 10.58 of the California Rules of Court, which established the advisory committee and its charge.[1] At the same time, the council approved *CACI* under what is now rule 2.1050 of the California Rules of Court. Since then, the committee has complied with both rules by regularly proposing to the council additions and changes to *CACI* to ensure that the instructions remain accurate and complete, with a focus on plain language to enhance clarity. This is release 50 of *CACI*. The council approved release 49 at its meeting in July 2026.

Analysis/Rationale

A total of 12 instructions and verdict forms are presented in this release. In addition, at its meeting on November 9, 2026, the Judicial Council's Rules Committee approved minor changes to 12 other instructions and verdict forms under a delegation of authority from the council.[2]

The recommended additions and revisions to the instructions and verdict forms are based on comments or suggestions from justices, judges, attorneys, and bar associations; proposals by staff and committee members; and recent developments in the law. Below is a summary of the more significant changes recommended for approval in this release.

[1] Rule 10.58(a) states: "The committee regularly reviews case law and statutes affecting jury instructions and makes recommendations to the Judicial Council for updating, amending, and adding topics to the council's civil jury instructions."

[2] At its meeting on October 20, 2006, the Judicial Council delegated to the Rules Committee (formerly called the Rules and Projects Committee, or RUPRO) the final authority to approve nonsubstantive technical changes and corrections and minor substantive changes to jury instructions unlikely to create controversy. The council also gave the Rules Committee the authority to delegate to the jury instructions advisory committees the authority to review and approve nonsubstantive grammatical and typographical corrections and other similar changes to the jury instructions, which the Rules Committee has done.

Under the implementing guidelines that the Rules Committee approved on December 14, 2006, which were submitted to the council on February 15, 2007, the Rules Committee has the final authority to approve (among other things) additional cases and statutes cited in the Sources and Authority and additions or changes to the Directions for Use.

New instructions and verdict forms

Three new Fair Employment and Housing Act instructions

The committee recommends three new instructions to address Government Code section 12945.8, which took effect January 1, 2025, and moved protections for survivors of violence into the Fair Employment and Housing Act (FEHA). One of the protections in section 12945.8 is an employer's provision of reasonable accommodations for an employee who is a victim or whose family member is a victim of a qualifying act of violence who requests an accommodation for the safety of the employee while at work. The committee concluded that new instructions would be useful because existing instructions on "reasonable accommodations" in other FEHA contexts (e.g., disability, religious creed) were not easily adapted to address the claim in the workplace safety context.

First, new CACI No. 2590 addresses the essential elements of a plaintiff's claim that an employer failed to provide a reasonable accommodation for workplace safety for a victim of violence. Second, new CACI No. 2591 explains the meaning of a "reasonable accommodation" in this context. And third, new CACI No. 2592 sets out the requirements of an employer's affirmative defense of undue hardship and the factors to be considered.

Government Code section 12945.8 also requires employers to engage in a timely, good faith interactive process and prohibits retaliation against an employee for requesting a reasonable accommodation. Commenters suggested that the committee develop instructions to address those claims. Commenters also asked for verdict forms for the new instructions recommended in this report. The committee will consider expanding the FEHA series to address the additional claims and to offer verdict forms.

Two new verdict forms (CACI Nos. VF-2720 and VF-2721)

Commenters suggested in public comment during last year's invitation to comment for release 48 that the committee develop corresponding verdict forms for CACI Nos. 2720 and 2721. Based on those suggestions, the committee recommends two new verdict forms for these two affirmative defenses to Labor Code actions. Commenters in this release suggested resequencing the questions to place the question on monthly salary earlier in the order because the threshold question would obviate other questions. The committee has not recommended those changes at this time because the verdict forms correspond to the instructions on which they are based. The committee will consider the suggestion as to both the instructions and the verdict forms in a future release cycle.

CACI No. 4355. Breach of the Implied Covenant of Quiet Enjoyment—Essential Factual Elements

The council recently approved the committee's proposed expansion of *CACI* to include landlord-tenant claims outside the unlawful detainer process. These claims begin at CACI No. 4350. Series 4300 has been renamed *Unlawful Detainer and Other Landlord-Tenant Claims*. In this release, the committee recommends another new instruction for a tenant's claim for breach of the implied covenant of quiet enjoyment.

Revised instructions

CACI No. 451

This negligence series instruction addresses the effect of contractual releases of liability and recognizes that while such releases are generally enforceable, they are not enforceable to protect against claims of gross negligence or intentional harm. The committee recommends expanding the limitation on enforcement of contractual releases to additional situations where releases are unenforceable on other grounds. In the invitation to comment, the committee proposed striking the language in the instruction that referred to gross negligence or intentional harm in favor of more general bracketed content in which users would specify a ground. Citing a few cases, a commenter noted that gross negligence is frequently litigated and that the instruction would benefit from retaining the language the committee recommended replacing with the bracketed content. The committee agreed and recommends that the instruction offer both the language that already exists and a bracketed option to include other grounds for unenforceability.

CACI No. 3704

Last year, the Supreme Court of California in *Brown v. City of Inglewood* held that elected officials are not "employees" under Labor Code section 1106 and cannot claim whistleblower retaliation protections under Labor Code section 1102.5.[3] In discussing whether the common law definition of employee applies, the court reasoned that "the common law test of employment is not always appropriate beyond the tort context in which it was originally developed [to establish an employer's vicarious liability]."[4] The committee saw an opportunity to caution users about the use of this instruction and recommends a new sentence in the Directions for Use so that users may consider *Brown*, which discusses *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* and its progeny.[5]

Policy implications

The committee endeavors to accurately state the law in a way that is understandable to the average juror. Except for language choices, there are generally no policy implications.

Comments

The proposed revisions to *CACI* circulated for comment from July 28 through September 11, 2026. Comments were received from five organizations (Association of Southern California Defense Counsel, California Employment Lawyers Association, California Lawyers Association, Orange County Bar Association, and Western Center on Law & Poverty), one county counsel office, and one attorney. Most commenters submitted comments on multiple instructions and verdict forms. None of the proposed changes garnered significant debate or opposition.

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[3] (2025) 18 Cal.5th 33, 57 [334 Cal.Rptr.3d 1, 570 P.3d 885].

[4] *Id.* at p. 56, alteration in original.

[5] (1989) 48 Cal.3d 341 [256 Cal.Rptr. 543, 769 P.2d 399].

The committee appreciates the time taken to review and submit comments on the proposed changes. The committee evaluated all comments and, as a result, recommends refining some of the instructions and verdict forms in this release. A chart of the comments and the committee's responses is attached at pages 43–81.

Alternatives considered

Rules 2.1050(e) and 10.58(a) of the California Rules of Court require the committee to update, revise, and add topics to *CACI* on a regular basis and to submit its recommendations to the council for approval. There are no alternative actions for the committee to consider.

Fiscal and Operational Impacts

No implementation costs are associated with this proposal.

Attachments and Links

1. CACI Nos. 451, 712, 2548, 2590, 2591, 2592, 2721, VF-2720, VF-2721, 3075, 3704, and 4355, at pages 6–42
2. Chart of comments, at pages 43–81

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451. Affirmative Defense—Contractual Assumption of Risk

[*Name of defendant*] claims that [*name of plaintiff*] may not recover any damages because [he/she/*nonbinary pronoun*] agreed before the incident that [he/she/*nonbinary pronoun*] would not hold [*name of defendant*] responsible for any damages.

If [*name of defendant*] proves that there was such an agreement and that it applies to [*name of plaintiff*]'s claim, then [*name of defendant*] is not responsible for [*name of plaintiff*]'s harm[, unless you find that [*name of defendant*] [was grossly negligent or intentionally harmed [*name of plaintiff*]/[*specify alleged other ground(s) for invalidating agreement*]].

[If you find that [*name of defendant*] [was grossly negligent or intentionally harmed [*name of plaintiff*]/[*insert same other ground(s)*]], then the agreement does not apply. You must then determine whether [he/she/*nonbinary pronoun*/it] is responsible for [*name of plaintiff*]'s harm based on the other instructions that I have given you.]

New September 2003; Revised December 2011, December 2026

Directions for Use

This instruction sets forth the affirmative defense of express or contractual assumption of risk. (See *Eriksson v. Nunnink* (2011) 191 Cal.App.4th 826, 856 [120 Cal.Rptr.3d 90].) It will be given in very limited circumstances. Both the interpretation of a waiver agreement and application of its legal effect are generally resolved by the judge before trial. The existence of a duty is a question of law for the court (*Eriksson v. Nunnink* (2015) 233 Cal.App.4th 708, 719 [183 Cal.Rptr.3d 234]), as is the interpretation of a written instrument if the interpretation does not turn on the credibility of extrinsic evidence. (*Allabach v. Santa Clara County Fair Assn., Inc.* (1996) 46 Cal.App.4th 1007, 1011 [54 Cal.Rptr.2d 330].)

However, there may be contract law defenses (such as fraud, lack of consideration, duress, unconscionability) that could be asserted by the plaintiff to contest the validity of a waiver. If these defenses depend on disputed facts that must be considered by a jury, then this instruction should also be given along with any relevant instructions related to contract formation.

Insert the alleged grounds for invalidating the agreement in the second and third paragraphs. Express assumption of risk does not relieve the defendant of liability if ~~there was~~ the defendant committed certain aggravated misconduct, specifically gross negligence ~~or~~, recklessness or willful injury, fraud, or violation of a specific statutory duty affecting public safety. (~~See~~ Civ. Code, § 1668; *Whitehead v. City of Oakland* (2025) 17 Cal.5th 735, 750 [332 Cal.Rptr.3d 134, 567 P.3d 701] [violation of a specific statutory duty to ensure safety of public roadway]; *New England Country Foods, LLC v. VanLaw Food Products, Inc.* (2025) 17 Cal.5th 703, 718 [331 Cal.Rptr.3d 890, 567 P.3d 63] [willful injury to the person or property of another]; *Epochal Enterprises, Inc. v. LF Encinitas Properties, LLC* (2024) 99 Cal.App.5th 44, 60 [317 Cal.Rptr.3d 573, 586] [violation of hazardous disclosure statutes]; *City of Santa Barbara v. Superior Court* (2007) 41 Cal.4th 747, 777 [62 Cal.Rptr.3d 527, 161 P.3d 1095] [gross negligence].) ~~However~~Even if express assumption of the risk does not relieve the defendant of liability, the doctrine of primary assumption of risk may ~~then become~~ be relevant, requiring additional instructions (e.g., CACI Nos. 470 et seq.) if an inherently dangerous sport or recreational activity is involved. (See *Rosencrans v.*

Dover Images, Ltd. (2011) 192 Cal.App.4th 1072, 1081 [122 Cal.Rptr.3d 22].)

If there are jury issues with regard to gross negligence, the applicability of Civil Code section 1668, or the alleged grounds for invalidating the agreement, ~~include the bracketed language on gross negligence~~ give the final bracketed paragraph. Also give CACI No. 425, *"Gross Negligence" Explained*, CACI No. 335, *Affirmative Defense—Fraud*, or other appropriate instructions related to contract formation, and, for example, CACI No. 418, *Presumption of Negligence per se*. ~~If the jury finds no gross negligence, then the action is barred by express assumption of risk unless there are issues of fact with regard to contract formation.~~

Sources and Authority

- Contract Releasing Party From Liability for Fraud or Willful Injury ~~is~~ Is Against Public Policy. Civil Code section 1668.

- "[P]arties may contract for the release of liability for future ordinary negligence so long as such contracts do not violate public policy. 'A valid release precludes liability for risks of injury within the scope of the release.' " (*Anderson v. Fitness Internat., LLC* (2016) 4 Cal.App.5th 867, 877 [208 Cal.Rptr.3d 792], internal citations omitted.)

- "With respect to the question of express waiver, the legal issue is *not* whether the particular risk of injury appellant suffered is inherent in the recreational activity to which the Release applies [citations], but simply *the scope of the Release*." (*Hass v. RhodyCo Productions* (2018) 26 Cal.App.5th 11, 27 [236 Cal.Rptr.3d 682], original italics.)

- "Express assumption occurs when the plaintiff, in advance, expressly consents ... to relieve the defendant of an obligation of conduct toward him, and to take his chances of injury from a known risk arising from what the defendant is to do or leave undone. ... The result is that ... being under no duty, [the defendant] cannot be charged with negligence." (*Saenz v. Whitewater Voyages, Inc.* (1990) 226 Cal.App.3d 758, 764 [276 Cal.Rptr. 672], internal citations omitted.)

- "While often referred to as a defense, a release of future liability is more appropriately characterized as an express assumption of the risk that negates the defendant's duty of care, an element of the plaintiff's case." (*Eriksson, supra,* 233 Cal.App.4th at p. 719.)

- "[C]ases involving express assumption of risk are concerned with instances in which, as the result of an express agreement, the defendant owes no duty to protect the plaintiff from an injury-causing risk. Thus in this respect express assumption of risk properly can be viewed as analogous to primary assumption of risk." (*Knight v. Jewett* (1992) 3 Cal.4th 296, 308–309, fn. 4 [11 Cal.Rptr.2d 2, 834 P.2d 696].)

- " ' "It is only necessary that the act of negligence, which results in injury to the releaser, be reasonably related to the object or purpose for which the release is given." ' … 'An act of negligence is reasonably related to the object or purpose for which the release was given if it is included within the express scope of the release.' " (*Eriksson, supra,* 233 Cal.App.4th at p. 722.)

- ~~"Although [decedent] could not release or waive her parents' subsequent wrongful death claims, it is~~

~~well settled that a release of future liability or express assumption of the risk by the decedent may be asserted as a defense to such claims." (*Eriksson, supra,* 233 Cal.App.4th at p. 725.)~~

- "[E]xculpatory clause which affects the public interest cannot stand." (*Tunkl v. Regents of Univ. of California* (1963) 60 Cal.2d 92, 98 [32 Cal.Rptr. 33, 383 P.2d 441].)

- "In *Tunkl,* our high court identified six characteristics typical of contracts affecting the public interest: ' "[1] It concerns a business of a type generally thought suitable for public regulation. [2] The party seeking exculpation is engaged in performing a service of great importance to the public, which is often a matter of practical necessity for some members of the public. [3] The party holds himself out as willing to perform this service for any member of the public who seeks it, or at least any member coming within certain established standards. [4] As a result of the essential nature of the service, in the economic setting of the transaction, the party invoking exculpation possesses a decisive advantage of bargaining strength against any member of the public who seeks his services. [5] In exercising a superior bargaining power the party confronts the public with a standardized adhesion contract of exculpation, and makes no provision whereby a purchaser may pay additional reasonable fees and obtain protection against negligence. [6] Finally, as a result of the transaction, the person or property of the purchaser is placed under the control of the seller, subject to the risk of carelessness by the seller or his agents." ' Not all of these factors need to be present for an exculpatory contract to be voided as affecting the public interest." (*Hass, supra,* 26 Cal.App.5th at p. 29, internal citations omitted.)

- "[W]e conclude that an agreement to exculpate a party for future violations of a statutory duty designed to protect public safety is against the policy of the law under Civil Code section 1668 and is not enforceable." (*Whitehead, supra,* 17 Cal.5th at p. 742.)

- "The issue [of whether something is in the public interest] is tested *objectively*, by the activity's importance to the *general public*, not by its subjective importance to the particular plaintiff." (*Booth v. Santa Barbara Biplane Tours, LLC* (2008) 158 Cal.App.4th 1173, 1179–1180 [70 Cal.Rptr.3d 660], original italics.)

- "[P]ublic policy generally precludes enforcement of an agreement that would remove an obligation to adhere to even a *minimal* standard of care. Applying that general rule here, we hold that an agreement purporting to release liability for future gross negligence committed against a developmentally disabled child who participates in a recreational camp designed for the needs of such children violates public policy and is unenforceable." (*City of Santa Barbara, supra, ~~v. Superior Court~~ (~~2007~~)* 41 Cal.4th ~~747, at~~ p. 777 ~~[62 Cal.Rptr.3d 527, 161 P.3d 1095]~~, original italics.)

- " ' "[A] purveyor of recreational activities owes a duty to a patron not to increase the risks inherent in the activity in which the patron has paid to engage." ' " Thus, in cases involving a waiver of liability for future negligence, courts have held that conduct that substantially or unreasonably increased the inherent risk of an activity or actively concealed a known risk could amount to gross negligence, which would not be barred by a release agreement." (*Willhide-Michiulis v. Mammoth Mountain Ski Area, LLC* (2018) 25 Cal.App.5th 344, 359 [235 Cal.Rptr.3d 716].)

- " ' "A written release may exculpate a tortfeasor from future negligence or misconduct. [Citation.] To be effective, such a release '*must be clear, unambiguous, and explicit in expressing the intent of the*

subscribing parties.' [Citation.] The release need not achieve perfection. [Citation.] Exculpatory agreements in the recreational sports context do not implicate the public interest and therefore are not void as against public policy. [Citations.]" ' ' "An ambiguity exists when a party can identify an alternative, semantically reasonable, candidate of meaning of a writing. [Citations.]" ' " (*Huverserian v. Catalina Scuba Luv, Inc.* (2010) 184 Cal.App.4th 1462, 1467 [110 Cal.Rptr.3d 112], original italics, internal citations omitted.)

- "Unlike claims for ordinary negligence, products liability claims cannot be waived." (*Grebing v. 24 Hour Fitness USA, Inc.* (2015) 234 Cal.App.4th 631, 640 [184 Cal.Rptr.3d 155].)

- "Since there is no disputed issue of material fact concerning gross negligence, the release also bars [plaintiff]'s cause of action for breach of warranty." (*Grebing, supra,* 234 Cal.App.4th at p. 640.)

- "Generally, a person who signs an instrument may not avoid the impact of its terms on the ground that she failed to read it before signing. However, a release is invalid when it is procured by misrepresentation, overreaching, deception, or fraud. 'It has often been held that if the releaser was under a misapprehension, not due to his own neglect, as to the nature or scope of the release, and if this misapprehension was induced by the misconduct of the releasee, then the release, regardless of how comprehensively worded, is binding only to the extent actually intended by the releaser.' 'In cases providing the opportunity for overreaching, the releasee has a duty to act in good faith and the releaser must have a full understanding of his legal rights. [Citations.] Furthermore, it is the province of the jury to determine whether the circumstances afforded the opportunity for overreaching, whether the releasee engaged in overreaching and whether the releaser was misled. [Citation.]' A 'strong showing of misconduct' by the plaintiff is not necessary to demonstrate the existence of a triable issue of fact here; only a 'slight showing' is required." (*Jimenez v. 24 Hour Fitness USA, Inc.* (2015) 237 Cal.App.4th 546, 563−564 [188 Cal.Rptr.3d 228], internal citations omitted.)

- "Plaintiffs assert that Jerid did not 'freely and knowingly' enter into the Release because (1) the [defendant's] employee represented the Release was a sign-in sheet; (2) the metal clip of the clipboard obscured the title of the document; (3) the Release was written in a small font; (4) [defendant] did not inform Jerid he was releasing his rights by signing the Release; (5) Jerid did not know he was signing a release; (6) Jerid did not receive a copy of the Release; and (7) Jerid was not given adequate time to read or understand the Release. [¶] We do not find plaintiffs' argument persuasive because … there was nothing preventing Jerid from reading the Release. There is nothing indicating that Jerid was prevented from (1) reading the Release while he sat at the booth, or (2) taking the Release, moving his truck out of the line, and reading the Release. In sum, plaintiffs' arguments do not persuade us that Jerid was denied a reasonable opportunity to discover the true terms of the contract." (*Rosencrans, supra,* 192 Cal.App.4th at pp. 1080–1081.)

- "Whether a contract provision is clear and unambiguous is a question of law, not of fact." (*Madison v. Superior Court* (1988) 203 Cal.App.3d 589, 598 [250 Cal.Rptr. 299].)

- "By signing as [decedent]'s parent, [plaintiff] approved of the terms of the release and understood that her signature made the release 'irrevocable and binding.' Under these circumstances, the release could not be disaffirmed. [¶] Although [plaintiff]'s signature prevented the agreement from being disaffirmed, it does not make her a party to the release." (*Eriksson, supra,* 233 Cal.App.4th at p. 721.)

Secondary Sources

6 Witkin, Summary of California Law (11th ed. 2017) Torts, §§ 1439, 1449–1451

California Tort Guide (Cont.Ed.Bar 3d ed.) § 1.44

1 Levy et al., California Torts, Ch. 4, *Comparative Negligence, Assumption of the Risk, and Related Defenses*, § 4.03 (Matthew Bender)

4 California Trial Guide, Unit 90, *Closing Argument*, § 90.90 (Matthew Bender)

33 California Forms of Pleading and Practice, Ch. 380, *Negligence*, § 380.171 (Matthew Bender)

16 California Points and Authorities, Ch. 165, *Negligence*, § 165.402 (Matthew Bender)

712. Affirmative Defense—Failure to Wear a Seat Belt

[*Name of defendant*] claims that [*name of plaintiff*] was negligent because [he/she/*nonbinary pronoun*] failed to wear a seat belt. To succeed, [*name of defendant*] must prove all of the following:

1. **That a working seat belt was available;**
2. **That a reasonably careful person in [*name of plaintiff*]'s situation would have used the seat belt;**
3. **That [*name of plaintiff*] failed to wear a seat belt; and**
4. **That [*name of plaintiff*]'s injuries would have been avoided or less severe if [he/she/*nonbinary pronoun*] had used the seat belt.**

[In deciding whether a reasonably careful person would have used a seat belt, you may consider Vehicle Code section 27315, which states: [*insert pertinent provision*].]

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*New September 2003; Revised October 2008, December 2026**

Directions for Use

~~Note that t~~The Motor Vehicle Safety Act (Veh. Code, § 27315) applies ~~only~~ to persons 16 years of age or older and passengers 8 years of age and older in certain circumstances. (Compare Veh. Code, § 27315(d)(1), (e) with § 27315(d)(2), (3).) ~~No case law regarding whether persons under 16 can be found comparatively negligent for failing to wear a seat belt has been found.~~ For an instruction on the standard of care for minors, see CACI No. 402, *Standard of Care for Minors*.

Modify the introductory sentence, elements 2–4, and the final bracketed sentence (if included) as appropriate if the defendant alleges that the plaintiff wore a seat belt but was not properly restrained. (See Veh. Code, § 27315(c)(2), (d), (e).)

Sources and Authority

- ~~Failure to Wear Seat Belt as Negligence~~Certain Violations Do Not Establish Negligence as a Matter of Law or Negligence Per Se for Comparative Fault Purposes; Negligence May Be Proven as a Fact Without Regard to the Violation. Vehicle Code section 27315(i).

- "Defendants ... are required to prove two issues of fact: (1) the defendant must show whether in the exercise of ordinary care the plaintiff should have used the seat belt which was available to him. ... (2) The defendant must show what the consequence to the plaintiff would have been had seat belts been used." (*Franklin v. Gibson* (1982) 138 Cal.App.3d 340, 343 [188 Cal.Rptr. 23].)

- "Upon a retrial the court or jury will determine whether in the exercise of ordinary care [plaintiff] should have used the seat belt; expert testimony will be required to prove whether [plaintiff] would have been injured, and, if so, the extent of the injuries he would have sustained if he had been using

the seat belt ... ." (*Truman v. Vargas* (1969) 275 Cal.App.2d 976, 983 [80 Cal.Rptr. 373].)

- ~~In *Housley v. Godinez* (1992) 4 Cal.App.4th 737, 747 [6 Cal.Rptr.2d 111], the court approved of the following jury instruction, which was read in addition to section 27315:~~ "The Defendants have raised the seat belt defense in this case. First, you must decide whether in the exercise of ordinary care, the Plaintiff should have used seat belts, if available to him. Second you must determine with expert testimony the nature of injuries and damages Plaintiff would have sustained if he had used seat belts." ~~In~~ (*Housley v. Godinez* (1992) 4 Cal.App.4th 737, 747 [6 Cal.Rptr.2d 111] [~~, the court~~ approving ~~ed of the following~~ jury instruction, which was read in addition to section 27315~~:~~].)

- "[Section 27315] permits the civil trial courts to instruct on the existence of the seat belt statute in appropriate cases, while allowing the jury to decide what weight, if any, to give the statute in determining the standard of reasonable care." (*Housley, supra,* 4 Cal.App.4th at p. 747.)

- "[N]othing in the statute prohibits a jury from knowing and considering its very existence when determining the reasonableness of driving without a seat belt." (*Housley, supra,* 4 Cal.App.4th at p. 744.)

- "There was evidence presented that appellant's failure to wear a seat belt worsened his injuries. The foreseeability test clearly eliminates this act as a supervening cause because it is the general likelihood of the type of injury that must be unforeseeable in order to absolve defendant; the extent of injury need not be foreseeable." (*Hardison v. Bushnell* (1993) 18 Cal.App.4th 22, 28 [22 Cal.Rptr.2d 106].)

- "Expert testimony is not always required to prove that failure to use a seat belt may cause at least some, if not all, of plaintiff's claimed injuries. [¶] Depending on the facts of the case, expert testimony may be necessary for the jury to distinguish the injuries that [plaintiff] unavoidably sustained in the collision from the injuries he could have avoided if he had worn a seat belt." (*Lara v. Nevitt* (2004) 123 Cal.App.4th 454, 458–459 [19 Cal.Rptr.3d 865], internal citation omitted.)

- "The seat belt defense does not depend on a Vehicle Code violation nor is it eviscerated by a Vehicle Code exemption from the requirement to wear seat belts." (*Lara, supra,* 123 Cal.App.4th at p. 461 fn. 3.)

Secondary Sources

California Tort Guide (Cont.Ed.Bar 3d ed.) § 4.71

2 Levy et al., California Torts, Ch. 20, *Motor Vehicles*, § 20.05[2] (Matthew Bender)

8 California Forms of Pleading and Practice, Ch. 82, *Automobiles: Causes of Action*, § 82.10 (Matthew Bender)

California Civil Practice: Torts § 25:26 (Thomson Reuters)

2548. Disability Discrimination—Refusal to Make Reasonable Accommodation in Housing (Gov. Code, § 12927(c)(1))

[*Name of plaintiff***] claims that [***name of defendant***] refused to reasonably accommodate [his/her/***nonbinary pronoun***] [***select term to describe basis of limitations, e.g., physical disability***] as necessary to afford [him/her/***nonbinary pronoun***] an equal opportunity to use and enjoy a dwelling. To establish this claim, [***name of plaintiff***] must prove all of the following:**

1. **That [***name of defendant***] was the [***specify defendant's source of authority to provide housing, e.g., owner***] of [a/an] [***specify nature of housing at issue, e.g., apartment building***];**

2. **That [***name of plaintiff***] [sought to rent/was living in/[***specify other efforts to obtain housing***]] the [***e.g., apartment***];**

3. **That [***name of plaintiff***] had [a history of having] [a] [***e.g., physical disability***] [that limited [***insert major life activity***]];**

4. **That [***name of defendant***] knew of, or should have known of, [***name of plaintiff***]'s [history of having a] disability;**

5. **That in order to afford [***name of plaintiff***] an equal opportunity to use and enjoy the [***e.g., apartment***], it was necessary to [***specify accommodation required***];**

6. **That it was reasonable to [***specify accommodation***];**

7. **That [***name of defendant***] refused to make this accommodation.**

New May 2017; Revised May 2020, December 2025, December 2026*

Directions for Use

This instruction is for use in a case alleging discrimination in housing based on a failure to reasonably accommodate a disability. Under the Fair Employment and Housing Act, "discrimination" includes the "refusal to make reasonable accommodations in rules, policies, practices, or services when these accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling." (Gov. Code, § 12927(c)(1).)

In the introductory paragraph, select a term to describe the source of the plaintiff's limitations. It may be a statutory term such as "physical disability," "mental disability," or "medical condition." (See Gov. Code, § 12940(a).) Or it may be a general term such as "condition," "disease," or "disorder." Or it may be a specific health condition such as "diabetes." Use the term in element 3.

In element 2, if the plaintiff encountered a barrier before actually submitting an application, such as discovering a policy that would make it impossible to live in the unit, specify what the plaintiff did to obtain the housing.

In ~~element 3~~elements 3 and 4, select the bracketed language on "history" of disability if the claim of discrimination is based on a history of disability rather than a current actual disability.

~~Modify element 3 if the plaintiff did not have a disability or a history of disability but alleges denial of accommodation because the plaintiff was perceived to have a disability or to be associated with someone who has, or is perceived to have, a disability.~~ As appropriate, modify elements 3 and 4 if the reasonable accommodation in housing claim involves being regarded as disabled or an association with someone who has or is perceived to have a disability. The Government Code defines both mental disability and physical disability to include having a record or history of having a disability, as well as a perception that the person has a disability, or that the person is associated with a person who has, or is perceived to have, a disability. (Gov. Code, §§ 12955.3 [disability includes, but is not limited to, any physical or mental disability as defined in section 12926], 12926(o) [disability includes a combination of characteristics, perception that a person has a disability, or perception that the person is associated with a person who has, or is perceived to have, a disability]; see also Gov. Code, § 12926(j)(4), (m)(4) [mental and physical disability include being regarded or treated as disabled by the employer or other entity].)

In element 5, explain the accommodation in rules, policies, or practices that is alleged to be needed.

Sources and Authority

- "Discrimination" Defined Regarding Housing Disability Accommodations. Government Code section 12927(c)(1).
- "Disability" Defined for Housing Discrimination. Government Code section 12955.3.
- "Housing Accommodation" Defined. Government Code section 12927(d).
- "Disability" Defined. 2 California Code of Regulations section 11065(d).
- " 'FEHA in the housing area is thus intended to conform to the general requirements of federal law in the area and may provide greater protection against discrimination.' In other words, the FHA provides a minimum level of protection that FEHA may exceed. Courts often look to cases construing the FHA, the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990 when interpreting FEHA." (*Auburn Woods I Homeowners Assn. v. Fair Employment & Housing Com.* (2004) 121 Cal.App.4th 1578, 1591 [18 Cal.Rptr.3d 669], internal citations omitted.)
- "[T]he basic principles applicable in employment cases should also apply in the housing context." (*Brown v. Smith* (1997) 55 Cal.App.4th 767, 782 [64 Cal.Rptr.2d 301].)
- "In order to establish discrimination based on a refusal to provide reasonable accommodations, a party must establish that he or she (1) suffers from a disability as defined in FEHA, (2) the discriminating party knew of, or should have known of, the disability, (3) accommodation is necessary to afford an equal opportunity to use and enjoy the dwelling, and (4) the discriminating party refused to make this accommodation." (*Auburn Woods I Homeowners Assn., supra,* 121 Cal.App.4th at p.1592.)
- "FEHA prohibits, as unlawful discrimination, a 'refusal to make reasonable accommodations in

rules, policies, practices, or services when these accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling.' 'In order to establish discrimination based on a refusal to provide reasonable accommodations, a party must establish that he or she (1) suffers from a disability as defined in FEHA, (2) the discriminating party knew of, or should have known of, the disability, (3) accommodation is necessary to afford an equal opportunity to use and enjoy the dwelling, and (4) the discriminating party refused to make this accommodation.' " (*Roman v. BRE Properties, Inc.* (2015) 237 Cal.App.4th 1040, 1051 [188 Cal.Rptr.3d 537], internal citation omitted.)

- "We note that, currently, section 12955.3 explicitly states that 'disability' includes 'any physical or mental disability as defined in Section 12926.' That statute in turn defines 'mental disability' to include "any mental or psychological disorder or condition … that limits a major life activity', that is, 'makes the achievement of the major life activity difficult.' 'Major life activities' is to be broadly construed, and includes 'physical, mental, and social activities and working.' " (*Auburn Woods I Homeowners Assn., supra,* 121 Cal.App.4th at p. 1592, internal citations omitted.)

- " 'If a landlord is skeptical of a tenant's alleged disability or the landlord's ability to provide an accommodation, it is incumbent upon the landlord to request documentation or open a dialogue.' This obligation to 'open a dialogue' with a party requesting a reasonable accommodation is part of an interactive process in which each party seeks and shares information." (*Auburn Woods I Homeowners Assn., supra,* 121 Cal.App.4th at p. 1598, internal citation omitted.)

- "This evidence established the requisite causal link between the [defendant]'s no-pets policy and the interference with the [plaintiffs]' use and enjoyment of their condominium." (*Auburn Woods I Homeowners Assn., supra,* 121 Cal.App.4th at p. 1593.)

- "When the reasons for a delay in offering a reasonable accommodation are subject to dispute, the matter is left for the trier of fact to resolve. The administrative law judge properly characterized this lengthy delay as a refusal to provide reasonable accommodation." (*Auburn Woods I Homeowners Assn., supra,* 121 Cal.App.4th at p. 1599, internal citation omitted.)

- "We reiterate that the FEHC did not rule that companion pets are always a reasonable accommodation for individuals with mental disabilities. Each inquiry is fact specific and requires a case-by-case determination." (*Auburn Woods I Homeowners Assn., supra,* 121 Cal.App.4th at p. 1593.)

Secondary Sources

Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act* (May 17, 2004), www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint_statement_ra.pdf

8 Witkin, Summary of California Law (11th ed. 2017) Constitutional Law, §§ 1073–1076

7 California Real Estate Law and Practice, Ch. 214, *Government Regulation and Enforcement*, § 214.41 (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 117, *Civil Rights: Housing Discrimination*, § 117.14

(Matthew Bender)

2590. Reasonable Accommodation for Workplace Safety for Victim of Qualifying Act of Violence—Essential Factual Elements (Gov. Code, § 12945.8(e))

[*Name of plaintiff***] claims that [***name of defendant***] failed to reasonably accommodate [his/her/***nonbinary pronoun***] safety while at work. To establish this claim, [***name of plaintiff***] must prove all of the following:**

1. **That [***name of plaintiff***] was an employee of [***name of defendant***];**

2. **That [***name of plaintiff***]/[[***name of plaintiff***]'s family member] was a victim of [***specify qualifying act of violence***];**

3. **That [***name of plaintiff***] disclosed to [***name of defendant***] [his/her/***nonbinary pronoun***] [family member's] status as a victim of [***specify qualifying act of violence***];**

4. **That [***name of plaintiff***] requested an accommodation for [his/her/***nonbinary pronoun***] safety while at work;**

5. **That [***name of defendant***] failed to provide reasonable accommodation for [***name of plaintiff***]'s safety while at work;**

6. **That [***name of plaintiff***] was harmed; and**

7. **That [***name of defendant***]'s failure to provide reasonable accommodation was a substantial factor in causing [***name of plaintiff***]'s harm.**

New December 2026

Directions for Use

Modify the instruction or give a special instruction if there is a factual dispute as to whether the act is a qualifying act of violence or whether the plaintiff's family member meets the definition under the statute. For example, a person may be a victim of a qualifying act of violence regardless of whether anyone was arrested for, prosecuted for, or convicted of committing any crime. (Gov. Code, § 12945.8(j)(5).)

A special instruction may be needed if, after the employee's initial disclosure of victim status, the employer requested written certification under Government Code section 12945.8(e)(7), and a dispute exists as to that request or the employee's response to the request. If written certification is disputed, elements 3 and 4 may need to be modified to clarify that disclosure of victim status and a request for accommodation need not be in writing.

For an instruction defining "reasonable accommodation" in this context, see CACI No. 2591, *Workplace Safety for Victim of Qualifying Act of Violence—"Reasonable Accommodation" Explained*. For an instruction on undue hardship in this context, see CACI No. 2592, *Workplace Safety for Victim of Qualifying Act of Violence—Affirmative Defense—Undue Hardship*.

Sources and Authority

- Employer's Duty to Provide Reasonable Accommodation. Government Code section 12945.8(e)(1).
- "Employer" Defined. Government Code section 12945.8(j)(3).
- "Family Member" Defined. Government Code section 12945.8(j)(4).
- "Victim" Defined. Government Code section 12945.8(j)(8).
- "Qualifying Act of Violence" Defined. Government Code section 12945.8(j)(5).
- Disclosure Requirement. Government Code section 12945.8(e)(3).
- Employer's Request for Certification. Government Code section 12945.8(e)(7).

2591. Workplace Safety for Victim of Qualifying Act of Violence—"Reasonable Accommodation" Explained (Gov. Code, § 12945.8(e)(2))

A reasonable accommodation is a reasonable change made to the workplace for the safety of the employee while at work.

Reasonable accommodations may include measures such as:

a. A job transfer or reassignment;

b. Changed job responsibilities, work schedules, or work stations;

c. A changed work telephone number;

d. Permission to carry a telephone at work;

e. An installed lock;

f. Assistance in documenting violence that occurs in the workplace;

g. Implemented safety procedures;

h. Referral to a victim assistance organization; or

i. Another adjustment to job structure, workplace facility, or work requirements.

You must determine whether any accommodation made was reasonable under the circumstances.

If more than one accommodation is reasonable, an employer makes a reasonable accommodation if it selects one accommodation in good faith.

New December 2026

Directions for Use

Give this instruction to explain "reasonable accommodation" as used in CACI No. 2590, *Reasonable Accommodation for Workplace Safety for Victim of Qualifying Act of Violence—Essential Factual Elements*. These listed measures are examples only; the list is not exhaustive. Include the accommodations (a) through (i) that are requested; others may be omitted.

Modify the instruction or give a special instruction if the employee claims that the employer failed to consider an exigent circumstance or danger facing the employee or their family member. (Gov. Code, § 12945.8(e)(f).)

Sources and Authority

- Employer's Obligation to Make Reasonable Accommodation. Government Code section 12945.8(e)(1).
- "Reasonable Accommodation" Defined. Government Code section 12945.8(e)(2).
- Employer's Obligation to Consider Exigent Circumstances. Government Code section 12945.8(e)(5).

2592. Workplace Safety for Victim of Qualifying Act of Violence—Affirmative Defense—Undue Hardship (Gov. Code, § 12945.8(e)(6))

[*Name of defendant*] claims that accommodating [*name of plaintiff*]'s safety at the workplace would have created an undue hardship to the operation of [*name of defendant*]'s business.

To succeed on this defense, [*name of defendant*] must prove that [an] accommodation[s] would have created an undue hardship [either because providing the accommodation would have violated the employer's duty to provide and maintain a place of employment that is safe and healthful for all employees or] because providing the accommodation would have been significantly difficult or expensive, in light of the following factors:

a. The nature and cost of the accommodation[s];

b. [*Name of defendant*]'s ability to pay for the accommodation[s];

c. The type of operations conducted at the facility;

d. The impact on the operations of the facility;

e. The number of [*name of defendant*]'s employees and the relationship of the employees' duties to one another;

f. The number, type, and location of [*name of defendant*]'s facilities; and

g. The administrative and financial relationship of the facilities to one another.

New December 2026

Directions for Use

In addition to the hardship factors identified in Government Code section 12926, an undue hardship under the statute includes an action that would violate an employer's duty to furnish and maintain a place of employment that is safe and healthful for all employees as required by section 6400 of the Labor Code. (Gov. Code, § 12945.8(e)(6).) Include the bracketed phrase in the second paragraph if the employer has raised the duty under Labor Code section 6400.

Sources and Authority

- Employer's Duty to Provide Reasonable Accommodation. Government Code section 12945.8(e)(1).
- Employer's Duty to Furnish Safe and Healthful Place of Employment. Labor Code section 6400.
- "Undue Hardship" Defined. Government Code sections 12926(u), 12945.8(e)(6).

2721. Affirmative Defense—Nonpayment of Overtime—Administrative Exemption

[*Name of defendant***] claims that [he/she/***nonbinary pronoun***/it] is not required to pay [***name of plaintiff***] for overtime because [***name of plaintiff***] is an administrative employee. [***Name of plaintiff***] is exempt from overtime pay requirements as an administrator if [***name of defendant***] proves all of the following:**

1. **[***Name of plaintiff***]'s duties and responsibilities involve the performance of office or nonmanual work directly related to management policies or general business operations of [***name of defendant***] or [***name of defendant***]'s customers;**

2. **[***Name of plaintiff***] customarily and regularly exercises discretion and independent judgment;**

3. **[[***Name of plaintiff***] performs, under general supervision only, specialized or technical work that requires special training, experience, or knowledge;]**

   [*or***]**

   [[*Name of plaintiff***] regularly and directly assists a proprietor or a bona fide executive or administrator;]**

   [*or***]**

   [[*Name of plaintiff***] performs special assignments and tasks under general supervision only;]**

4. **More than half of the time, [***name of plaintiff***] performs administrative duties that meet the test of the exemption; and**

5. **[***Name of plaintiff***]'s monthly salary is at least [***insert amount that is twice the state minimum wage for full time employment***].**

In determining whether [*name of plaintiff***] spends more than half of [his/her/***nonbinary pronoun***] time performing administrative duties that meet the test of the exemption, the most important consideration is how [he/she/***nonbinary pronoun***] actually spends [his/her/***nonbinary pronoun***] time. But also consider whether [***name of plaintiff***]'s practice differs from [***name of defendant***]'s realistic expectations of how [***name of plaintiff***] should spend [his/her/***nonbinary pronoun***] time and the realistic requirements of the job.**

[*Define the administrative duties that meet the test of the exemption.***]**

[Each of [*name of plaintiff***]'s activities is either an exempt or a nonexempt activity depending on the primary purpose for which [he/she/***nonbinary pronoun***] undertook it at that time. Time spent on an activity is either exempt or nonexempt, not both.]**

New December 2012; Revised June 2014, December 2025, December 2026

Directions for Use

This instruction is an affirmative defense to an employee's claim for statutory overtime earnings. (See CACI No. 2702, *Nonpayment of Overtime Compensation—Essential Factual Elements*.) The employer claims that the employee is an exempt administrator. (See Lab. Code, § 515(a).) The employer must prove all of the elements. (*Eicher v. Advanced Business Integrators, Inc*. (2007) 151 Cal.App.4th 1363, 1372 [61 Cal.Rptr.3d 114].) For an instruction for the affirmative defense of executive exemption, see CACI No. 2720, *Affirmative Defense—Nonpayment of Overtime—Executive Exemption.*

This instruction is based on Industrial Welfare Commission Wage Order 9, which is applicable to the transportation industry. (See 8 Cal. Code Regs., § 11090.) Different wage orders are applicable to different industries. (See Lab. Code, § 515.) The requirements of the administrative exemptions under the various wage orders are essentially the same. (Cf., e.g., 8 Cal. Code Regs., § 11040, Wage Order 4, applicable to persons employed in professional, technical, clerical, mechanical, and similar occupations.)

The exemption requires that the employee be "primarily engaged in duties that meet the test of the exemption." (See 8 Cal. Code Regs., § 11090 sec. 1(A)(2)(f), sec. 2(J) ("primarily" means more than one-half the employee's work time).) This requirement is expressed in element 4. However, the contours of administrative duties are quite detailed in the wage orders, which incorporate federal regulations under the Fair Labor Standards Act and also provide some specific examples. (See also *Ramirez v. Yosemite Water Co.* (1999) 20 Cal.4th 785, 802 [85 Cal.Rptr.2d 844, 978 P.2d 2].) Provide as appropriate details from the applicable wage order, regulations, or other sources as to what "administrative duties" meet the test of the exemption in the paragraph following the elements. In many cases, it also will be advisable to instruct on the meaning of "directly related" (element 1).

Include the optional last paragraph if a particular work activity arguably involves more than one purpose and could be characterized as exempt or nonexempt, depending on its primary purpose.

This instruction may be expanded to provide examples of the specific exempt and nonexempt activities relevant to the work at issue. (See, e.g., *Heyen v. Safeway, Inc.* (2013) 216 Cal.App.4th 795, 808−809 [157 Cal.Rptr.3d 280].)

Sources and Authority

- Exemptions to Overtime Requirements. Labor Code section 515(a).
- "[T]he assertion of an exemption from the overtime laws is considered to be an affirmative defense, and therefore the employer bears the burden of proving the employee's exemption." (*Ramirez, supra,* 20 Cal.4th at pp. 794–795.)
- "In order to establish that [plaintiff] was exempt as an administrative employee, [defendant] was required to show all of the following: (1) his duties and responsibilities involve the performance of office or nonmanual work directly related to management policies or general business operations of [defendant]; (2) he customarily and regularly exercises discretion and independent judgment; (3) he performs work requiring special training, experience, or knowledge under general supervision only (the two alternative prongs of the general supervision element are not

pertinent to our discussion); (4) he is primarily engaged in duties that meet the test of exemption; and (5) his monthly salary is equivalent to no less than two times the state minimum wage for full-time employment." (*United Parcel Service Wage & Hour Cases, supra,* 190 Cal.App.4th at p. 1028 [relying on 8 Cal. Code Regs., § 11090, subd. 1(A)(2)].)

- "Read together, the applicable Labor Code statutes, wage orders, and incorporated federal regulations now provide an explicit and extensive framework for analyzing the administrative exemption." (*Harris v. Superior Court* (2011) 53 Cal.4th 170, 182 [135 Cal.Rptr.3d 247, 266 P.3d 953].)

- "Determining whether or not all of the elements of the exemption have been established is a fact-intensive inquiry." (*United Parcel Service Wage & Hour Cases* (2010) 190 Cal.App.4th 1001, 1014 [118 Cal.Rptr.3d 834].)

- "Review of the determination that [plaintiff] was not an exempt employee is a mixed question of law and fact. Whether an employee satisfies the elements of the exemption is a question of fact reviewed for substantial evidence. The appropriate manner of evaluating the employee's duties is a question of law that we review independently." (*Heyen, supra,* 216 Cal.App.4th at p. 817, internal citations omitted.)

- "The appropriateness of any employee's classification as exempt must be based on a review of the actual job duties performed by that employee. Wage Order 9 expressly provides that '[t]he *work actually performed by the employee during the course of the workweek must, first and foremost, be examined and the amount of time the employee spends on such work,* together with the employer's realistic expectations and the realistic requirements of the job, shall be considered … .' No bright-line rule can be established classifying everyone with a particular job title as per se exempt or nonexempt—the regulations identify job duties, not job titles. 'A job title alone is insufficient to establish the exempt status of an employee. The exempt or nonexempt status of any particular employee must be determined on the basis of whether the employee's salary and duties meet the requirements of the regulations … .' " (*United Parcel Service Wage & Hour Cases, supra,* 190 Cal.App.4th at p. 1014–1015, original italics, internal citation omitted.)

- "This is not a day-by-day analysis. The issue is whether the employees ' "spend more than 51% of their time on managerial tasks in any given workweek." ' " (*Batze v. Safeway, Inc.* (2017) 10 Cal.App.5th 440, 473, fn. 36 [216 Cal.Rptr.3d 390].)

- "Put simply, 'the regulations do not recognize "hybrid" activities—i.e., activities that have both "exempt" and "nonexempt" aspects. Rather, the regulations require that each discrete task be separately classified as either "exempt' or "nonexempt." [Citations.]' [¶] We did not state, however, that the same task must always be labeled exempt or nonexempt: ' [I]dentical tasks may be "exempt" or 'nonexempt" based on the purpose they serve within the organization or department.' " (*Batze, supra,* 10 Cal.App.5th at p. 474.)

- "In basic terms, the administrative/production worker dichotomy distinguishes between administrative employees who are primarily engaged in ' "administering the business affairs of the enterprise" ' and production-level employees whose ' "primary duty is producing the commodity or commodities, whether goods or services, that the enterprise exists to produce and

market." [Citation.]' ¶¶ [T]he dichotomy is a judicially created creature of the common law, which has been effectively superseded in this context by the more specific and detailed statutory and regulatory enactments." (*Harris, supra,* 53 Cal.4th at pp. 183, 188.)

- "We do not hold that the administrative/production worker dichotomy … can never be used as an analytical tool. We merely hold that the Court of Appeal improperly applied the administrative/production worker dichotomy as a dispositive test. [¶] … [I]n resolving whether work qualifies as administrative, courts must consider the particular facts before them and apply the language of the statutes and wage orders at issue. Only if those sources fail to provide adequate guidance … is it appropriate to reach out to other sources." (*Harris, supra,* 53 Cal.4th at p. 190.)

- "[T]he federal regulations incorporated into Wage Order 7 do not support the 'multi-tasking' standard proposed by [defendant]. Instead, they suggest, as the trial court correctly instructed the jury, that the trier of fact must categorize tasks as either 'exempt' or 'nonexempt' based on the purpose for which [plaintiff] undertook them." (*Heyen, supra,* 216 Cal.App.4th at p. 826.)

- "Wage Order 4 refers to compensation in the form of a 'salary.' It does not define the term. The regulation does not use a more generic term, such as 'compensation' or 'pay.' Either of these terms would encompass hourly wages, a fixed annual salary, and anything in between. 'Salary' is a more specific form of compensation. A salary is generally understood to be a fixed rate of pay as distinguished from an hourly wage. Thus, use of the word 'salary' implies that an exempt employee's pay must be something other than an hourly wage. California's Labor Commission noted in an opinion letter dated March 1, 2002, that the Division of Labor Standards Enforcement (DLSE) construes the IWC wage orders to incorporate the federal salary-basis test for purposes of determining whether an employee is exempt or nonexempt." (*Negri v. Koning & Associates* (2013) 216 Cal.App.4th 392, 397−398 [156 Cal.Rptr.3d 697], footnote omitted.)

- "[T]he costs incurred by an employer to provide an employee with board, lodging or other facilities may not count towards the minimum salary amount required for exemption … ." (*Kao v. Holiday* (2017) 12 Cal.App.5th 947, 958 [219 Cal.Rptr.3d 580].)

- "The rule is that state law requirements for exemption from overtime pay must be at least as protective of the employee as the corresponding federal standards. Since federal law requires that, in order to meet the salary basis test for exemption the employee would have to be paid a predetermined amount that is not subject to reduction based upon the number of hours worked, state law requirements must be at least as protective." (*Negri, supra,* 216 Cal.App.4th at p. 398.)

- "Under California law, to determine whether an employee was properly classified as 'exempt,' the trier of fact must look not only to the 'work actually performed by the employee during the … workweek,' but also to the 'employer's realistic expectations and the realistic requirements of the job.' " (*Heyen, supra,* 216 Cal.App.4th at p. 828.)

- "Having recognized California's distinctive quantitative approach to determining which employees are outside salespersons, we must then address an issue implicitly raised by the parties that caused some confusion in the trial court and the Court of Appeal: Is the number of hours worked in sales-related activities to be determined by the number of hours that the employer,

according to its job description or its estimate, claims the employee should be working in sales, or should it be determined by the actual average hours the employee spent on sales activity? The logic inherent in the IWC's quantitative definition of outside salesperson dictates that neither alternative would be wholly satisfactory. On the one hand, if hours worked on sales were determined through an employer's job description, then the employer could make an employee exempt from overtime laws solely by fashioning an idealized job description that had little basis in reality. On the other hand, an employee who is supposed to be engaged in sales activities during most of his working hours and falls below the 50 percent mark due to his own substandard performance should not thereby be able to evade a valid exemption. A trial court, in determining whether the employee is an outside salesperson, must steer clear of these two pitfalls by inquiring into the *realistic* requirements of the job. In so doing, the court should consider, first and foremost, how the employee actually spends his or her time. But the trial court should also consider whether the employee's practice diverges from the employer's realistic expectations, whether there was any concrete expression of employer displeasure over an employee's substandard performance, and whether these expressions were themselves realistic given the actual overall requirements of the job." (*Ramirez, supra,* 20 Cal.4th at pp. 801−802, original italics.)

Secondary Sources

3 Witkin, Summary of California Law (11th ed. 2017) Agency and Employment, § 392 et seq.

Chin et al., California Practice Guide: Employment Litigation, Ch. 11-B, *Coverage And Exemptions—In General*, ¶ 11:345 et seq. (The Rutter Group)

1 Wilcox, California Employment Law, Ch. 2, *Minimum Wages*, § 2.04 (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 250, *Employment Law: Wage and Hour Disputes*, § 250.71 (Matthew Bender)

Simmons, Wage and Hour Manual for California Employers, Ch. 2, *Coverage of Wage and Hour Laws* (Castle Publications Limited)

Simmons, Wage and Hour Manual for California Employers, Ch. 10, *Exemptions* (Castle Publications Limited)

VF-2720. Affirmative Defense—Nonpayment of Overtime—Executive Exemption

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We answer the questions submitted to us as follows:

1. **Did [*name of plaintiff*]'s duties and responsibilities involve management of [*name of defendant*]'s [business/enterprise] or of a customarily recognized department or subdivision of the [business/enterprise]?**

   ____ Yes ____ No

   If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. **Did [*name of plaintiff*] customarily and regularly direct the work of two or more employees?**

   ____ Yes ____ No

   If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. **Did [*name of plaintiff*] have the authority to hire or fire employees, or were [his/her/*nonbinary pronoun*] suggestions as to hiring or firing and as to advancement and promotion or other changes in status given particular weight? (If you answer yes to either or both parts of this question, answer yes below; if you answer no to both parts of this question, answer no below.)**

   ____ Yes ____ No

   If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. **Did [*name of plaintiff*] customarily and regularly exercise discretion and independent judgment?**

   ____ Yes ____ No

   If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. **Did [*name of plaintiff*], more than half of the time, perform executive duties that meet the test of the exemption?**

   ____ Yes ____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. Was [*name of plaintiff***]'s monthly salary at least [***insert amount that is twice the state minimum wage for full-time employment***]?**

____ Yes ____ No

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New December 2026

Directions for Use

This verdict form is based on CACI No. 2720, *Affirmative Defense—Nonpayment of Overtime—Executive Exemption*. That instruction is based on Industrial Welfare Commission Wage Order 9, which is applicable to the transportation industry.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case. For example, depending on the industry and its applicable Industrial Welfare Commission Wage Order, additional or alternative questions may be required.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

This verdict form may be augmented for the jury to make any factual findings that are required for the court to calculate the amount of prejudgment interest due for nonpayment of wages. (Lab. Code, § 218.6.)

VF-2721. Affirmative Defense—Nonpayment of Overtime—Administrative Exemption

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We answer the questions submitted to us as follows:

1. **Did [*name of plaintiff*]'s duties and responsibilities involve performance of office or nonmanual work directly related to management policies or general business operations of [*name of defendant*] or [*name of defendant*]'s customers?**

   ____ Yes ____ No

   If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. **Did [*name of plaintiff*] customarily and regularly exercise discretion and independent judgment?**

   ____ Yes ____ No

   If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. **[Did [*name of plaintiff*] perform, under general supervision only, specialized or technical work that requires special training, experience, or knowledge?]**

   [*or***]**

   [Did [*name of plaintiff*] regularly and directly assist a proprietor or a bona fide executive or administrator?]

   [*or***]**

   [Did [*name of plaintiff*] perform, under general supervision only, special assignments and tasks?]

   [(If you answer yes to any of the parts of this question, answer yes below; if you answer no to all parts of this question, answer no below.)]

   ____ Yes ____ No

   If you answered yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

4. **Did [*name of plaintiff*], more than half of the time, perform administrative duties that meet the test of the exemption?**

   ____ Yes ____ No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was [*name of plaintiff***]'s monthly salary at least [***insert amount that is twice the state minimum wage for full time employment***]?**
____ Yes ____ No

Signed: _____
Presiding Juror

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant].

New December 2026

Directions for Use

This verdict form is based on CACI No. 2721, *Affirmative Defense—Nonpayment of Overtime—Administrative Exemption*. That instruction is based on Industrial Welfare Commission Wage Order 9, which is applicable to the transportation industry.

The special verdict forms in this section are intended only as models. They may need to be modified depending on the facts of the case. For example, additional or alternative questions may be required depending on the industry and its applicable Industrial Welfare Commission Wage Order.

If there are multiple causes of action, users may wish to combine the individual forms into one form. If different damages are recoverable on different causes of action, replace the damages tables in all of the verdict forms with CACI No. VF-3920, *Damages on Multiple Legal Theories*.

This verdict form may be augmented for the jury to make any factual findings that are required for the court to calculate the amount of prejudgment interest due for nonpayment of wages. (Lab. Code, § 218.6.)

3075. Disability Discrimination—Unruh Act—Website or Mobile Application Equal Access—Essential Factual Elements (Civ. Code, § 51)

[*Name of plaintiff***] claims that [***name of defendant***] denied [him/her/***nonbinary pronoun***] full and equal access to [***name of defendant***]'s goods, services, or accommodations because of [his/her/its/***nonbinary pronoun***] [website/mobile application] [***specify terms or conditions that allegedly created barrier to access***]. To establish this claim, [***name of plaintiff***] must prove all of the following:**

1. **That [***name of plaintiff***] had [***specify disability, e.g., a visual impairment***];**

[2. That [*name of plaintiff***] had a genuine intent to [use/sign up for/***specify other act***] [***name of defendant***]'s [website/mobile application];]**

3. **That [***name of defendant***] denied [***name of plaintiff***] full and equal access to [name of *defendant*]'s goods, services, or accommodations because [his/her/its/***nonbinary pronoun***] [website/mobile application] was inaccessible to [***name of plaintiff***] due to [***name of plaintiff***]'s [***specify disability***];**

4. **That [***name of plaintiff***] was harmed; and**

5. **That [***name of defendant***]'s conduct was a substantial factor in causing [***name of plaintiff***]'s harm.**

New December 2026

Directions for Use

Note that this instruction does not include an element for intentional discrimination, which is typically required for an Unruh Act claim. (See Directions for Use under CACI No. 3060, *Unruh Civil Rights Act—Essential Factual Elements*.) Use this instruction only if the plaintiff's claim is based on a violation of the Americans With Disabilities Act (ADA). California cases hold that a retail website without any connection to a physical location is not a "place of public accommodation" under the ADA. (*Martin v. Thi E-Commerce, LLC* (2023) 95 Cal.App.5th 521, 532–533; *Martinez v. Cot'n Wash, Inc.* (2022) 81 Cal.App.5th 1026, 1032 & 1052 fn. 9 ["a standalone website cannot constitute a facility"].) Under this authority, the website or mobile application must have a connection to a physical location to violate the ADA.

The alleged accessibility barrier to using a website or mobile application may depend on the plaintiff's particular disability. Specify the terms or conditions that created the alleged barrier to access.

Optional element 2 should be given if the defendant asserts that the plaintiff did not have a bona fide intent to use the defendant's goods, services, or accommodations.

Elements 4 and 5 may not be needed if plaintiff only seeks a minimum statutory damages award. (Civ. Code, § 52.) With regard to the Unruh Act (Civ. Code, § 51), which is also governed by Civil Code

section 52(a), the California Supreme Court has held that a violation is per se injurious, and that section 52 provides for minimum statutory damages for every violation regardless of the plaintiff's actual damages. (See *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 33 [219 Cal.Rptr. 133, 707 P.2d 195].) For an instruction on damages under the Unruh Civil Rights Act, see CACI No. 3067, *Unruh Civil Rights Act—Damages*.

The judge may decide the issue of whether the defendant is a business establishment as a matter of law. (*Rotary Club of Duarte v. Bd. of Directors* (1986) 178 Cal.App.3d 1035, 1050 [224 Cal.Rptr. 213].) Additional instructions may be needed if there are factual issues, especially about the defendant's operation of the website or mobile application. This element has been omitted from the instruction because it is unlikely to go to a jury.

Sources and Authority

- "Disability" Defined. Government Code sections 12926, 12926.1.

- "We conclude that a person who visits a business's website with intent to use its services and encounters terms or conditions that exclude the person from full and equal access to its services has standing under the Unruh Civil Rights Act, with no further requirement that the person enter into an agreement or transaction with the business." (*White v. Square, Inc.* (2019) 7 Cal.5th 1019, 1032–1033 [250 Cal.Rptr.3d 770, 446 P.3d 276].)

- "While we agree that an Unruh Civil Rights Act claimant need not be a client or customer of the covered public accommodation, and that he or she need not prove intentional discrimination upon establishing an ADA violation, we do not agree that an Unruh Civil Rights Act claimant's intent or motivation for visiting the covered public accommodation is irrelevant to a determination of the merits of his or her claim. [Plaintiff's] argument conflates standing requirements with the merits of her claim. 'A litigant's standing to sue is a threshold issue to be resolved before the matter can be reached on the merits.' Here, [plaintiff] had standing to assert an Unruh Civil Rights Act claim against [defendant]. What was unclear was whether her factual allegations could overcome [defendant's] assertion that she did 'not actually possess a *bona fide intent* … to use its services.' " (*Thurston v. Omni Hotels Management Corp.* (2021) 69 Cal.App.5th 299, 309 [284 Cal.Rptr.3d 341], original italics, internal citations omitted.)

- "A plaintiff can recover under the [Unruh Civil Rights Act] on two alternate theories: (1) a violation of the ADA (Civ. Code, § 51, subd. (f)); or (2) denial of access to a business establishment based on intentional discrimination." (*Martinez, supra,* 81 Cal.App.5th at p. 1035.)

- "Because we conclude that the ADA applies only to physical places, and because plaintiffs did not allege a violation of the ADA arising from any physical space, they failed to state a claim under the Unruh Civil Rights Act for a violation of the ADA." (*Martin, supra,* 95 Cal.App.5th at p. 533.)

Secondary Sources

2 Wilcox, California Employment Law, Ch. 40, Unruh/Ralph Acts, Public Access of Disabled Persons, and Prohibited Business Transactions, § 40.12 (Matthew Bender)

10 California Forms of Pleading and Practice—Annotated, Ch. 104, *Complaint for Money Based on Violation of Unruh Act*, § 104.311 (Matthew Bender)

20 California Points and Authorities Ch. 206, *Supporting Contention That Unruh Act Applies to Loan Transaction—Consumer Sale Was Financed by Lender Closely Connected to Seller*, § 206.151 (Matthew Bender)

3704. Existence of "Employee" Status Disputed

[*Name of plaintiff***] must prove that [***name of agent***] was [***name of defendant***]'s employee.**

In deciding whether [*name of agent***] was [***name of defendant***]'s employee, the most important factor is whether [***name of defendant***] had the right to control how [***name of agent***] performed the work, rather than just the right to specify the result. One indication of the right to control is that the hirer can discharge the worker [without cause]. It does not matter whether [***name of defendant***] exercised the right to control.**

In deciding whether [*name of defendant***] was [***name of agent***]'s employer, in addition to the right of control, you must consider the full nature of their relationship. You should take into account the following additional factors, which, if true, may show that [***name of defendant***] was the employer of [***name of agent***]. No one factor is necessarily decisive. Do not simply count the number of applicable factors and use the larger number to make your decision. It is for you to determine the weight and importance to give to each of these additional factors based on all of the evidence.**

(a) **[***Name of defendant***] supplied the equipment, tools, and place of work;**

(b) **[***Name of agent***] was paid by the hour rather than by the job;**

(c) **[***Name of defendant***] was in business;**

(d) **The work being done by [***name of agent***] was part of the regular business of [***name of defendant***];**

(e) **[***Name of agent***] was not engaged in a distinct occupation or business;**

(f) **The kind of work performed by [***name of agent***] is usually done under the direction of a supervisor rather than by a specialist working without supervision;**

(g) **The kind of work performed by [***name of agent***] does not require specialized or professional skill;**

(h) **The services performed by [***name of agent***] were to be performed over a long period of time; [and]**

(i) **[***Name of defendant***] and [***name of agent***] believed that they had an employer-employee relationship[./; and]**

(j) **[***Specify other factor***].**

New September 2003; Revised December 2010, June 2015, December 2015, November 2018, May 2020, May 2021, July 2025, December 2026**

Directions for Use

This instruction is based on *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 354–355 [256 Cal.Rptr. 543, 769 P.2d 399] and the Restatement Second of Agency, section 220. It is sometimes referred to as the *Borello* test or the common law test. (See *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903, 934 [232 Cal.Rprt.3d 1, 416 P.3d 1].) It is intended to address the employer-employee relationship for purposes of assessing vicarious responsibility on the employer for the employee's acts. The common law test of employment is not always appropriate beyond the tort context in which it was originally developed to establish an employer's vicarious liability. (*Brown v. City of Inglewood* (2025) 18 Cal.5th 33, 56 [334 Cal.Rptr.3d 1, 570 P.3d 885] [looking to "history and fundamental purposes of the statute at issue" to determine whether the Legislature intended the test to apply].)

Most of the factors are less appropriate for analyzing other types of agency relationships, such as franchisor/franchisee. For an instruction more appropriate to these kinds of relationships, see CACI No. 3705, *Existence of "Agency" Relationship Disputed.*

Secondary factors (a)–(i) come from the Restatement section 220. (See also *Ayala v. Antelope Valley Newspapers, Inc.* (2014) 59 Cal.4th 522, 532 [173 Cal.Rptr.3d 332, 327 P.3d 165]; Rest.3d Agency, § 7.07, com. f.) They have been phrased so that a yes answer points toward an employment relationship. Omit any that are not relevant. Additional factors have been endorsed by the California Supreme Court and may be included if applicable. (See *S. G. Borello & Sons, Inc., supra,* 48 Cal.3d at pp. 354–355.) Therefore, an "other" option (j) has been included.

Borello was a workers' compensation case. In *Dynamex, supra,* the court, in holding that *Borello* did not control the specific wage order dispute at issue, noted that "it appears more precise to describe *Borello* as calling for resolution of the employee or independent contractor question by focusing on the intended scope and purposes of the particular statutory provision or provisions at issue." (*Dynamex*, *supra*, 4 Cal.5th at p. 934.) The court also said that "[t]he *Borello* decision repeatedly emphasizes statutory purpose as the touchstone for deciding whether a particular category of workers should be considered employees rather than independent contractors for purposes of social welfare legislation." (*Id.* at p. 935.) With respondeat superior, there is no statutory provision or social welfare legislation to be considered. (Cf. Lab. Code, § 2775 [codifying *Dynamex* for purposes of the provisions of the Labor Code, the Unemployment Insurance Code, and the wage orders of the Industrial Welfare Commission, with limited exceptions for specified occupations].)

Sources and Authority

- Principal-Agent Relationship. Civil Code section 2295.
- Rebuttable Presumption that Contractor Is Employee Rather Than Independent Contractor; Proof of Independent Contractor Status. Labor Code section 2750.5.
- "[S]ubject to certain policy considerations, a hirer … cannot be held vicariously liable for the negligence of his independent contractors." (*Blackwell v. Vasilas* (2016) 244 Cal.App.4th 160, 168 [197 Cal.Rptr.3d 753].)

- "Whether a common law employer-employee relationship exists turns foremost on the degree of a hirer's right to control how the end result is achieved." (*Ayala, supra,* 59 Cal.4th at p. 528.)

- "However, the courts have long recognized that the 'control' test, applied rigidly and in isolation, is often of little use in evaluating the infinite variety of service arrangements. While conceding that the right to control work details is the 'most important' or 'most significant' consideration, the authorities also endorse several 'secondary' indicia of the nature of a service relationship." (*S. G. Borello & Sons, Inc., supra,* 48 Cal.3d at p. 350, internal citations omitted.)

- "While the extent of the hirer's right to control the work is the foremost consideration in assessing whether a common law employer-employee relationship exists, our precedents also recognize a range of secondary indicia drawn from the Second and Third Restatements of Agency that may in a given case evince an employment relationship. Courts may consider '(a) whether the one performing services is engaged in a distinct occupation or business; (b) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the principal or by a specialist without supervision; (c) the skill required in the particular occupation; (d) whether the principal or the worker supplies the instrumentalities, tools, and the place of work for the person doing the work; (e) the length of time for which the services are to be performed; (f) the method of payment, whether by the time or by the job; (g) whether or not the work is a part of the regular business of the principal; and (h) whether or not the parties believe they are creating the relationship of employer-employee.' " (*Ayala, supra,* 59 Cal.4th at p. 532.)

- " 'Generally, . . . the individual factors cannot be applied mechanically as separate tests; they are intertwined and their weight depends often on particular combinations.' " (*S. G. Borello & Sons, Inc., supra,* 48 Cal.3d at p. 351, internal citations omitted.)

- "[T]he Restatement guidelines heretofore approved in our state remain a useful reference." (*S. G. Borello & Sons, Inc., supra,* 48 Cal.3d at p. 354.)

- "We also note the six-factor test developed by other jurisdictions which determine independent contractorship in light of the remedial purposes of the legislation. Besides the 'right to control the work,' the factors include (1) the alleged employee's opportunity for profit or loss depending on his managerial skill; (2) the alleged employee's investment in equipment or materials required for his task, or his employment of helpers; (3) whether the service rendered requires a special skill; (4) the degree of permanence of the working relationship; and (5) whether the service rendered is an integral part of the alleged employer's business. [¶] As can be seen, there are many points of individual similarity between these guidelines and our own traditional Restatement tests. We find that all are logically pertinent to the inherently difficult determination whether a provider of service is an employee or an excluded independent contractor for purposes of workers' compensation law." (*S. G. Borello & Sons, Inc., supra,* 48 Cal.3d at pp. 354–355, internal cross-reference omitted.)

- "[A]t common law the problem of determining whether a worker should be classified as an employee or an independent contractor initially arose in the tort context--in deciding whether the hirer of the worker should be held vicariously liable for an injury that resulted from the worker's actions. In the vicarious liability context, the hirer's right to supervise and control the details of the worker's actions was reasonably viewed as crucial, because ' "[t]he extent to which the employer had a right to control [the details of the service] activities was . . . highly relevant to the question whether the employer

ought to be legally liable for them . . . .” ’ For this reason, the question whether the hirer controlled the details of the worker’s activities became the primary common law standard for determining whether a worker was considered to be an employee or an independent contractor.” (*Dynamex, supra,* 4 Cal.5th at p. 927, internal citations omitted.)

- “[A]lthough we have sometimes characterized *Borello* as embodying the common law test or standard for distinguishing employees and independent contractors, it appears more precise to describe *Borello* as calling for resolution of the employee or independent contractor question by focusing on the intended scope and purposes of the particular statutory provision or provisions at issue. In other words, *Borello* calls for application of a *statutory purpose* standard that considers the control of details and other potentially relevant factors identified in prior California and out-of-state cases in order to determine which classification (employee or independent contractor) best effectuates the underlying legislative intent and objective of the statutory scheme at issue.” (*Dynamex, supra,* 4 Cal.5th at p. 934, original italics, internal citation omitted.)

- “The trial court’s determination of employee or independent contractor status is one of fact if it depends upon the resolution of disputed evidence or inferences. ‘ “Even in cases where the evidence is undisputed or uncontradicted, if two or more different inferences can reasonably be drawn from the evidence this court is without power to substitute its own inferences or deductions for those of the trier of fact … .” ’ The question is one of law only if the evidence is undisputed.” (*Linton v. DeSoto Cab Co., Inc.* (2017) 15 Cal.App.5th 1208, 1225 [223 Cal.Rptr.3d 761.)

- The burden of proving the existence of an agency rests on the one affirming its existence. (*Burbank v. National Casualty Co.* (1941) 43 Cal.App.2d 773, 781 [111 P.2d 740].)

- “The label placed by the parties on their relationship is not dispositive, and subterfuges are not countenanced.” (*S. G. Borello & Sons, Inc., supra,* 48 Cal.3d at p. 349.)

- “[A]lthough the Caregiver Contract signed by Plaintiff stated she was an independent contractor, not an employee, there is evidence of other indicia of employment and Plaintiff averred in her declaration that the Caregiver Contract was presented to her ‘on a take it or leave it basis.’ ‘A party’s use of a label to describe a relationship with a worker … will be ignored where the evidence of the parties’ actual conduct establishes that a different relationship exists.’ ” (*Duffey v. Tender Heart Home Care Agency, LLC* (2019) 31 Cal.App.5th 232, 257–258 [242 Cal.Rptr.3d 460].)

- “It is not essential that the right of control be exercised or that there be actual supervision of the work of the agent. The existence of the right of control and supervision establishes the existence of an agency relationship.” (*Malloy v. Fong* (1951) 37 Cal.2d 356, 370 [232 P.2d 241], internal citations omitted.)

- “ ‘[W]hat matters is whether a hirer has the “legal right to control the activities of the alleged agent” … . That a hirer chooses not to wield power does not prove it lacks power.’ ” (*Duffey, supra,* 31 Cal.App.5th at p. 257.)

- “Perhaps the strongest evidence of the right to control is whether the hirer can discharge the worker without cause, because ‘[t]he power of the principal to terminate the services of the agent gives him the means of controlling the agent’s activities.’ ” (*Ayala, supra,* 59 Cal.4th at p. 531.)

- "The worker's corresponding right to leave is similarly relevant: ' "An employee may quit, but an independent contractor is legally obligated to complete his contract." ' " (*Ayala, supra,* 59 Cal.4th at p. 531 fn. 2.)

- "A finding of employment is supported where the workers are 'a regular and integrated portion of [the] business operation.' " (*Garcia v. Seacon Logix Inc.* (2015) 238 Cal.App.4th 1476, 1487 [190 Cal.Rptr.3d 400].)

- "Where workers are paid weekly or by the hour, rather than by the job, it suggests an employment relationship." (*Garcia, supra,* 238 Cal.App.4th at p. 1488.)

- "In cases where there is a written contract, to answer that question [the right of control] without full examination of the contract will be virtually impossible. … [¶] … [T]he rights spelled out in a contract may not be conclusive if other evidence demonstrates a practical allocation of rights at odds with the written terms." (*Ayala, supra,* 59 Cal.4th at p. 535.)

- "[T]he right to exercise complete or authoritative control must be shown, rather than mere suggestion as to detail. A worker is an independent contractor when he or she follows the employer's desires only in the result of the work, and not the means by which it is achieved." (*Jackson v. AEG Live, LLC* (2015) 233 Cal.App.4th 1156, 1179 [183 Cal.Rptr.3d 394].)

- " '[T]he owner may retain a broad general power of supervision and control as to the results of the work so as to insure satisfactory performance of the independent contract—including the right to inspect [citation], … the right to make suggestions or recommendations as to details of the work [citation], the right to prescribe alterations or deviations in the work [citation]—without changing the relationship from that of owner and independent contractor … .' " (*Beaumont-Jacques v. Farmers Group, Inc.* (2013) 217 Cal.App.4th 1138, 1143 [159 Cal.Rptr.3d 102], quoting *McDonald v. Shell Oil Co.* (1955) 44 Cal.2d 785, 790 [285 P.2d 902].)

- "Agency and independent contractorship are not *necessarily* mutually exclusive legal categories as independent contractor and servant or employee are. In other words, an agent may also be an independent contractor. One who contracts to act on behalf of another and subject to the other's control, except with respect to his physical conduct, is both an agent and an independent contractor." (*Jackson, supra,* 233 Cal.App.4th at p. 1184, original italics, internal citations omitted].)

- "[W]hen a statute refers to an 'employee' without defining the term, courts have generally applied the common law test of employment to that statute." (*Arnold v. Mutual of Omaha Ins. Co.* (2011) 202 Cal.App.4th 580, 586 [135 Cal.Rptr.3d 213].)

- "[A] termination at-will clause for both parties may properly be included in an independent contractor agreement, and is not by itself a basis for changing that relationship to one of an employee." (*Arnold, supra,* 202 Cal.App.4th at p. 589.)

- Restatement Second of Agency, section 220, provides: "(1) A servant is a person employed to perform services in the affairs of another and who with respect to the physical conduct in the performance of the services is subject to the other's control or right to control. [¶] (2) In determining whether one acting for another is a servant or an independent contractor, the following matters of fact,

> among others, are considered: [¶] (a) the extent of control which, by the agreement, the master may exercise over the details of the work; [¶] (b) whether or not the one employed is engaged in a distinct occupation or business; [¶] (c) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision; [¶] (d) the skill required in the particular occupation; [¶] (e) whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work; [¶] (f) the length of time for which the person is employed; [¶] (g) the method of payment, whether by the time or by the job; [¶] (h) whether or not the work is a part of the regular business of the employer; [¶] (i) whether or not the parties believe they are creating the relation of master and servant; and [¶] (j) whether the principal is or is not in business."

Secondary Sources

3 Witkin, Summary of California Law (11th ed. 2017) Agency and Employment, § 29A

1 Levy et al., California Torts, Ch. 8, *Vicarious Liability*, § 8.03[2] (Matthew Bender)

2 Wilcox, California Employment Law, Ch. 30, *Employers' Tort Liability to Third Parties for Conduct of Employees*, § 30.04 (Matthew Bender)

21 California Forms of Pleading and Practice, Ch. 248, *Employer's Liability for Employee's Torts*, §§ 248.15, 248.22, 248.51 (Matthew Bender)

37 California Forms of Pleading and Practice, Ch. 427, *Principal and Agent*, § 427.13 (Matthew Bender)

10 California Points and Authorities, Ch. 100A, *Employer and Employee: Respondeat Superior*, §§ 100A.25, 100A.34 (Matthew Bender)

California Civil Practice: Torts §§ 3:5–3:6 (Thomson Reuters)

4355. Breach of the Implied Covenant of Quiet Enjoyment—Essential Factual Elements

[*Name of plaintiff*] claims that [*name of defendant*] breached [his/her/*nonbinary pronoun*] right to quiet enjoyment of the property. To succeed, [*name of plaintiff*] must prove all of the following:

1. **That [*name of plaintiff*] and [*name of defendant*] entered into a lease for the property;**

2. **That [*name of defendant*]'s [acts/ [or] omissions] substantially interfered with [*name of plaintiff*]'s right to use or enjoy the property;**

3. **That [*name of plaintiff*] was harmed; and**

4. **That [*name of defendant*]'s conduct was a substantial factor in causing [*name of plaintiff*]'s harm.**

New December 2026

Directions for Use

The instruction is for use only in an action separate from the unlawful detainer process. It assumes the tenant or former tenant is the plaintiff.

Element 1 is based on the premise that every lease contains an implied covenant of quiet enjoyment absent language in the lease to the contrary; modify element 1 if there is a question of fact about the applicability of contract language to the contrary. (See *Andrews v. Mobile Aire Estates* (2005) 125 Cal.App.4th 578, 590 [22 Cal.Rptr.3d 832].)

A claim for breach of the covenant of quiet enjoyment need not be based on the landlord's personal interference with the tenant's quiet enjoyment; the instruction may be modified as needed to reflect the underlying facts and relationship between the landlord and a third party alleged to have interfered with the plaintiff's covenant of quiet enjoyment. (See *Andrews, supra,* 125 Cal.App.4th at p. 590, 593 [interference by a neighbor or tenant].)

In the context of breach of contract, it has been said that the term "substantial factor" has no precise definition, but is something that is more than a slight, trivial, negligible, or theoretical factor in producing a particular result. (*Haley v. Casa Del Rey Homeowners Assn.* (2007) 153 Cal.App.4th 863, 871–872 [63 Cal.Rptr.3d 514]; see CACI No. 430, *Causation: Substantial Factor*, applicable to negligence actions.)

See instructions in the Contracts series (CACI No. 300 et seq.).

Sources and Authority

- Quiet Possession During the Term of Hiring. Civil Code section 1927.
- "In the absence of language to the contrary, *every lease* contains an implied covenant of quiet enjoyment, whereby the landlord impliedly covenants that the tenant shall have quiet enjoyment and possession of the premises. The covenant of quiet enjoyment 'insulates the tenant against any

act or omission on the part of the landlord, or anyone claiming under him, which interferes with a tenant's right to use and enjoy the premises for the purposes contemplated by the tenancy." (*Ginsberg v. Gamson* (2012) 205 Cal.App.4th 873, 896 [141 Cal.Rptr.3d 62], original italics, internal citations omitted.)

- "It is not necessary to show that the landlord acted with the subjective intent to compel the tenant to leave the property or deprive the tenant of quiet enjoyment. There is a 'presumption that a landlord intends the natural and probable consequences of his acts; and where the acts of the landlord effectively deprive the tenant of the use and enjoyment of the premises, the intent to evict is implied from the character of the acts done.' " (*Nativi v. Deutsche Bank National Trust Co.* (2014) 223 Cal.App.4th 261, 292 [167 Cal.Rptr.3d 173], internal citations omitted.)

- "Substantial interference is required to establish a breach of quiet enjoyment. Minor inconveniences and annoyances are not actionable breaches of the implied covenant of quiet enjoyment. To be actionable, the landlord's act or omission must substantially interfere with a tenant's right to use and enjoy the premises for the purposes contemplated by the tenancy." (*Andrews, supra,* 125 Cal.App.4th at p. 589.)

- "The perpetrator of the interference with the tenant's quiet enjoyment need not be the landlord personally. There may be an actionable breach where the interference is caused by a neighbor or tenant claiming under the landlord." (*Andrews, supra,* 125 Cal.App.4th at p. 590.)

- "The implied covenant of quiet enjoyment implies a term in a contract, and a breach of the covenant gives rise to an action in contract. As such, the damages available for a breach of the covenant are contract damages." (*Ginsberg, supra,* 205 Cal.App.4th at pp. 896–897.)

- "Civil Code section 3304 prescribes the measure of damages for breach of the covenant of quiet enjoyment. Additionally, case law holds a tenant suing for breach of the covenant of quiet enjoyment may recover contract damages in accordance with Civil Code section 3300 — an amount that will compensate the aggrieved party for all the detriment caused by the breach or which in the ordinary course would be a likely result. Thus, in an appropriate case, recovery may include, inter alia, lost profits, lost business goodwill and moving expenses." (*Andrews, supra,* 125 Cal.App.4th at p. 590–591, internal citations omitted.)

Secondary Sources

17 Witkin, Summary of California Law (11th ed. 2017) Real Property, §§ 635–637

7 California Real Estate Law & Practice, Ch. 200, *Termination: Causes and Procedures* §§ 200.50–200.53 (Matthew Bender)

42 California Jurisprudence 3d *Landlord and Tenant* § 146

Matthew Bender Practice Guide: California Landlord-Tenant Litigation, Ch. 4, *Termination of Tenancy*, 4.46; Chapter 6 Suing a Landlord for Damages

14 California Points and Authorities § 141.25

ITC CACI 26-02

Civil Jury Instructions: Revisions to Judicial Council of California Civil Jury Instructions (Revise and adopt jury instructions and verdict forms)

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

Instruction(s)	Commenter	Comment	Committee Response
451. Affirmative Defense—Contractual Assumption of Risk (Revise)	Association of Southern California Defense Counsel by Eric S. Boorstin	We write on behalf of the Association of Southern California Defense Counsel (ASCDC) to comment on the Advisory Committee's proposed revision to the "Affirmative Defense—Contractual Assumption of Risk" to CACI No. 451. ASCDC submits this comment as the nation's largest and preeminent regional organization of lawyers who specialize in defending civil actions. Its members include over 1,100 attorneys in Central and Southern California, among whom are some of the leading trial and appellate lawyers of California's Civil defense bar. ASCDC appears often as amicus curiae in appellate matters of interest to its members, and has similarly weighed in on proposed legislation, rules changes, and jury instructions affecting matters of civil procedure and other aspects of ASCDC members' practices.	See the committee's response to ASCDC's comment below.
451. (continued)	ASCDC (continued)	CACI No. 451 addresses the effect of contractual releases of liability and, in its current form, recognizes that while such releases are generally enforceable, they are not enforceable to protect against claims of gross negligence or intentional harm. The thrust of the committee's proposed changes to CACI No. 451 and the directions for use is to expand the limitation on enforcement of contractual releases to additional situations where releases are unenforceable on other grounds. With that, ASCDC does not disagree. However, it is the experience of ASCDC's members that gross negligence remains the most frequently litigated form of claims involving contractual releases. (See, e.g., *City of Santa Barbara v. Superior Court* (2007) 41 Cal.4th 747, 753–759; *Brown v. El Dorado Union High School Dist.* (2022) 76 Cal.App.5th 1003, 1024, 1027–1034; *Anderson v. Fitness Internat., LLC* (2016) 4 Cal.App.5th 867, 880; *Willhide-Michiulis v. Mammoth Mountain Ski Area, LLC* (2018) 25 Cal.App.5th 344, 358, 363–367.) Given this, ASCDC suggests keeping the current language in CACI No. 451 regarding gross negligence as one option for the trial court to consider in fashioning an	The committee appreciates the comment and recommends maintaining the existing grounds as suggested and adding the new bracketed language as an alternative to the existing grounds.

Instruction(s)	Commenter	Comment	Committee Response
		appropriate instruction depending on the facts of the case. We suggest the following (underlining suggested changes): If [name of defendant] proves that there was such an agreement and that it applies to [name of plaintiff]'s claim, then [name of defendant] is not responsible for [name of plaintiff]'s harm[, unless you find that [name of defendant] [was grossly negligent or intentionally harmed [name of plaintiff]] [specify alleged ground(s) for invalidating agreement]]. [If you find that [name of defendant] [was grossly negligent or intentionally harmed [name of plaintiff]] [insert same ground(s)], then the agreement does not apply. You must then determine whether [he/she/nonbinary pronoun/it] is responsible for [name of plaintiff]'s harm based on the other instructions that I have given you.]	
451. (continued)	California Lawyers Association's Litigation Section by Rueben A. Ginsburg	Agree.	No response required.
451. (continued)	Orange County Bar Association by Shirin Forootan, President	Agree as Modified The words "Civil Code…" should be inserted before "section 1668" of the first sentence of the 4th paragraph in the Directions for Use. This will help the reader easily understand which Code is being referenced.	The committee agrees with the suggestion and recommends the addition.

ITC CACI 26-02

Civil Jury Instructions: Revisions to Judicial Council of California Civil Jury Instructions (Revise and adopt jury instructions and verdict forms)

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

Instruction(s)	Commenter	Comment	Committee Response
712. Affirmative Defense—Failure to Wear a Seat Belt (Revise)	California Lawyers Association's Litigation Section by Rueben A. Ginsburg	We suggest adding language to the instruction to inform the jury how their findings will affect the amount of any damages award. Without that information, jurors may make their own assumptions as to the impact of their findings. We note that CACI Nos. 405 and 406 both include information on the impact of the jury's findings on any damages award.	This suggestion is beyond the scope of the invitation to comment. The committee will consider it in a future release.
712. (continued)	Bruce Greenlee Attorney at Law Richmond	1. Directions for Use: I don't get it. What is reason for the proposed changes? The statute Vehicle Code 27315 has not been amended. It still does not address minors under 16 so what is there to compare? Subsections (d)(2) and (3) have nothing to do with minors. You don't cite anything regarding whether persons under 16 can be found comparatively negligent for failing to wear a seat belt, so "no case has been found" would seem to still be accurate.	The statute was amended by Assembly Bill 435 (Stats 2025, ch 434), effective January 1, 2026, and operative January 1, 2027. The committee therefore recommends the updated content that reflects the new statutory provisions. With respect to the sentence noting a lack of case law, the committee recommends removing the sentence, which is not a direction for use.
712. (continued)	Orange County Bar Association by Shirin Forootan, President	Agree.	No response required.

ITC CACI 26-02
Civil Jury Instructions: Revisions to Judicial Council of California Civil Jury Instructions (Revise and adopt jury instructions and verdict forms)
All comments are verbatim unless indicated by an asterisk (*)

Instruction(s)	Commenter	Comment	Committee Response
2548. Disability Discrimination—Refusal to Make Reasonable Accommodation in Housing (Gov. Code, § 12927(c)(1)) (Revise)	California Lawyers Association's Litigation Section by Rueben A. Ginsburg	Agree.	No response required.
2548. (continued)	Orange County Bar Association by Shirin Forootan, President	Agree.	No response required.
2548. (continued)	Western Center on Law & Poverty by Hilda Chan	Western Center on Law & Poverty writes in response to the Judicial Council's Invitation to Comment on Civil Jury Instructions CACI 26-02. We propose some minor changes to proposed language in the "Instructions for Use" section of CACI 2548. **CACI 2548. Disability Discrimination—Refusal to Make Reasonable Accommodation in Housing** Within the "Directions for Use" explanation as to CACI 2548 is the Judicial Council's proposed language: …The Government Code defines both mental disability and physical disability to include <u>having a record or history</u> of having a disability, **as well as** a <u>perception</u> that the person has a disability, or that the person is associated with a person who has, or is perceived to have, a disability. (Gov. Code, §§ 12955.3 [disability includes, but is not limited to, any physical or mental disability as defined in section 12926]; 12926(o) [disability includes a combination of characteristics, perception that a person has a disability, **and** perception that the person is associated with a person who has, or is perceived to have, a disability]; see also Gov. Code, § 12926(j)(4), (m)(4) [mental and	The committee agrees in part and recommends changing "and" to "or" in the bracket following the citation to section 12926(o). With respect to changing "as well as" to "or" in the fifth paragraph of the Directions for Use, the committee does not recommend the change because the terms relating to perception after the phrase "as well as" are parallel and the meaning is clear.

Instruction(s)	Commenter	Comment	Committee Response
		physical disability include being regarded or treated as disabled by the employer or other entity].) (emphasis added). We recommend that the two bolded language above ("as well as" and "and") should be modified to "or" to align with California's broad definitions of disability under Government Code § 12926 and its implementing regulations at Cal. Code of Regulations § 11065. Government Code § 12926(j)(3) to (5) states: (j) "Mental disability" includes, but is not limited to, all of the following: […] (3) Having a record or history of a mental or psychological disorder or condition described in paragraph (1) or (2), which is known to the employer or other entity covered by this part. (4) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any mental condition that makes achievement of a major life activity difficult. (5) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a mental or psychological disorder or condition that has no present disabling effect, but that may become a mental disability as described in paragraph (1) or (2). (emphasis added). Similarly, Section 12926(m)(3) to (5) states: (m) "Physical disability" includes, but is not limited to, all of the following: […] (3) Having a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in paragraph (1) or (2), which is known to the employer or other entity covered by this part. (4) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any physical condition that makes achievement	

Instruction(s)	Commenter	Comment	Committee Response
		of a major life activity difficult. (4) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability as described in paragraph (1) or (2). (emphasis added). Government Code § 12926(o) lists a number of protected classes, including "physical disability" and "mental disability" as those which "include[] any of the following: (1) Any combination of those characteristics. (2) A perception that the person has any of those characteristics or any combination of those characteristics. (3) A perception that the person is associated with a person who has, or is perceived to have, any of those characteristics or any combination of those characteristics." (emphasis added). The implementing regulations of Section 12926 are found at Code Regs. Tit. 2, § 11065, as follows: (d) "Disability" shall be broadly construed to mean and include any of the following definitions: […] (4) A "record or history of disability" includes previously having, or being misclassified as having, a record or history of a mental or physical disability or special education health impairment of which the employer or other covered entity is aware. (5) A "perceived disability" means being "regarded as," "perceived as" or "treated as" having a disability. Perceived disability includes: (A) Being regarded or treated by the employer or other entity covered by this article as having, or having had, any mental or physical condition or adverse genetic information that makes achievement of a major life activity difficult; or (B) Being subjected to an action prohibited by this article, including non-selection, demotion, termination, involuntary transfer or reassignment, or	

Instruction(s)	Commenter	Comment	Committee Response
		denial of any other term, condition, or privilege of employment, based on an actual or perceived physical or mental disease, disorder, or condition, or cosmetic disfigurement, anatomical loss, adverse genetic information or special education disability, or its symptom, such as taking medication, whether or not the perceived condition limits, or is perceived to limit, a major life activity. (6) A "perceived potential disability" includes being regarded, perceived, or treated by the employer or other covered entity as having, or having had, a physical or mental disease, disorder, condition or cosmetic disfigurement, anatomical loss, adverse genetic information or special education disability that has no present disabling effect, but may become a mental or physical disability or special education disability. (emphasis added). Thus, the "record or history of disability" and the "perception that a person has a disability" are two distinct categories, either of which is sufficient for a person to fit into California's broad definitions of having a disability. The Judicial Council's proposed language within "Instructions for Use" for CACI 2548, however, may inadvertently imply that one must both have a "record or history of disability" as well as demonstrate that they are "perceived" as having a disability, in order to meet California's definition of having a disability. To avoid this inaccurate summation of Government Code § 12926 and Code of Regulations § 11065, we recommend the proposed "Instructions for Use" as to CACI 2548 to be amended as follows: …The Government Code defines both mental disability and physical disability to include having a record or history of having a disability, **or ~~as well as~~** a perception that the person has a disability, or that the person is associated with a person who has, or is perceived to have, a disability. (Gov. Code, §§ 12955.3 [disability includes, but is not limited to, any physical or mental disability as defined in section 12926]; 12926(o) [disability includes a	

Instruction(s)	Commenter	Comment	Committee Response
		combination of characteristics, perception that a person has a disability, **or** ~~**and**~~ perception that the person is associated with a person who has, or is perceived to have, a disability]; see also Gov. Code, § 12926(j)(4), (m)(4) [mental and physical disability include being regarded or treated as disabled by the employer or other entity].)	
2548. (continued)	Western Center on Law & Poverty (continued)	We would also recommend that, under the "Sources and Authority," in addition to citing Government Code § 12955.3 for the definition of "disability," that an additional citation to Code Regs. Tit. 2, § 11065(d) be included.	The committee recommends the additional citation as suggested.
2590. Reasonable Accommodation for Workplace Safety for Victim of Qualifying Act of Violence—Essential Factual Elements (Gov. Code, § 12945.8) (New)	California Employment Lawyers Association by Leonard Sansanowicz, Chair	The California Employment Lawyers Association (CELA) submits this letter in response to the proposed revisions to the California Civil Jury Instructions (CACI) recently circulated for comment. CELA is the largest statewide organization of attorneys dedicated to representing employees in cases involving discrimination, harassment, retaliation, wage and hour violations, and other workplace injustices. With over 1,400 members, our mission is to protect and expand the legal rights of workers through education, advocacy, and the development of fair and accurate laws, rules, and procedures. We respectfully request that the Judicial Council incorporate the changes we propose into the CACI jury instructions. Our requested edits are necessary to ensure that the instructions (1) accurately reflect the current state of California law and (2) promote consistent, efficient, and fair use of jury instructions in employment cases and beyond. Clear, reliable jury instructions are essential to safeguarding the rights of litigants and ensuring the integrity of trial proceedings. We have set forth our proposed edits to each instruction below.	See the committee's responses to CELA's specific comments below.
2590. (continued)	CELA (continued)	CELA supports the addition of instructions implementing Government Code section 12945.8, which took effect January 1, 2025 and consolidated the former Labor Code sections 230 and 230.1 protections into FEHA. We offer the following comments to bring the instruction into closer alignment with the statute.	The committee acknowledges CELA's support for the new instructions.

Instruction(s)	Commenter	Comment	Committee Response
2590. (continued)	CELA (continued)	Regarding Element 2, the instruction should tell the jury that a qualifying act of violence does not depend on any arrest, prosecution, or conviction. Section 12945.8(j)(5) defines "qualifying act of violence" as domestic violence, sexual assault, stalking, or the listed acts and conduct, "regardless of whether anyone is arrested for, prosecuted for, or convicted of committing any crime." Jurors are likely to assume that "victim" status requires police involvement or a criminal case, and defendants will argue as much. We suggest adding to the instruction, after Element 2, the sentence: "A person may be a victim of [specify qualifying act of violence] regardless of whether anyone was arrested for, prosecuted for, or convicted of committing any crime." At a minimum, this language should appear in the Directions for Use with a recommendation that it be given when the point is contested.	The committee drafts individual elements to be self-contained. For clarity, CACI's style does not include a definitional explanation inside of an element. The committee recommends expanding the Directions for Use to cite subdivision (j)(5). Based on a suggestion from the California Lawyers Association, the committee recommends revising element 2 to reference status.
2590. (continued)	CELA (continued)	Also as to Element 2, the Directions for Use should identify the definitional sources the court should draw on when the jury must decide whether the conduct was a qualifying act of violence (for example, the statutory definitions of domestic violence, sexual assault, and stalking incorporated in section 12945.8(j)), and should note that the "act, conduct, or pattern of conduct" category in section 12945.8(j)(5)(D) includes a "reasonably perceived or actual threat" of force. The current direction to "modify the instruction if there is a factual dispute" gives the trial court no guidance about what the modification should say.	The committee believes that the requested authority is appropriately located in the Sources and Authority.

Instruction(s)	Commenter	Comment	Committee Response
2590. (continued)	CELA (continued)	Regarding Element 3, the instruction should make clear that disclosure of victim status need not take any particular form. Section 12945.8(e)(3) requires only that the employee have "disclosed" the status; it does not require a written disclosure, a formal request, or certification. Certification is separate and is something the employer "may" request under section 12945.8(e)(7). We suggest a Directions for Use note stating that (1) disclosure may be verbal or written, (2) Elements 3 and 4 may be satisfied by the same communication, and (3) the instruction should not be modified to require certification unless the employer actually requested certification under section 12945.8(e)(7) and the employee's failure to provide it is at issue. Without this guidance, defendants will argue that an employee who told a supervisor about the abuse but did not submit paperwork never "disclosed" her status.	The committee recommends a new paragraph in the Directions for Use about certification. As the commenter notes, under the statute, certification is not required unless requested by the employer. The committee does not recommend modifying the disclosure or request components of elements 3 and 4.
2590. (continued)	CELA (continued)	Regarding Element 5, the statute requires the employer to engage in "a timely, good faith, and interactive process with the employee to determine effective reasonable accommodations." (Gov. Code, § 12945.8(e)(4).) The proposed instruction does not mention the interactive process at all, and no companion instruction is proposed. This is a significant omission. The interactive process requirement in section 12945.8(e)(4) parallels the FEHA disability provisions, for which the Committee has provided both a failure to accommodate instruction (CACI No. 2541) and a separate failure to engage in the interactive process instruction (CACI No. 2546). We ask the Committee to add a parallel interactive process instruction for section 12945.8(e)(4), or at minimum to add a Directions for Use note recognizing that a failure to engage in the interactive process is a separate statutory violation and that CACI No. 2546 may be adapted for that purpose. The word "timely" in section 12945.8(e)(4) also matters in this context, because a victim's safety need is often immediate. The Directions for Use should note that an unreasonable delay in responding to a request may itself constitute a failure to provide reasonable accommodation.	In part, this suggestion is beyond the scope of the invitation to comment. The committee will consider developing an instruction for a failure to engage in the interactive process in a future release. The committee believes the new instruction is sufficient on the reasonable accommodation claim and does not recommend, at this time, a Direction for Use on the related but distinct interactive process claim.

Instruction(s)	Commenter	Comment	Committee Response
2590. (continued)	CELA (continued)	Regarding Element 1 and the definition of "employer," the Directions for Use should flag that the accommodation duty in subdivision (e) applies to "any person who directly employs one or more persons to perform services for a wage or salary" and to public entities. (Gov. Code, § 12945.8(j)(3).) This is broader than the general FEHA definition in section 12926(d) (five or more employees) and broader than the 25-employee threshold that applies to the leave provisions in section 12945.8(b). Trial courts and practitioners accustomed to the FEHA threshold may otherwise assume the accommodation duty does not reach small employers.	The committee believes that the requested authority is appropriately located in the Sources and Authority.
2590. (continued)	CELA (continued)	The Sources and Authority should include section 12945.8(e)(3) (disclosure), (e)(4) (interactive process), and (e)(7) (certification), which are the provisions most likely to be disputed at trial.	The committee recommends adding entries in the Sources and Authority for disclosure and certification as suggested but does not recommend an entry for the interactive process at this time.
2590. (continued)	CELA (continued)	Finally, the proposal includes no instruction for the anti-retaliation provisions of section 12945.8. Subdivision (e)(8) prohibits retaliation against an employee for requesting a reasonable accommodation "regardless of whether the request was granted," and subdivision (d) prohibits discrimination and retaliation based on victim status once the employer has notice or actual knowledge of that status. Nor is there an instruction for a breach of the confidentiality requirement in section 12945.8(e)(7)(D). We ask the Committee to add a retaliation instruction for section 12945.8, or at minimum to note in the Directions for Use that CACI No. 2505 may be adapted for a section 12945.8 retaliation claim. We also suggest that the Committee prepare a verdict form for CACI No. 2590.	This comment is beyond the scope of the invitation to comment. The committee will consider developing a retaliation and a breach of confidentiality instruction, as well as a verdict form for CACI No. 2590, in a future release. The committee does not recommend content in the Directions for Use about retaliation.

ITC CACI 26-02

Civil Jury Instructions: Revisions to Judicial Council of California Civil Jury Instructions (Revise and adopt jury instructions and verdict forms)

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

Instruction(s)	Commenter	Comment	Committee Response
2590. (continued)	California Lawyers Association's Litigation Section by Rueben A. Ginsburg	We would modify element 3 to more closely reflect the statutory language, "disclosed the employee's status, or the employee's family member's status, as a victim" (Gov. Code, § 12945.8, subd. (e)(3)), and to avoid any misunderstanding as to the specificity of the required disclosure: "3. That [*name of plaintiff*] disclosed to [*name of defendant*] ~~that [[he/she/*nonbinary pronoun*]/~~[his/her/*nonbinary pronoun*] family member's] ~~was~~ status as a victim ~~of [*specify qualifying act of violence*]~~;"	The committee agrees and recommends the phrasing suggested for element 3.
2590. (continued)	Bruce Greenlee Attorney at Law Richmond	1. Title: Add subsection (e) to supporting authority.	The committee agrees and recommends the addition suggested.
2590. (continued)	Office of the County Counsel County of Los Angeles by Dawyn R. Harrison	Enclosed you will find the County of Los Angeles County Counsel's responses to the request to comment on proposed Civil Jury Instructions. County Counsel would agree with the proposed changes if they are modified as suggested in Attachment A. We have included a Power Point Presentation with slides showing the proposed language, with a column for each that provides Los Angeles County's responses in Attachment B. Specifically, CACI 2590 conflates the concept of an employer's reasonable accommodation with the Plaintiff's requested accommodation (Government Code section 12945.8). It also is missing the interactive process meeting requirement and does not sufficiently define "safety at work."	See the committee's responses to the County of Los Angeles's County Counsel's specific comments below, including the notion that an interactive process requirement is missing from CACI No. 2590. As noted above in response to the comment from CELA, the committee will consider developing a new instruction for an interactive process claim in a future release.

Instruction(s)	Commenter	Comment	Committee Response
2590. (continued)	Office of the County Counsel County of Los Angeles (continued)	• Element 4 "accommodation" and element 5 "reasonable accommodation" are conflated as the same accommodation, but they are different. Plaintiff is requesting an accommodation, while Defendant employer provides a "reasonable accommodation." Employer's obligation is to provide reasonable accommodation, not necessarily plaintiff's requested accommodation.	The committee believes that elements 4 and 5 present different requirements. Under the statute, the plaintiff must make a request for accommodation. Element 4 states that requirement. Element 5 does not refer to *the plaintiff's requested* accommodation; it requires a failure to provide "reasonable accommodation." The committee recommends a companion instruction (CACI No. 2591) that defines "reasonable accommodation."
2590. (continued)	Office of the County Counsel County of Los Angeles (continued)	• "Safety at work" is unclear and not defined. What is considered work? The workplace? On work time? What if the employee works at home?	The committee appreciates the concern. The committee recommends using the language of the statute, which is "safety of the employee while at work."

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Instruction(s)	Commenter	Comment	Committee Response
2590. (continued)	Office of the County Counsel County of Los Angeles (continued)	• Govt Code Sec. 12945.8 includes having an interactive process meeting, but that is not mentioned in the proposed California Civil Jury Instructions (CACI) 2590. It fails to include that employer must conduct an interactive process meeting and evaluate other safety measures.	As noted above, committee will consider developing a new instruction for an interactive process claim in a future release. The committee understands that the facts surrounding any interactive process may be relevant evidence for a reasonable accommodation claim but the committee does not believe that the interactive process itself is an essential factual element of a plaintiff's reasonable accommodation claim.
2590. (continued)	Orange County Bar Association by Shirin Forootan, President	Agree.	No response required.

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Instruction(s)	Commenter	Comment	Committee Response
2591. Workplace Safety for Victim of Qualifying Act of Violence—"Reasonable Accommodation" Explained (New)	California Employment Lawyers Association by Leonard Sansanowicz, Chair	**CACI No. 2591. Workplace Safety for Victim of Qualifying Act of Violence-"Reasonable Accommodation" Explained** The instruction omits the one substantive standard the statute supplies for judging reasonableness. Section 12945.8(e)(5) provides that "in determining whether the accommodation is reasonable, the employer shall consider an exigent circumstance or danger facing the employee or their family member." The proposal cites this provision in the Sources and Authority but does not put it in the instruction. We suggest adding, immediately before the final sentence: "In deciding whether an accommodation was reasonable, you must consider any exigent circumstance or danger facing [name of plaintiff] [or [his/her/nonbinary pronoun] family member]." This is the statutory measure of reasonableness, and a jury will not otherwise know to weigh it.	As the commenter notes, the statute provides that the employer must take into consideration "an exigent circumstance or danger facing the employee or their family member." The committee considered including this substantive standard but decided against it. The committee concluded that the standard is not among the factors a jury must weigh to determine reasonableness. For this reason, the committee determined that it would not be appropriate to include as a factor like the others. The committee included the citation in the Sources and Authority so that users are aware of the duty.

Instruction(s)	Commenter	Comment	Committee Response
2591. (continued)	CELA (continued)	The final sentence, "You must determine whether the employer's accommodation(s) was or were reasonable under the circumstances," presumes the employer provided an accommodation. In many cases the employer provided nothing, or provided something that did not address the safety concern. We suggest rewording the sentence to: "You must decide whether [name of defendant] provided [name of plaintiff] with a reasonable accommodation for [his/her/nonbinary pronoun] safety while at work." Consistent with section 12945.8(e)(4), which refers to "effective reasonable accommodations," the instruction should also state that an accommodation is not reasonable if it did not effectively address the safety concern that prompted the request. The "(s) was or were" construction should also be replaced with standard CACI bracketing, for example "[accommodation/accommodations] [was/were]."	The committee believes that the first sentence of the instruction addresses the effectiveness of the accommodation. The committee recommends including two sentences after the listed measures: "You must determine whether any accommodation made was reasonable under the circumstances. If more than one accommodation is reasonable, an employer makes a reasonable accommodation if it selects one accommodation in good faith." This language is more consistent with CACI No. 2542, another "reasonable accommodation" explained instruction.
2591. (continued)	CELA (continued)	The list of examples in items (a) through (i) tracks section 12945.8(e)(2) and is helpful. We suggest adding a sentence making clear that the list is illustrative and that an employer may not limit the employee to the listed measures, so that jurors do not treat the list as exhaustive.	The committee recommends a sentence in the Directions for Use that expressly provides that the list is not exhaustive and that users may refine the list as appropriate.

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Instruction(s)	Commenter	Comment	Committee Response
2591. (continued)	California Lawyers Association's Litigation Section by Rueben A. Ginsburg	Agree.	No response required.
2591. (continued)	Bruce Greenlee Attorney at Law Richmond	1. Title: Add "(Gov. Code, § 12945.8(e)(2)) as supporting authority	The committee agrees and recommends the addition suggested.
2591. (continued)	Bruce Greenlee (continued)	2. Directions for Use: Add: "Include the accommodations (a) through (i) that are requested. The others may be omitted."	The committee recommends a statement in the Directions for Use to this effect.
2591. (continued)	Office of the County Counsel County of Los Angeles by Dawyn R. Harrison	• The list of examples should say it is not exhaustive	The phrasing used to introduce the listed measures ("may include") conveys that the list is illustrative. The committee recommends a sentence in the Directions for Use that expressly provides that the list is not exhaustive and that users may refine the list as appropriate.
2591. (continued)	Office of the County Counsel County of Los Angeles (continued)	• Should state that the examples provided does not mean it is a reasonable accommodation for the employer	The committee believes that the instruction's language appropriately directs the jury to make the reasonableness determination; the committee does not recommend the suggestion.

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Instruction(s)	Commenter	Comment	Committee Response
2591. (continued)	Office of the County Counsel County of Los Angeles (continued)	• Concern with example: "Another adjustment to job structure, workplace facility, or work requirements." For example, an employee requests teleworking, this catchall would allow it, but that does not make it a reasonable accommodation for the employer	The committee acknowledges the commenter's concern but notes that the listed measure tracks those in section 12945.8(e)(2).
2591. (continued)	Office of the County Counsel County of Los Angeles (continued)	CACI 2591 should state that the list is not exhaustive, nor does the list mean that the accommodation is "reasonable" under the circumstances just because it is listed.	The phrasing used to introduce the listed measures ("may include") conveys that the list is illustrative.

Instruction(s)	Commenter	Comment	Committee Response
2591. (continued)	Office of the County Counsel County of Los Angeles (continued)	Explained A reasonable accommodation is a reasonable change made by the employer to the workplace for the safety of the employee while at work. In determining whether an accommodation is reasonable, you must consider the circumstances of the employer, the employee's safety needs, the employee's requested accommodation, the employer's operations and workplace, the hardship on the employer in providing the accommodation, and any other relevant circumstances. Examples of such measures that may be considered as possible accommodations include: a. A job transfer or reassignment; b. Changed job responsibilities, work schedules, or work stations; c. A changed work telephone number; d. Permission to carry a telephone at work; e. An installed lock; f. Assistance in documenting violence that occurs in the workplace; g. Implemented safety procedures; h. Referral to a victim assistance organization; or i. Another adjustment to job structure, workplace facility, or work requirements. You must determine whether the employer's accommodation(s) was or were reasonable under the circumstances. This list provides examples and is not exhaustive. Being a measure on this list does not mean that it is a reasonable accommodation, or that the employer is required to provide that accommodation.	See the committee's responses above. With respect to adding "made by the employer" to the first sentence, the committee declines the suggestion because some accommodations may not be "made" by an employer. The committee does not recommend adding a paragraph that references hardship on the employer. The committee recommends one additional sentence after the measure: "If more than one accommodation is reasonable, an employer makes a reasonable accommodation if it selects one accommodation in good faith." The committee also recommends adding a Direction for Use to indicate that the list is not exhaustive.

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Instruction(s)	Commenter	Comment	Committee Response
2592. Workplace Safety for Victim of Qualifying Act of Violence—Affirmative Defense—Undue Hardship (New)	California Employment Lawyers Association by Leonard Sansanowicz, Chair	**CACI No. 2592. Workplace Safety for Victim of Qualifying Act of Violence-Affirmative Defense-Undue Hardship** The instruction appropriately follows the structure of CACI No. 2545 and correctly places the burden on the defendant. Our concern is the Labor Code section 6400 prong. As drafted, the defense is established if the accommodation "would have violated the employer's duty to provide and maintain a place of employment that is safe and healthful for all employees." Employers will use this prong to argue that any accommodation for a victim, such as a changed work station, an installed lock, or permission to carry a phone, raises a generalized safety concern for coworkers. The statute requires more: the accommodation must be one that "would violate" the employer's section 6400 duty. (Gov. Code, § 12945.8(e)(6).) We suggest adding a sentence after the factors: "It is not enough for [name of defendant] to show that the accommodation would have been inconvenient, would have required changes to its operations, or might have raised a safety concern. [Name of defendant] must prove that the accommodation actually would have violated its duty to provide a safe and healthful workplace for all employees."	The committee declines to add the additional information suggested without authority for its inclusion.
2592. (continued)	CELA (continued)	The instruction should also make clear that undue hardship is assessed accommodation by accommodation. Because section 12945.8(e)(4) requires the employer to engage in an interactive process to identify effective accommodations, an employer that shows hardship as to one requested measure has not established the defense if another effective accommodation was available without undue hardship. We suggest a Directions for Use note to that effect, consistent with the approach in the Directions for Use to CACI No. 2545.	The committee is not aware of any language in CACI No. 2545 that is inconsistent with the recommended new instruction. The committee does not recommend a change to the instruction's Direction for Use.
2592. (continued)	CELA (continued)	Finally, the section 6400 prong should be bracketed so that it is given only when the employer actually relies on it. In the typical case the employer's hardship claim is cost or operational, and instructing the jury on a workplace safety theory the employer has not raised invites confusion.	The committee agrees and recommends bracketing the language and adding a Direction for Use on including it if it is at issue.

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Instruction(s)	Commenter	Comment	Committee Response
2592. (continued)	California Lawyers Association's Litigation Section by Rueben A. Ginsburg	Agree.	No response required.
2592. (continued)	Bruce Greenlee Attorney at Law Richmond	1. Title: Add "(Gov. Code, § 12945.8(e)(6)) as supporting authority	The committee agrees and recommends the citation in the title.
2592. (continued)	Office of the County Counsel County of Los Angeles by Dawyn R. Harrison	• CACI 2592 states that undue hardship is if it violates the safety of others, or would be significantly difficult, or expensive; the two alternatives should be separated, that the accommodation would violate the employer's obligation to provide a safe workplace for all, OR, accommodation would impose significantly difficult or expensive. Safety concerns should be separated from financial and operational concerns	The committee appreciates the concern identified. The committee recommends bracketing the health and safety prong as suggested by CELA.
2592. (continued)	Office of the County Counsel County of Los Angeles (continued)	• Unclear what "safe and healthful for all employees" means, undefined	The committee appreciates the concern identified. The committee, however, recommends tracking the statutory language.
2592. (continued)	Office of the County Counsel County of Los Angeles (continued)	• Should state that undue hardship is based on circumstances at the time the accommodation was sought	The committee does not recommend the change suggested without authority for the proposition.
2592. (continued)	Office of the County Counsel County of Los Angeles (continued)	• Clarify the "ability to pay" factor because it is problematic for a large employer like the County because it has deep pockets; would be difficult to show undue hardship	The committee does not recommend a change to the instruction's language without authority for the proposition.

Instruction(s)	Commenter	Comment	Committee Response
2592. (continued)	Office of the County Counsel County of Los Angeles (continued)	CACI 2592 should state safety as a separate undue hardship from financial or operational concerns. We also recommend that the instructions clarify any undue hardship considered is "at the time the accommodation is sought." It should also clarify the term, "ability to pay."	The committee does not recommend the proposed changes but recommends bracketing the health and safety duty as suggested by CELA above.
2592. (continued)	Office of the County Counsel County of Los Angeles (continued)	2592. Workplace Safety for Victim of Qualifying Act of Violence—Affirmative Defense— Undue Hardship [Name of defendant] claims that providing the accommodation[s] would impose an undue hardship. To succeed on this defense, [name of defendant] must prove that, based on facts and circumstances known or reasonably available to the employer at the time the accommodation was considered, providing the accommodation[s] would have imposed an undue hardship through either: 1. Workplace safety The accommodation would have prevented or substantially impaired [name of defendant]'s ability to maintain a safe and healthful place of employment, considering the nature of the workplace, the duties performed, and the persons who could reasonably be affected by the accommodation, and any reasonably foreseeable risks created or increased by the accommodation; OR 2. Significant difficulty or expense The accommodation would have required significant difficulty or expense. Relevant circumstances that demonstrate significant difficulty or expense, include:	See the committee's responses above. The committee does not recommend the substantial restructuring proposed or any change to the undue hardship factors.

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Instruction(s)	Commenter	Comment	Committee Response
		a. The nature and cost of the accommodation[s]; b. [Name of defendant]'s overall financial resource[s] to pay for the accommodation; c. The type of operations conducted at the facility; d. The impact on the operations of the facility or facilities affected by the accommodation; e. The number of [name of defendant]'s employees and the relationship of the employees' duties to one another; f. The number, type, and location of [name of defendant]'s facilities; and g. The administrative and financial relationship of the facilities to one another; or h. The impact on the accommodation on [name of defendant]'s operations, including ability to perform business functions, provide services, maintain staffing, maintain operations, Note: The fact that an employer has substantial financial resources does not establish that a specific accommodation would not impose an undue hardship.	
2592. (continued)	Orange County Bar Association by Shirin Forootan, President	Agree.	No response required.
2721. Affirmative Defense—Nonpayment of Overtime—Administrative Exemption (Revise)	California Lawyers Association's Litigation Section by Rueben A. Ginsburg	a. We agree with the revision to the instruction.	No response required.

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Instruction(s)	Commenter	Comment	Committee Response
2721. (continued)	California Lawyers Association's Litigation Section (continued)	b. Although it may be beyond the scope of the invitation to comment, we would make element 5 on monthly salary the first element because it is a threshold requirement.	The suggestion is beyond the scope of the invitation to comment and would require significant revisions to the instruction and the verdict form. The committee will consider the suggestion in a future release.
2721. (continued)	Bruce Greenlee Attorney at Law Richmond	1. No change is highlighted in red.	The committee has recommended adding an "a" in element 3, option 2. This is a minor change, which was shown in the invitation to comment.
2721. (continued)	Office of the County Counsel County of Los Angeles by Dawyn R. Harrison	Nos. 2721, VF-2720, and VF-2721 are not relevant to the County of Los Angeles because the Labor Code's overtime provisions do not apply to charter county employees, so any overtime claim under state law should be dismissed via demurrer or other pre-trial dispositive motion. Curciniv. County of Alameda, 164 Cal.App.4th629 (Cal. Ct. App. 2008).	The committee appreciates the observations.
2721. (continued)	Office of the County Counsel County of Los Angeles (continued)	CACI Nos. 2721, VF-2720, and VF-2721 are not relevant to the County of Los Angeles because the Labor Code's overtime provisions do not apply to charter county employees, so any overtime claim under state law should be dismissed via demurrer or other pre-trial dispositive motion. Curcini v. County of Alameda, 164 Cal.App.4th 629 (Cal. Ct. App. 2008).	The committee appreciates the observations.
2721. (continued)	Orange County Bar Association by Shirin Forootan, President	Agree.	No response required.

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Instruction(s)	Commenter	Comment	Committee Response
VF-2720 Affirmative Defense—Nonpayment of Overtime—Executive Exemption (New)	California Employment Lawyers Association by Leonard Sansanowicz, Chair	**VF-2720. Affirmative Defense-Nonpayment of Overtime-Executive Exemption** Regarding Question 6, we suggest that the salary threshold question come first, that it be Question 1. The salary test is usually the most objective, quickest-to-resolve element, yet the form makes the jury work through five fact-intensive duties questions first. Moving it up can resolve some cases efficiently.	The suggestion is beyond the scope of the invitation to comment and would require significant revisions to the instruction and verdict form. The committee will consider the suggestion in a future release.
VF-2720 (continued)	CELA (continued)	Further as to Question 6, since the minimum wage can change year to year, a *Directions* note that the inserted minimum wage figure must correspond to the minimum wage in effect during the relevant pay periods. Multiple period-specific questions may be needed for multi-year claims.	The suggestion is beyond the scope of the invitation to comment. The committee will consider the suggestion in a future release.
VF-2720 (continued)	CELA (continued)	Also as to Question 6, it only tests the amount. Where it is contested whether the plaintiff was actually paid on a salary basis (a guaranteed predetermined amount not subject to improper deductions, see, *Negri v. Koning & Associates* (2013) 216 Cal.App.4th 392, 397 and *Semprini v. Wedbush Securities, Inc.* (2020) 57 Cal.App.5th 246, 254-255), that is a separate factual dispute the amount question does not reach. This fits the existing *Directions* caveat that additional questions may be required, but it may be worth calling out specifically.	The suggestion is beyond the scope of the invitation to comment. The committee will consider the suggestion in a future release.

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Instruction(s)	Commenter	Comment	Committee Response
VF-2720 (continued)	CELA (continued)	Question 5 is conclusory on its face. "Duties that meet the test of the exemption" asks the jury to apply a legal test rather than find a fact, and a juror reading the verdict form in isolation has no independent way to know what that test is. This is inherent in tracking the element, but in a case where the exempt/nonexempt character of specific tasks is actually contested, a single yes/no here may not adequately support the judgment or preserve appellate issues under the *Ramirez v. Yosemite Water Co., Inc.* (1999) 20 Cal.4th 785, 802 realistic-expectations analysis and the concurrent-duties material in the instruction all collapse into this one question. Worth a *Directions* note that Q5 may need to be expanded to capture the specific factual disputes about which duties were exempt. Consider tying it back to the concrete duties the jury has already evaluated, e.g., "spend more than half of the time performing the duties described in Questions 1, 2, and 3." That preserves the "primarily engaged" standard California uses while giving the jury something factual to measure.	The verdict form is a companion to the corresponding jury instruction, which will provide more information. The Directions for Use for CACI No. 2720 advises that "This instruction may be expanded to provide examples of the specific exempt and nonexempt activities relevant to the work at issue."
VF-2720 (continued)	California Lawyers Association's Litigation Section by Rueben A. Ginsburg	We agree with this proposed new instruction, but we would make question 6 on monthly salary the first element because it is a threshold requirement that may obviate other questions.	The committee acknowledges CLA's support for the new verdict form. The suggested change, however, is beyond the scope of the invitation to comment and would require significant revisions to the instruction and verdict form. The committee will consider the suggestion in a future release.

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Instruction(s)	Commenter	Comment	Committee Response
VF-2720 (continued)	Bruce Greenlee Attorney at Law Richmond	1. Question 5: move "more than half of the time" to the end of the question.	The committee considered the phrasing and determined that the location of the phrase is better as drafted to avoid the potential for confusion about what more than half the time relates to.
VF-2720 (continued)	Office of the County Counsel County of Los Angeles by Dawyn R. Harrison	Nos. 2721, VF-2720, and VF-2721 are not relevant to the County of Los Angeles because the Labor Code's overtime provisions do not apply to charter county employees, so any overtime claim under state law should be dismissed via demurrer or other pre-trial dispositive motion. Curciniv. County of Alameda, 164 Cal.App.4th629 (Cal. Ct. App. 2008).	The committee appreciates the observations.
VF-2721 Affirmative Defense—Nonpayment of Overtime—Administrative Exemption (New)	California Employment Lawyers Association by Leonard Sansanowicz, Chair	**VF-2721. Affirmative Defense-Nonpayment of Overtime-Administrative Exemption** Regarding Question 5, we suggest that the salary threshold question come first. The salary test is usually the most objective, quickest-to-resolve element, yet the form makes the jury work through five fact-intensive duties questions first. Moving it up can resolve some cases efficiently.	The suggestion is beyond the scope of the invitation to comment and would require significant revisions to the instruction and verdict form. The committee will consider the suggestion in a future release.
VF-2721 (continued)	CELA (continued)	Further as to Question 5, since the minimum wage can change year to year, a *Directions* note that the inserted minimum wage figure must correspond to the minimum wage in effect during the relevant pay periods. Multiple period-specific questions may be needed for multi-year claims.	The suggestion is beyond the scope of the invitation to comment. The committee will consider the suggestion in a future release.

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Instruction(s)	Commenter	Comment	Committee Response
VF-2721 (continued)	CELA (continued)	Finally as to Question 5, it only asks whether the monthly salary was at least twice the state minimum wage. Under *Negri v. Koning & Associates* (2013) 216 Cal.App.4th 392, California's exemption also requires that the employee actually be paid on a salary basis, that is a predetermined amount not subject to reduction based on quantity or quality of work and not merely that the amount clears the threshold. The Committee may want either a separate question on salary basis or a note in the *Directions for Use* telling users to add one where it is contested.	The suggestion is beyond the scope of the invitation to comment. The committee will consider the suggestion in a future release.
VF- 2721 (continued)	CELA (continued)	Question 4 is conclusory on its face. "Duties that meet the test of the exemption" asks the jury to apply a legal test rather than find a fact, and a juror reading the verdict form in isolation has no independent way to know what that test is. This is inherent in tracking the element, but in a case where the exempt/nonexempt character of specific tasks is actually contested, a single yes/no here may not adequately support the judgment or preserve appellate issues under the *Ramirez v. Yosemite Water Co., Inc.* (1999) 20 Cal.4th 785, 802 realistic-expectations analysis and the concurrent-duties material in the instruction all collapse into this one question. Worth a Directions note that Q5 may need to be expanded to capture the specific factual disputes about which duties were exempt. Consider tying it back to the concrete duties the jury has already evaluated, e.g., "spend more than half of the time performing the duties described in Questions 1, 2, and 3." That preserves the "primarily engaged" standard California uses while giving the jury something factual to measure.	The verdict form is a companion to the corresponding jury instruction, which will provide more information. The Directions for Use for CACI No. 2721 advises that "This instruction may be expanded to provide examples of the specific exempt and nonexempt activities relevant to the work at issue."
VF-2721 (continued)	CELA (continued)	Question 3 appears to be missing a bracket. The middle alternative: "[Did [name of plaintiff] regularly and directly assist a proprietor or a bona fide executive or administrator?" is missing its closing bracket before the following "[or]." That should be fixed so all three alternatives are consistently bracketed.	The committee recommends adding a closing bracket as suggested.

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Instruction(s)	Commenter	Comment	Committee Response
VF-2721 (continued)	California Lawyers Association's Litigation Section by Rueben A. Ginsburg	We agree with this proposed new instruction, but we would make question 5 on monthly salary the first element because it is a threshold requirement that may make it unnecessary for the jury to answer other questions.	The committee acknowledges CLA's support for the new verdict form. The suggestion is beyond the scope of the invitation to comment and would require significant revisions to the instruction and verdict form. The committee will consider the suggestion in a future release.
VF-2721 (continued)	Bruce Greenlee Attorney at Law Richmond	1. Question 4: move "more than half of the time" to the end of the question.	The committee considered the phrasing and determined that the location of the phrase is better as drafted to avoid the potential for confusion about what more than half the time relates to.
VF-2721 (continued)	Office of the County Counsel County of Los Angeles by Dawyn R. Harrison	Nos. 2721, VF-2720, and VF-2721 are not relevant to the County of Los Angeles because the Labor Code's overtime provisions do not apply to charter county employees, so any overtime claim under state law should be dismissed via demurrer or other pre-trial dispositive motion. Curciniv. County of Alameda, 164 Cal.App.4th629 (Cal. Ct. App. 2008).	The committee appreciates the observations.
VF-2721 (continued)	Orange County Bar Association by Shirin Forootan, President	Agree.	No response required.

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Instruction(s)	Commenter	Comment	Committee Response
3075. Disability Discrimination—Unruh Act—Website or Mobile Application Equal Access—Essential Factual Elements (Civ. Code, § 51) (New)	California Employment Lawyers Association by Leonard Sansanowicz, Chair	**CACI No. 3075. Disability Discrimination-Unruh Act-Website or Mobile Application Equal Access-Essential Factual Elements** CELA supports a dedicated instruction for website and mobile application access claims. Our principal concern is that the instruction does not distinguish between the two ways an Unruh Act violation may be established, and as a result it is incomplete as to one and potentially misleading as to the other. Under Civil Code section 51(f), a violation of the ADA is a violation of the Unruh Act, and no showing of intentional discrimination is required. (*Munson v. Del Taco, Inc.* (2009) 46 Cal.4th 661, 665.) Where the claim does not rest on an ADA violation, the plaintiff must prove intentional discrimination. (*Ibid*.) The proposed instruction takes neither path. It asks only whether the website "was inaccessible" to the plaintiff because of the disability, which does not track the ADA standard (full and equal enjoyment of goods, services, and accommodations of a place of public accommodation) and does not include an intent element for a non-ADA claim. Given *Martinez v. Cot'n Wash, Inc.* (2022) 81 Cal.App.5th 1026, in which the court held that an online-only business is not a place of public accommodation under the ADA and that a failure to remediate known accessibility barriers after notice is not, by itself, intentional discrimination, the choice between the two theories will often determine the outcome. We ask the Committee to restructure the instruction with bracketed alternatives: one version for a claim predicated on an ADA violation under section 51(f), with a Directions for Use note that intent is not an element, and a second version for a claim of intentional discrimination, with the Directions for Use identifying the relevant authority. The Directions for Use should also address websites and applications of businesses that operate physical locations, which the Ninth Circuit has held are covered by the ADA where the website or application connects customers to the goods and services of the physical place. (*Robles v.Domino's Pizza, LLC* (9th Cir. 2019) 913 F.3d 898, 905; *see Martinez, supra*, 81 Cal.App.5th 1026 [distinguishing *Robles*].)	The committee acknowledges CELA's support for the new instruction. The committee recommends addressing the requirement of intentional discrimination for an Unruh claim, as well as the state of the case law on the ADA and Unruh Act, in the Directions for Use. The committee will also include a cross-reference to the Directions for Use under CACI No. 3060, which addresses this issue and has an intentional discrimination element.

Instruction(s)	Commenter	Comment	Committee Response
3075. (continued)	CELA (continued)	Regarding optional Element 2 (genuine intent), we have three suggestions. First, the element should be phrased to include an intent to learn about the defendant's goods or services, not only to purchase them. *White v. Square, Inc.* (2019) 7 Cal.5th 1019, 1032-1033 holds that a person "who visits a business's website with intent to use its services and encounters terms or conditions that exclude the person from full and equal access to its services" has standing, and the instruction upheld in *Thurston v. Omni Hotels Management Corp.* (2021) 69 Cal.App.5th 299 asked whether the plaintiff attempted to use the website to make a reservation "or to ascertain Omni's prices and accommodations for the purpose of considering whether to make a hotel reservation." We suggest: "That [name of plaintiff] [visited/attempted to use] [name of defendant]'s [website/mobile application] with a genuine intent to [use/sign up for/purchase/learn about] [name of defendant]'s goods or services." Second, the Directions for Use should state that the element is to be given only when the defendant has placed the plaintiff's intent genuinely in dispute, and that a plaintiff's history of filing accessibility lawsuits does not, by itself, negate genuine intent. *White* left the "tester" question open, and *Thurston* affirmed a defense verdict on the evidence of intent rather than holding that tester status is disqualifying; the Directions for Use should not be drafted in a way that suggests otherwise. Third, the numbering should be corrected. As drafted, the optional element is numbered 2 and the following mandatory element is also numbered 2, which will produce inconsistent verdict forms and special verdict references. The Directions for Use should instruct the court to renumber if the optional element is given.	The committee has recommended use, sign up for, and *specify other act*, which allows users to supply other verbs, such as an intent to learn or an intent to purchase. With respect to the inclusion of element 2, the committee is satisfied with the Direction for Use on the issue. The committee, however, does recommend renumbering the elements as suggested.
3075. (continued)	CELA (continued)	Regarding the harm and causation elements, the Directions for Use correctly note that a plaintiff seeking only the statutory minimum need not prove actual damages. We suggest citing Koire v. Metro Car Wash (1985) 40 Cal.3d 24, 33, and Civil Code section 52(a), and stating expressly that a denial of full and equal access is itself the injury that entitles the plaintiff to the statutory minimum of four thousand dollars per violation, so that trial courts do not treat Elements 3 and 4 as required in every case.	The Directions for Use state, " Elements 3 and 4 may not be needed if plaintiff only seeks a minimum statutory damages award." In that same paragraph, both *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 33,

Instruction(s)	Commenter	Comment	Committee Response
			and Civil Code section 52(a) are cited.
3075. (continued)	CELA (continued)	Regarding Element 1, the instruction should note that "disability" under the Unruh Act carries the definitions in Government Code sections 12926 and 12926.1, which are broader than the federal ADA definition. (Civ. Code, § 51(e)(1).) The Sources and Authority cite these sections, but the Directions for Use should say so, because defendants routinely argue the federal standard.	The committee does not recommend expanding the instruction's content or the Directions for Use to address any differences in the definition of disability across statutes.
3075. (continued)	CELA (continued)	Finally, we suggest the Committee prepare a companion verdict form for CACI No. 3075.	The committee will consider a new verdict form for this instruction in a future release.
3075. (continued)	California Lawyers Association's Litigation Section by Rueben A. Ginsburg	a. An Unruh Act claim ordinarily requires proof of intentional discrimination. (Koebke v. Bernardo Heights Country Club (2005) 36 Cal.4th 824, 854.) However, no proof of intentional discrimination is needed when an Unruh Act claim is based on an ADA violation. (Civ. Code, § 51, subd. (f); Munson v. Del Taco, Inc. (2009) 46 Cal.4th 661, 665.) An Unruh Act claim alleging that a retail website fails to provide equal access does not fit within this exception if the website has no connection to a physical location. California courts hold that a retail website without any connection to a physical location is not a "place of public accommodation" (42 U.S.C. § 12182(a)) under the ADA. (Martin v. Thi E-Commerce, LLC (2023) 95 Cal.App.5th 521, 532–533; Martinez v. Cot'n Wash, Inc. (2022) 81 Cal.App.5th 1026, 1032.) An Unruh Act claim alleging that a website fails to provide equal access is not based on an ADA violation if the website has no connection to a physical location. (Martin, at p. 533; Martinez, at p. 1053.) A plaintiff alleging such a claim under the Unruh Act therefore must allege intentional discrimination. (Martinez, at p. 1053.) This instruction omits intentional discrimination. We would modify the instruction by inserting a new, optional element 2 immediately after element 1, stating:	The committee recommends addressing the requirement of intentional discrimination for an Unruh claim, as well as the state of the case law on the ADA and Unruh Act, in the Directions for Use. The committee will also include a cross-reference to the Directions for Use under CACI No. 3060, which addresses this issue and has an intentional discrimination element. With respect to the proposed revision to CACI No. 3060, the committee will consider the suggestion, which is

Instruction(s)	Commenter	Comment	Committee Response
		"2. [That a substantial motivating reason for [name of defendant]'s conduct was [its perception of] [name of plaintiff]'s [sex/race/color/religion/ancestry/national origin/medical condition/genetic information/marital status/sexual orientation/ citizenship/primary language/immigration status/[any combination of those characteristics]/[insert other actionable or protected characteristic or combination of characteristics]];] "[That [name of defendant]'s perception of] the sex/race/color/religion/ancestry/national origin/medical condition/genetic information/marital status/sexual orientation/citizenship/ primary language/immigration status/[any combination of those characteristics]/[insert other actionable or protected characteristic or combination of characteristics]] of a person whom [name of plaintiff] was associated with was a substantial motivating reason for [name of defendant]'s conduct;]" This language is copied from CACI No. 3060, except we have inserted "[name of defendant]'s perception of]" after "That" in the second alternative paragraph. We have inserted this language because Civil Code section 51, subdivision (e)(7) states that protected characteristics include not only a (1) perception that the person has any of those characteristics and (2) a perception that the person is associated with a person who has any of those characteristics, but also (3) a perception that the person is associated with a person who is perceived to have any of those characteristics.[footnote 1] [FN1] Although it may be beyond the scope of the invitation to comment, we suggest making this same change to CACI No. 3060.	beyond the scope of the invitation to comment, in a future release.

ITC CACI 26-02

Civil Jury Instructions: Revisions to Judicial Council of California Civil Jury Instructions (Revise and adopt jury instructions and verdict forms)

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

Instruction(s)	Commenter	Comment	Committee Response
3075. (continued)	California Lawyers Association's Litigation Section (continued)	b. We suggest adding language to the Directions for Use stating that the new, optional element 2 should be given if the website is not connected with any physical location.	The committee does not recommend a new optional element 2 for the reasons stated above, but the committee does recommend a Directions for Use entry about the issue.
3075. (continued)	California Lawyers Association's Litigation Section (continued)	c. We believe *Martin v. Thi E-Commerce, LLC* (2023) 95 Cal.App.5th 521 and *Martinez v. Cot'n Wash, Inc.* (2022) 81 Cal.App.5th 1026 should be added to the Sources and Authority.	The committee recommends citing these cases in the Directions for Use and has added an excerpt from *Martin* to the Sources and Authority as suggested.
3075. (continued)	Bruce Greenlee, Attorney at Law Richmond	1. Intro paragraph and element 2: Don't we really want to know exactly what the plaintiff was trying to access and could not? So instead of "goods, services, or accommodations," how about "*Specify goods, services, or accommodations, that plaintiff sought and could not access.*"	The committee does not recommend the suggested bracketing for users to specify the goods, services, or accommodations at issue.
3075. (continued)	Bruce Greenlee (continued)	2. Directions for Use: last paragraph: "Special interrogatories:" CACI doesn't concern itself with discovery issues. Replace with "Additional instructions."	The committee agrees and has revised the phrasing as suggested.
3075. (continued)	Orange County Bar Association by Shirin Forootan, President	Agree.	No response required.

ITC CACI 26-02

Civil Jury Instructions: Revisions to Judicial Council of California Civil Jury Instructions (Revise and adopt jury instructions and verdict forms)

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

Instruction(s)	Commenter	Comment	Committee Response
3704. Existence of "Employee" Status Disputed (Revise)	California Employment Lawyers Association by Leonard Sansanowicz, Chair	**CACI 3704's Use Notes proposed amendment** CACI 3704's Use Notes's proposed amendment seeks to include the following new text as a means to guide a jury in defining who is an employee or has employee status in the parties' relationship: "[t]he common law test of employment is not always appropriate beyond the tort context in which it was originally developed to establish an employer's vicarious liability. (*Brown v. City of Inglewood* (2025) 18 Cal.5th 33, 56 [334 Cal.Rptr.3d 1, 570 P.3d 885] [looking to "history and fundamental purposes of the statute at issue" to determine whether the Legislature intended the test to apply].)" *Brown v. City of Inglewood* (2025) 18 Cal.5th 33 is a unique case insofar as Brown was an elected official seeking to establish an employee/employer relationship for purposes of relief under Labor Code §§1102.5. The case focuses upon whether elected officials are or should be considered to be within the purview of Labor Code 1106; the court determined they should not. In other words, *Brown's* application is and should be limited to its unique facts of an elected official's status as "employee" under Labor Code §1106, and it should not be suggested in the CACI use notes as the basis for a limitation upon, or outright refusal of a court's application of the common law test to determine the status of other workers as "employee" in a different context or under a different set of facts - which its inclusion in the use notes would suggest and would run afoul of the intended broad application of Labor Code 1002.5 and its underlying public policy. Including only the one quote without its full context or distinguishing factors in the CACI use notes would likely result in a trial court's unnecessary curtailing its application of the common law employment test in a different factual setting under Labor Code §§1102.5/1106 well outside of the unique circumstance of an elected official. It further suggests a broader application of the quote and its source caselaw to other non-tort, employment based claims than appears to be intended by the *Brown* case itself. For instance, the opinion reflects other instances and precedent where looking to the common law text for employer/employee status may be appropriate - including other employment rights matters (not just tort matters).	The committee recommends including *Brown* in the Directions for Use and believes that the new sentence properly cautions users about a need to consider the appropriateness of using the instruction.

Instruction(s)	Commenter	Comment	Committee Response
3704. (continued)	CELA (continued)	Secondly, the premise stated in the proposed amended language is already stated in the *Borello* case; adding it in the manner proposed here as independently arising under the *Brown* case is inaccurate, and suggests greater application than intended. Our suggestion is simply to keep the parenthetical indicating the Brown case, and the need to refer to legislative history to determine whether the common law test applies; i.e., "(*Brown v. City of Inglewood* (2025) 18 Cal.5th 33, 56 [334 Cal.Rptr.3d 1, 570 P.3d 885] [looking to "history and fundamental purposes of the statute at issue" to determine whether the Legislature intended the test to apply])". **Conclusion** For these reasons, CELA respectfully urges the Judicial Council to adopt the proposed revisions. Doing so will ensure that the CACI instructions remain accurate, accessible, and effective tools for both the bench and bar, and that jurors are properly guided in deciding cases under California law. As an organization committed to advancing justice and fairness in the workplace and beyond, CELA appreciates the Council's attention to these important issues and stands ready to provide any further input or assistance as needed.	The committee does not recommend the alternative formulation suggested. The California Supreme Court's explanation of this proposition in *Borello* spans two pages (pages 350 to 351). The court's language in *Brown* is more succinct and more recent, easier to reference in the Directions for Use, and may lead users to *Borello*.
3704. (continued)	California Lawyers Association's Litigation Section by Rueben A. Ginsburg	We find the sentence added to the first paragraph of the Directions for Use ambiguous. Rather than paraphrase *Brown v. City of Inglewood* (2025) 18 Cal.5th 33, 56, we believe a quotation would clarify the point: ~~"The common law test of employment is not always appropriate beyond the tort context in which it was originally developed to establish an employer's vicarious liability. (*Brown v. City of Inglewood* (2025) 18 Cal.5th 33, 56 [334 Cal.Rptr.3d 1, 570 P.3d 885] [looking to 'history and fundamental purposes of the statute at issue' to determine whether the Legislature intended the test to apply].)~~ The California Supreme Court has stated, 'as we explained in *S. G. Borello & Sons*, *Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 256 Cal.Rptr. 543, 769 P.2d 399, the common law test of employment is not always appropriate beyond the tort context in which it was originally developed [to establish an employer's vicarious liability].' "	The committee does not recommend the alternative formulation suggested. The committee has quoted directly from *Brown* to supplement the paraphrased new sentence.

ITC CACI 26-02

Civil Jury Instructions: Revisions to Judicial Council of California Civil Jury Instructions (Revise and adopt jury instructions and verdict forms)

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

Instruction(s)	Commenter	Comment	Committee Response
3704. (continued)	Bruce Greenlee Attorney at Law Richmond	1. Add *Brown* to Sources and Authority	The committee does not recommend adding *Brown* to the Sources and Authority, which is already cited in the Directions for Use.
3704. (continued)	Office of the County Counsel County of Los Angeles by Dawyn R. Harrison	It appears the instruction was last updated in 2025.There are no changes to the text of this jury instruction. The only changes appear in the "Directions for Use" section. The last paragraph in the "Directions for Use" section of the previous version of the instruction had language indicating that "a different test for the existence of 'independent contractor' status applies to app-based rideshare and delivery drivers. (See Business and Professions Code section 7451.)" That language is absent from the latest version of the jury instruction. Given that the County does not employee app-based rideshare and delivery drivers, like Amazon for example, this would not have any effect on the County of Los Angeles' litigation matters. The only other change in the "Directions for Use" section is added language at the end of the first paragraph citing the recent California Supreme Court case of Brown v City of Inglewood which was published in 2025.In Brown, the Court upheld the Court of Appeal's ruling that the statutory definition of an "employee" does not cover elected officials who answer directly to the electorate rather than internal supervisors or managers. The Court's review of legislative history showed that state whistleblower protections were designed to shield rank and file workers from workplace retaliation, not to encompass political disputes involving independent, elected officials. The reference to the *Brown* decision does not have any significant impact on this jury instruction. The decision relates to whether an elected official can sue a municipality or governmental entity for whistleblower retaliation. It is not related to the concept of vicarious liability as it applies to the County of Los Angeles' litigation matters.	The committee appreciates the observations.

ITC CACI 26-02

Civil Jury Instructions: Revisions to Judicial Council of California Civil Jury Instructions (Revise and adopt jury instructions and verdict forms)

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

Instruction(s)	Commenter	Comment	Committee Response
3704. (continued)	Office of the County Counsel County of Los Angeles (continued)	As to CACI No. 3704, the reference to the *Brown* decision does not have any significant impact on this jury instruction. The decision relates to whether an elected official can sue a municipality or governmental entity for whistleblower retaliation. It is not related to the concept of vicarious liability as it applies to the County of Los Angeles' litigation matters. Thank you for the opportunity to provide our thoughts and comments.	The committee appreciates the observations.
3704. (continued)	Orange County Bar Association by Shirin Forootan, President	Agree.	No response required.
4355. Breach of the Implied Covenant of Quiet Enjoyment—Essential Factual Elements (New)	California Lawyers Association's Litigation Section by Rueben A. Ginsburg	Agree.	No response required.
4355. (continued)	Bruce Greenlee Attorney at Law Richmond	1. So this is not an affirmative defense to a UD. In that case, I would skip it rather than include it with the UD series unless you want to rename that series as "Landlord-Tenant Actions.	In a previous release, the committee renamed the series as Unlawful Detainer and Other Landlord-Tenant Claims.
4355. (continued)	Orange County Bar Association by Shirin Forootan, President	Agree as Modified. The Orange County Bar Association "substantially agrees" with this proposed instruction and its accurate delineation of the essential factual elements necessary to prove a breach of the implied covenant of quiet enjoyment. However, we recommend that a citation be added to the "Directions for Use" to reference Petroleum Collections, Inc vs Swords (1975) 48 Cal. App. 3d 841, 846 for the proposition that the failure to preserve the quiet enjoyment of the lessee is actionable only "if the failure substantially affects the tenant's beneficial enjoyment of the premises". This will avoid confusion with the separate "substantial factor" test for causation.	The committee appreciates the comment. The Directions for Use and the Sources and Authority already cite *Andrews v. Mobile Aire Estates* (2005) 125 Cal.App.4th 578, 590 [22 Cal.Rptr.3d 832], which is a more recent case, for the same proposition. Notably, *Andrews* cites

ITC CACI 26-02

Civil Jury Instructions: Revisions to Judicial Council of California Civil Jury Instructions (Revise and adopt jury instructions and verdict forms)

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

Instruction(s)	Commenter	Comment	Committee Response
			Petroleum Collections, Inc. The committee does not recommend adding another case for the same proposition.

Rules Committee Action Request Form

Item number: 02

Rules Committee Meeting Date: November 10, 2026

Action requested: Approve

Title of proposal: Jury Instructions: Civil Jury Instructions With Minor or Nonsubstantive Revisions (Release 50)

Proposed rules, forms, standards, or jury instructions (include amend/revise/adopt/approve/etc.)**:**
Revise CACI Nos. 426, 555, 1009B, 1100, 1203, 1501, 1903, 2507, 2521A, 2570, 3060, and 4603.

Advisory committee or other entity submitting the proposal:
Advisory Committee on Civil Jury Instructions

Staff contact (name, phone, and email)**:**
Eric Long, 415-865-7691, eric.long@jud.ca.gov

Annual agenda approved by Rules Committee on: October 22, 2026
Project description from annual agenda: 5. Maintenance—Sources and Authority; 6. Maintenance—Secondary Source; and 7. Technical Corrections

Implementation Date and Circulation Notes: (If requesting an effective date other than January 1 or a special invitation-to-comment cycle, please explain.) To be effective upon the approval of Release 50 by the Judicial Council at the December business meeting

Additional Information for Rules Committee: (To facilitate Rules Committee's review of your proposal, please include any other relevant information.)

Information for JC staff (Complete the following for proposals recommending forms.)

- **Form Translations** (check all that apply)
  Proposal includes forms that: ☐ staff requests be translated, ☐ are required by statute to be translated.
  Provide citations to code that mandates translation:
- **Website Content** (check all that apply)
  ☐ New or revised form descriptions are needed for the California Courts website. (If checked, form descriptions should be approved by a supervisor after council approval.)
  ☐ Changes or additions to self-help guide website are needed.

(Revised 2026)

Judicial Council *of* California

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

Telephone 415-865-4200 · Fax 415-865-4205

M E M O R A N D U M

Date
October 23, 2026

To
Members of the Rules Committee

From
Advisory Committee on Civil Jury Instructions
Ioana Petrou, Chair

Subject
Jury Instructions: Civil Jury Instructions With Minor or Nonsubstantive Revisions (Release 50)

Action Requested
Review and Approve Publication of Instructions

Deadline
November 9, 2026

Contact
Eric Long
Legal Services
415-865-7691 phone
eric.long@jud.ca.gov

Executive Summary

The Advisory Committee on Civil Jury Instructions recommends that the Rules Committee approve revisions to the *Judicial Council of California Civil Jury Instructions* (*CACI*) to maintain and update those instructions. The 12 instructions in this release, which were prepared by the advisory committee, contain the types of revisions that the Judicial Council has given the Rules Committee final authority to approve—primarily changes to the Sources and Authority.

Recommendation

The Advisory Committee on Civil Jury Instructions recommends that the Rules Committee approve for publication, effective December 11, 2026, revisions to 12 civil jury instructions prepared by the advisory committee that contain changes that do not require posting for public comment or full Judicial Council approval: CACI Nos. 426, 555, 1009B, 1100, 1203, 1501,

1903, 2507, 2521A, 2570, 3060, and 4603. These instructions will be published in the 2027 edition of *CACI* and posted online on the California Courts website.

The revised instructions are attached at pages 5–65.

Relevant Previous Council Action

The Judicial Council approved civil jury instructions—drafted by the Task Force on Jury Instructions—for initial publication in September 2003. The Advisory Committee on Civil Jury Instructions is charged with maintaining and updating those instructions.[1]

In 2006, the Judicial Council approved the Rules Committee's delegation of authority to the Advisory Committee on Civil Jury Instructions to review and approve nonsubstantive grammatical and typographical corrections to the jury instructions and authority for the Rules Committee to "[r]eview and approve nonsubstantive technical changes and corrections and minor substantive changes unlikely to create controversy to Judicial Council of California Civil Jury Instructions (CACI) and Criminal Jury Instructions (CALCRIM)."[2]

Under the implementing guidelines adopted by the Rules Committee (known at the time as the Rules and Projects Committee) on December 19, 2006, titled *Jury Instructions Corrections and Technical and Minor Substantive Changes*, examples of the changes the Rules Committee has final authority to approve include the following:

1. Additions, substitutions, and deletions of cases and statutes to the Sources and Authority;
2. Changes to statutory language quoted in Sources and Authority that are required by legislative amendments, provided that the amendment does not affect the text of the instruction itself;[3]
3. Additions or changes to the Directions for Use;[4]
4. Changes to instruction text that are nonsubstantive—that is, changes that do not affect or alter any fundamental legal basis of the instruction—and are unlikely to create controversy;

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[1] Cal. Rules of Court, rules 2.1050(e), 10.58(a).

[2] Judicial Council of Cal., Rules and Projects Committee, *Jury Instructions: Approve New Procedure for RUPRO Review and Approval of Changes in the Jury Instructions* (Sept. 12, 2006), p. 1.

[3] In light of the committee's decision in 2014 to remove verbatim quotes of statutes, rules, and regulations from *CACI*, this category is now mostly moot. It still applies if a statute, rule, or regulation is revoked or if subdivisions are renumbered.

[4] Only nonsubstantive changes to the Directions for Use are presented by the committee for the Rules Committee's final approval; substantive changes are posted for public comment and presented to the Judicial Council.

5. Changes to instruction text required by subsequent developments (such as new cases or legislative amendments), provided that the change, though substantive, is both necessary and unlikely to create controversy; and
6. Revocation of instructions for which any fundamental legal basis of the instruction is no longer valid because of statutory amendment or case law.

Analysis/Rationale

Overview of revisions

The 12 instructions in this release have proposed revisions under categories 1 (additions, substitutions, and deletions in the Sources and Authority) and 3 (additions or changes to the Directions for Use) above. Also included within these instructions are grammatical, typographical, and citation corrections for which the Rules Committee has delegated authority to the Advisory Committee on Civil Jury Instructions.

Standards for adding case excerpts to Sources and Authority

The standards approved by the advisory committee for adding case excerpts to the Sources and Authority are as follows:

- Entries should be direct quotes from cases. However, all cases that may be relevant to the subject area of an instruction need not be included, particularly if they do not involve a jury matter.
- Each legal component of the instruction should be supported by authority—either statutory or case law.
- Authority addressing the burden of proof should be included.
- Authority addressing the respective roles of judge and jury (questions of law and questions of fact) should be included.
- Only one case excerpt should be included for each legal point.
- California Supreme Court authority should always be included, if available.
- If no Supreme Court authority is available, the most recent California appellate court authority for a point should be included.
- A U.S. Supreme Court case should be included on any point for which it is the controlling authority.
- A Ninth Circuit Court of Appeals case may be included if the case construes California law or federal law that is the subject of the *CACI* instruction.
- Other cases may be included if deemed particularly useful to the users.

- The fact that the committee chooses to include a case excerpt in the Sources and Authority does not mean that the committee necessarily believes that the language is binding precedent. The standard is simply whether the language would be useful or of interest to users.

Policy implications

Rule 2.1050 of the California Rules of Court requires the committee to regularly update, revise, and add topics to *CACI* and to submit its recommendations to the council for approval. This proposal fulfills that requirement.

Comments

Because the revisions to these instructions do not change the legal effect of the instructions, they were not circulated for public comment.

Alternatives considered

California Rules of Court, rules 2.1050 and 10.58 charge the advisory committee to regularly review case law and statutes; to make recommendations to the Judicial Council for updating, amending, and adding topics to *CACI*; and to submit its recommendations to the council for approval. The proposed revisions meet this responsibility. There are no alternatives to be considered.

Fiscal and Operational Impacts

There are no implementation costs.

Attachments and Links

1. Proposed revised *CACI* instructions, CACI Nos. 426, 555, 1009B, 1100, 1203, 1501, 1903, 2507, 2521A, 2570, 3060, and 4603, at pages 5–65

Civil Jury Instructions
Release 50; For Rules Committee Approval
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426. Negligent Hiring, Supervision, or Retention of Employee

[*Name of plaintiff***] claims that [he/she/***nonbinary pronoun***] was harmed by [***name of employee***] and that [***name of employer defendant***] is responsible for that harm because [***name of employer defendant***] negligently [hired/ supervised/ [or] retained] [***name of employee***]. To establish this claim, [***name of plaintiff***] must prove all of the following:**

1. **[That [***name of employer defendant***] hired [***name of employee***];]**

2. **That [***name of employee***] [[was/became] [unfit [or] incompetent] to perform the work for which [he/she/***nonbinary pronoun***] was hired/[***specify other particular risk***]];**

3. **That [***name of employer defendant***] knew or should have known that [***name of employee***] [[was/became] [unfit/ [or] incompetent]/[***other particular risk***]] and that this [unfitness [or] incompetence/ [***other particular risk***]] created a particular risk to others;**

4. **That [***name of employee***]'s [unfitness [or] incompetence/ [***other particular risk***]] harmed [***name of plaintiff***]; and**

5. **That [***name of employer defendant***]'s negligence in [hiring/ supervising/ [or] retaining] [***name of employee***] was a substantial factor in causing [***name of plaintiff***]'s harm.**

New December 2009; Revised December 2015, June 2016

Directions for Use

Give this instruction if the plaintiff alleges that the employer of an employee who caused harm was negligent in the hiring, supervision, or retention of the employee after actual or constructive notice that the employee created a particular risk or hazard to others. For instructions holding the employer vicariously liable (without fault) for the acts of the employee, see the Vicarious Responsibility series, CACI No. 3700 et seq.

Include optional question 1 if the employment relationship between the defendant and the negligent person is contested. (See *Jackson v. AEG Live, LLC* (2015) 233 Cal.App.4th 1156, 1185−1189 [183 Cal.Rptr.3d 394].) It appears that liability may also be imposed on the hirer of an independent contractor for the negligent selection of the contractor. (See *Noble v. Sears, Roebuck & Co.* (1973) 33 Cal.App.3d 654, 662–663 [109 Cal.Rptr. 269].) Therefore, it would not seem to be necessary to instruct on the test to determine whether the relationship is one of employer-employee or hirer-independent contractor. (See CACI No. 3704, *Existence of "Employee" Status Disputed*.)

Choose "became" in elements 2 and 3 in a claim for negligent retention.

In most cases, "unfitness" or "incompetence" (or both) will adequately describe the particular risk that the employee represents. However, there may be cases in which neither word adequately describes the risk that the employer should have known about.

Sources and Authority

- "California case law recognizes the theory that an employer can be liable to a third person for negligently hiring, supervising, or retaining an unfit employee." (*Doe v. Capital Cities* (1996) 50 Cal.App.4th 1038, 1054 [58 Cal.Rptr.2d 122].)

- ~~"Negligence liability will be imposed on an employer if it 'knew or should have known that hiring the employee created a particular risk or hazard and that particular harm materializes.' " (*Phillips v. TLC Plumbing, Inc.* (2009) 172 Cal.App.4th 1133, 1139 [91 Cal.Rptr.3d 864].)~~

- "Liability for negligent hiring, supervision, and retention is distinct from vicarious liability. An employer may be directly liable 'if it "knew or should have known that hiring the employee created a particular risk or hazard and that particular harm materializes." ' " (*Y.P. v. Wells Fargo Co.* (2026) 119 Cal.App.5th 1069, 1088 [343 Cal.Rptr.3d 265], internal citations omitted.)

- "[Plaintiff] brought several claims against [defendant employer], including negligent hiring, supervising, and retaining [employee], and failure to warn. To prevail on his negligent hiring/retention claim, [plaintiff] will be required to prove [employee] was [defendant employer]'s agent and [defendant employer] knew or had reason to believe [employee] was likely to engage in sexual abuse. On the negligent supervision and failure to warn claims, [plaintiff] will be required to show [defendant employer] knew or should have known of [employee]'s alleged misconduct and did not act in a reasonable manner when it allegedly recommended him to serve as [plaintiff]'s Bible instructor." (*Lopez v. Watchtower Bible & Tract Society of New York, Inc.* (2016) 246 Cal.App.4th 566, 591 [201 Cal.Rptr.3d 156], internal citations omitted.)

- "[A] negligent supervision claim depends, in part, on a showing that the risk of harm was reasonably foreseeable. [Citations.] 'Foreseeability is determined in light of all the circumstances and does not require prior identical events or injuries.' [Citations.] ' "It is not necessary to prove that the very injury which occurred must have been foreseeable by the school authorities . . . . Their negligence is established if a reasonably prudent person would foresee that injuries of the same general type would be likely to happen in the absence of [adequate] safeguards." ' " (*D.Z. v. Los Angeles Unified School Dist.* (2019) 35 Cal.App.5th 210, 229 [247 Cal.Rptr.3d 127], internal citations omitted.)

- "Liability for negligent supervision and/or retention of an employee is one of direct liability for negligence, not vicarious liability." (*Delfino v. Agilent Technologies, Inc.* (2006) 145 Cal.App.4th 790, 815 [52 Cal.Rptr.3d 376].)

- "Liability for negligent hiring and supervision is based upon the reasoning that if an enterprise hires individuals with characteristics which might pose a danger to customers or other employees, the enterprise should bear the loss caused by the wrongdoing of its incompetent or unfit employees. The tort has developed in California in factual settings where the plaintiff's injury occurred in the workplace, or the contact between the plaintiff and the employee was generated by the employment relationship." (*Mendoza v. City of Los Angeles* (1998) 66 Cal.App.4th 1333, 1339–1340 [78 Cal.Rptr.2d 525].)

- "To establish negligent supervision, a plaintiff must show that a person in a supervisorial position

over the actor had prior knowledge of the actor's propensity to do the bad act." (*Z.V. v. County of Riverside* (2015) 238 Cal.App.4th 889, 902 [189 Cal.Rptr.3d 570].)

- "Apparently, [defendant] had no actual knowledge of [the employee]'s past. But the evidence recounted above presents triable issues of material fact regarding whether the [defendant] had reason to believe [the employee] was unfit or whether the [defendant] failed to use reasonable care in investigating [the employee]." (*Evan F. v. Hughson United Methodist Church* (1992) 8 Cal.App.4th 828, 843 [10 Cal.Rptr.2d 748]; cf. *Flores v. AutoZone West Inc.* (2008) 161 Cal.App.4th 373, 384–386 [74 Cal.Rptr.3d 178] [employer had no duty to investigate and discover that job applicant had a juvenile delinquency record].)

- "We note that the jury instructions issued by our Judicial Council include 'substantial factor' causation as an element of the tort of negligent hiring, retention, or supervision. The fifth element listed in CACI No. 426 is '[t]hat [name of employer defendant]'s negligence in [hiring/ supervising/ [or] retaining] [name of employee] *was a substantial factor in causing [name of plaintiff]'s harm.*' [¶] CACI No. 426 is consistent with California case law on the causation element of [plaintiff]'s claim against [employer]." (*Liberty Surplus Ins. Corp. v. Ledesma & Meyer Construction Co., Inc.* (2018) 5 Cal.5th 216, 224, fn.5 [233 Cal.Rptr.3d 487, 418 P.3d 400], original italics.)

- "A claim that an employer was negligent in hiring or retaining an employee-driver rarely differs in substance from a claim that an employer was negligent in entrusting a vehicle to the employee. Awareness, constructive or actual, that a person is unfit or incompetent to drive underlies a claim that an employer was negligent in hiring or retaining that person as a driver. (See Judicial Council of Cal. Civ. Jury Instns. (2011) CACI No. 426.) That same awareness underlies a claim for negligent entrustment. (See CACI No. 724.) In a typical case, like this, the two claims are functionally identical." (*Diaz v. Carcamo* (2011) 51 Cal.4th 1148, 1157 [126 Cal.Rptr.3d 443, 253 P.3d 535].)

- "The language of the instruction used specifies the particular risk at issue in this case. That is consistent with the model instruction, which prompts the user to 'specify other particular risk,' as well as the Directions for Use for CACI No. 426, which state: 'In most cases, "unfitness" or "incompetence" (or both) will adequately describe the particular risk that the employee represents. However, there may be cases in which neither word adequately describes the risk that the employer should have known about.' It is also consistent with the case law, discussed above, holding that a claim for negligent supervision requires a showing of foreseeability of a *particular* risk of harm." (*D.Z., supra,* 35 Cal.App.5th at p. 235, original italics.)

- "[I]f an employer admits vicarious liability for its employee's negligent driving in the scope of employment, 'the damages attributable to both employer and employee will be coextensive.' Thus, when a plaintiff alleges a negligent entrustment or hiring cause of action against the employer and the employer admits vicarious liability for its employee's negligent driving, the universe of defendants who can be held responsible for plaintiff's damages is reduced by one—the employer—for purposes of apportioning fault under Proposition 51. Consequently, the employer would not be mentioned on the special verdict form. The jury must divide fault for the accident among the listed tortfeasors, and the employer is liable only for whatever share of fault the jury assigns to the employee." (*Diaz, supra,* 41 Cal.4th at p. 1159, internal citations omitted.)

- "[W]hen an employer … admits vicarious liability, neither the complaint's allegations of employer misconduct relating to the recovery of punitive damages nor the evidence supporting those allegations are superfluous. Nothing in *Diaz* or *Armenta* suggests otherwise." (*CRST, Inc. v. Superior Court* (2017) 11 Cal.App.5th 1255, 1264 [218 Cal.Rptr.3d 664].)

- "[A] public school district may be vicariously liable under [Government Code] section 815.2 for the negligence of administrators or supervisors in hiring, supervising and retaining a school employee who sexually harasses and abuses a student." (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 879 [138 Cal.Rptr.3d 1, 270 P.3d 699].)

- "If a teacher sexually abuses a student, the school district that employs the teacher is not liable for the teacher's conduct under section 815.2(a) because such conduct is not within the scope of employment. But the same school district may be held liable if its supervisory employees were negligent in hiring and supervising the abusive teacher and that negligence resulted in the student's harm." (*A.H. v. Tamalpais Union High School Dist.* (2024) 105 Cal.App.5th 340, 350 [325 Cal.Rptr.3d 800], internal citations omitted.)

- " '[A] school district is liable for the negligence of supervisory employees who "knew or should have known of [a school employee's] dangerous propensities, but nevertheless hired, retained and failed to properly supervise" the employee.' Thus, the school district may be liable for hiring, supervising, or retaining an employee if the district's supervisory personnel had actual or constructive knowledge of the employee's dangerous propensities. 'Constructive knowledge is knowledge that "may be shown by circumstantial evidence 'which is nothing more than one or more inferences which may be said to arise reasonably from a series of proven facts.' " ' " (*Rancho Cucamonga Central School Dist. v. Superior Court* (2025) 116 Cal.App.5th 718, 721 [339 Cal.Rptr.3d 490], internal citations omitted.)

- "[P]laintiff premises her direct negligence claim on the hospital's alleged failure to properly screen [doctor] before engaging her and to properly supervise her after engaging her. Since hiring and supervising medical personnel, as well as safeguarding incapacitated patients, are clearly within the scope of services for which the hospital is licensed, its alleged failure to do so necessarily states a claim for professional negligence. Accordingly, plaintiff cannot pursue a claim of direct negligence against the hospital." (*So v. Shin* (2013) 212 Cal.App.4th 652, 668 [151 Cal.Rptr.3d 257].)

- "[Asking] whether [defendant] hired [employee] was necessary given the dispute over who hired [employee]—[defendant] or [decedent]. As the trial court noted, 'The employment was neither stipulated nor obvious on its face.' However, if the trial court began the jury instructions or special verdict form with, 'Was [employee] unfit or incompetent to perform the work for which he was hired,' confusion was likely to result as the question assumed a hiring. Therefore, the jury needed to answer the question of whether [defendant] hired [employee] before it could determine if [defendant] negligently hired, retained, or supervised him." (*Jackson, supra,* 233 Cal.App.4th at pp. 1187−1188.)

- "Any claim alleging negligent hiring by an employer will be based in part on events predating the employee's tortious conduct. Plainly, that sequence of events does not itself preclude liability." (*Liberty Surplus Ins. Corp., supra,* 5 Cal.5th at p. 225, fn. 7.)

- "We find no relevant case law approving a claim for direct liability based on a public entity's allegedly negligent hiring and supervision practices. … Here, … there is no statutory basis for declaring a governmental entity liable for negligence in its hiring and supervision practices and, accordingly, plaintiffs' claim against County based on that theory is barred … ." (*de Villers v. County of San Diego* (2007) 156 Cal.App.4th 238, 252–253 [67 Cal.Rptr.3d 253].)

Secondary Sources

6 Witkin, Summary of California Law (11th ed. 2017) Torts, § 1350

Chin et al., California Practice Guide: Employment Litigation, Ch. 5(I)-I, *Employment Torts and Related Claims—Negligence*, ¶ 5:800 et seq. (The Rutter Group)

3 California Torts, Ch. 40B, *Employment Discrimination and Harassment*, § 40B.21 (Matthew Bender)

21 California Forms of Pleading and Practice, Ch. 248, *Employer's Liability for Employee's Torts*, § 248.12 (Matthew Bender)

10 California Points and Authorities, Ch. 100A, *Employer and Employee: Respondeat Superior*, § 100A.22 (Matthew Bender)

555. Affirmative Defense—Statute of Limitations—Medical Malpractice—One-Year Limit (Code Civ. Proc., § 340.5)

[*Name of defendant***] contends that [***name of plaintiff***]'s lawsuit was not filed within the time set by law. To succeed on this defense, [***name of defendant***] must prove that before [***insert date one year before date of filing***], [***name of plaintiff***] discovered, or knew of facts that would have caused a reasonable person to suspect, that [he/she/***nonbinary pronoun***] had suffered harm that was caused by someone's wrongful conduct.**

[If, however, [*name of plaintiff***] proves [***insert tolling provision(s) of general applicability, e.g., Code Civ. Proc., §§ 351 [absence from California], 352 [insanity], 352.1 [prisoners], 352.5 [restitution orders], 353.1 [court's assumption of attorney's practice], 354 [war], 356 [injunction]***], the period within which [***name of plaintiff***] had to file the lawsuit is extended for the amount of time that [***insert tolling provision, e.g., [name of defendant] was absent from California***].]**

New April 2009; Revised May 2020

Directions for Use

Use CACI No. 556, *Affirmative Defense—Statute of Limitations—Medical Malpractice—Three-Year Limit*, if the three-year limitation provision is at issue.

If the notice of intent to sue required by Code of Civil Procedure section 364 is served within 90 days of the date on which the statute of limitations will run, the statute of limitations is tolled for 90 days beyond the end of the limitations period. (See Code Civ. Proc., § 364; *Woods v. Young* (1991) 53 Cal.3d 315, 325–326 [279 Cal.Rptr. 613, 807 P.2d 455].) Adjust the "date one year before the date of filing" in the instruction accordingly. If there is an issue of fact with regard to compliance with the requirements of section 364, the instruction may need to be modified accordingly.

Give the optional last paragraph if there is a question of fact concerning a tolling provision from the Code of Civil Procedure. If so, the verdict form should ask the jury to find (1) the "discovery" date (the date on which the plaintiff discovered or knew of facts that would have caused a reasonable person to suspect that the person had suffered harm that was caused by someone's wrongful conduct); (2) whether the tolling provision applies; and (3) if so, for what period of time. The court can then add the additional time to the discovery date and determine whether the action is timely.

Contrary to the otherwise applicable rule (see CACI No. 455, *Statute of Limitations—Delayed Discovery*), the defendant has been given the burden of proving that the plaintiff discovered or should have discovered the facts alleged to constitute the defendant's wrongdoing more than one year before filing the action. (See *Samuels v. Mix* (1999) 22 Cal.4th 1, 8–10 [91 Cal.Rptr.2d 273, 989 P.2d 701] [construing structurally similar Code Civ. Proc., § 340.6, on legal malpractice, to place burden regarding delayed discovery on the defendant and disapproving *Burgon v. Kaiser Foundation Hospitals* (1979) 93 Cal.App.3d 813 [155 Cal.Rptr. 763], which had reached the opposite result under Code Civ. Proc., § 340.5].) See also CACI No. 610, *Affirmative Defense—Statute of Limitations—Attorney Malpractice—One-Year Limit*.

Sources and Authority

- Statutes of Limitation for Medical Malpractice. Code of Civil Procedure section 340.5.
- Notice of Intent to Commence Action. Code of Civil Procedure section 364(a).
- 90-Day Extension of Limitation Period. Code of Civil Procedure section 364(d).
- "The one-year limitation period of section 340.5 is a codification of the discovery rule, under which a cause of action accrues when the plaintiff is aware, or reasonably should be aware, of 'injury,' a term of art which means 'both the negligent cause and the damaging effect of the alleged wrongful act.' " (*Arroyo v. Plosay* (2014) 225 Cal.App.4th 279, 290 [170 Cal.Rptr.3d 125].)
- "When a plaintiff has information which would put a reasonable person on inquiry, when a plaintiff's "reasonably founded suspicions [have been] aroused" and the plaintiff has "become alerted to the necessity for investigation and pursuit of her remedies," the one-year period commences. "Possession of 'presumptive' as well as 'actual' knowledge will commence the running of the statute." ' " (*Dolan v. Borelli* (1993) 13 Cal.App.4th 816, 823 [16 Cal.Rptr.2d 714], internal citations omitted.)
- "[W]hen the plaintiff in a medical malpractice action alleges the defendant health care provider misdiagnosed or failed to diagnose a preexisting disease or condition, there is no injury for purposes of section 340.5 until the plaintiff first experiences appreciable harm as a result of the misdiagnosis, which is when the plaintiff first becomes aware that a preexisting disease or condition has developed into a more serious one." (*Drexler v. Petersen* (2016) 4 Cal.App.5th 1181, 1183–1184 [209 Cal.Rtpr.3d 332].)
- "Injury from the failure to diagnose a latent, progressive condition occurs 'when the undiagnosed condition develops into a more serious condition,' and that more serious condition is made manifest by an appreciable increase or alteration in symptoms. A patient's concerns or suspicions about a diagnosis do not trigger the statute of limitations when no more serious condition is manifest and no lack of diligence is shown." (*Filosa v. Alagappan* (2020) 59 Cal.App.5th 772, 781 [273 Cal.Rptr.3d 731], internal citations omitted.)
- "The fact that [plaintiff] contemplated suing [defendants] is strong evidence that [plaintiff] suspected the doctors had not properly diagnosed or treated his headaches. Even with the presence of such suspicions, however, the one-year and three-year limitations periods did not begin to run until [plaintiff] discovered his injury—that is, became aware of additional, appreciable harm from his preexisting condition—and, with respect to the one-year limitations period, also had reason to believe that injury was caused by the wrongdoing of [defendants]." (*Drexler, supra,* 4 Cal.App.5th at p. 1190, internal citation omitted.)
- "We see no reason to apply the second sentence of section 340.5 to the one-year period it does not mention, in addition to the three-year period it does mention. The general purpose of MICRA does not require us to expand that sentence beyond its language." (*Belton v. Bowers Ambulance Serv.* (1999) 20 Cal.4th 928, 934 [86 Cal.Rptr.2d 107, 978 P.2d 591] [Code Civ. Proc., § 352.1, which tolls statutes of limitation for prisoners, applies to extend one-year period of Code Civ. Proc., § 340.5].)

- "The implications of *Belton's* analysis for our case here is inescapable. Like tolling the statute of limitations for confined prisoners under section 352.1, tolling under section 351 for a defendant's absence from California is of general applicability [and therefore extends the one-year period of Code of Civil Procedure section 340.5]. (For other general tolling provisions, see § 352 [minors or insanity]; § 352.5 [restitution orders]; § 353.1 [court's assumption of attorney's practice]; § 354 [war]; § 356 [injunction].)" (*Kaplan v. Mamelak* (2008) 162 Cal.App.4th 637, 643 [75 Cal.Rptr.3d 861].)

- "[A] plaintiff's minority as such does not toll the limitations period of section 340.5. When the Legislature added the separate statute of limitations for minors to section 340.5 in 1975, it clearly intended that the general provision for tolling of statutes of limitation during a person's minority (§ 352, subd. (a)(1)) should no longer apply to medical malpractice actions." (*Steketee v. Lintz* (1985) 38 Cal.3d 46, 53 [210 Cal.Rptr 781, 694 P.2d 1153], internal citations omitted.)

- "Section 340.5 creates two separate statutes of limitations, both of which must be satisfied if a plaintiff is to timely file a medical malpractice action. First, the plaintiff must file within one year after she first 'discovers' the injury *and the negligent cause* of that injury. Secondly, she must file within three years after she first experiences harm from the injury. This means that if a plaintiff does not 'discover' the negligent cause of her injury until more than three years after she first experiences harm from the injury, she will not be able to bring a malpractice action against the medical practitioner or hospital whose malpractice caused her injury." (*Ashworth v. Memorial Hospital* (1988) 206 Cal.App.3d 1046, 1054 [254 Cal.Rptr. 104], original italics.)

- "That legislative purpose [re: Code Civ. Proc., § 364] is best effectuated by construing section 364(d) as tolling the one-year statute of limitations when section 364(a)'s ninety-day notice of intent to sue is served during, but not before, the last ninety days of the one-year limitations period. Because the statute of limitations is tolled for 90 days and not merely extended by 90 days from the date of service of the notice, this construction results in a period of 1 year and 90 days in which to file the lawsuit. In providing for a waiting period of at least 90 days before suit can be brought, this construction achieves the legislative objective of encouraging negotiated resolutions of disputes." (*Woods, supra,* 53 Cal.3d at p. 325.)

- "[I]f the act or omission that led to the plaintiff's injuries was negligence in the maintenance of equipment that, under the prevailing standard of care, was reasonably required to treat or accommodate a physical or mental condition of the patient, the plaintiff's claim is one of professional negligence under section 340.5. But section 340.5 does not extend to negligence in the maintenance of equipment and premises that are merely convenient for, or incidental to, the provision of medical care to a patient." (*Flores v. Presbyterian Intercommunity Hospital* (2016) 63 Cal.4th 75, 88 [201 Cal.Rptr.3d 449, 369 P.3d 229]; see *Johnson v. Open Door Community Health Centers* (2017) 15 Cal.App.5th 153, 157–162 [222 Cal.Rptr.3d 838] [tripping over scale does not involve provision of medical care].)

- "[W]hile MICRA is not limited to suits by patients, it 'applies only to actions alleging injury suffered as a result of negligence in … the provision of medical care to patients.' Driving to an accident victim is not the same as providing medical care to the victim. A paramedic's exercise of due care while driving is not 'necessary or otherwise integrally related to the medical treatment and diagnosis of the

patient", at least when the patient is not in the vehicle.' " (*Aldana v. Stillwagon* (2016) 2 Cal.App.5th 1, 8 [205 Cal.Rptr.3d 719], internal citations omitted.)

- "[T]he plaintiff's status as a patient or nonpatient is not necessarily determinative. Rather, the fundamental question is whether the plaintiff's claim for negligence involves a violation of professional obligations, as opposed to the breach of a duty owed to the public generally." (*Gutierrez v. Tostado* (2025) 18 Cal.5th 222, 239 [335 Cal.Rptr.3d 36, 572 P.3d 523].)

Secondary Sources

Haning et al., California Practice Guide: Personal Injury, Ch. 5-B, *When To Sue—Statute Of Limitations*, ¶ 5:109 (The Rutter Group)

California Tort Guide (Cont.Ed.Bar 3d ed.) §§ 9.26, 9.67–9.72

3 Levy et al., California Torts, Ch. 31, *Liability of Physicians and Other Medical Professionals*, § 31.60 (Matthew Bender)

36 California Forms of Pleading and Practice, Ch. 415, *Physicians: Medical Malpractice*, § 415.47 (Matthew Bender)

17 California Points and Authorities, Ch. 175, *Physicians and Surgeons: Medical Malpractice*, § 175.45 et seq. (Matthew Bender)

McDonald, California Medical Malpractice: Law and Practice, §§ 7:1–7:7 (Thomson Reuters)

1009B. Liability to Employees of Independent Contractors for Unsafe Conditions—Retained Control

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[*Name of plaintiff***] claims that [he/she/***nonbinary pronoun***] was harmed by an unsafe condition while employed by [***name of contractor***] and working on [***specify nature of work that defendant hired the contractor to perform***]. To establish this claim, [***name of plaintiff***] must prove all of the following:**

1. **That [***name of defendant***] retained some control over [***name of contractor***]'s manner of performance of [***specify nature of contracted work***];**

2. **That [***name of defendant***] actually exercised [his/her/***nonbinary pronoun***/its] retained control over that work by [***specify alleged negligence of defendant***];**

3. **That [***name of plaintiff***] was harmed; and**

4. **That [***name of defendant***]'s negligent exercise of [his/her/***nonbinary pronoun***/its] retained control affirmatively contributed to [***name of plaintiff***]'s harm.**

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*Derived from former CACI No. 1009 April 2007; Revised April 2009, December 2010, December 2011, May 2017, May 2022, November 2024**

Directions for Use

This instruction is for use if a dangerous condition on property causes injury to an employee of an independent contractor hired to perform work on the property. The basis of liability is that the defendant retained control over the manner of performance of some part of the work entrusted to the contractor. (*Sandoval v. Qualcomm Inc.* (2021) 12 Cal.5th 256, 273 [283 Cal.Rptr.3d 19, 494 P.3d 487].) Both retaining control and actually exercising control over some aspect of the work is required because hirers who fully and effectively delegate work to a contractor owe no tort duty to that contractor's workers. (See *Ibid.*) If there is a question of fact regarding whether the defendant entrusted the work to the contractor, the instruction should be modified. For an instruction for injuries to others due to a concealed condition, see CACI No. 1003, *Unsafe Conditions*. For an instruction for injuries based on unsafe conditions not discoverable by the plaintiff's employer, see CACI No. 1009A, *Liability to Employees of Independent Contractors for Unsafe Concealed Conditions*. For an instruction for injuries based on the property owner's providing defective equipment, see CACI No. 1009D, *Liability to Employees of Independent Contractors for Unsafe Conditions—Defective Equipment*.

The hirer's exercise of retained control must have "affirmatively contributed" to the plaintiff's injury. (*Hooker v. Department of Transportation* (2002) 27 Cal.4th 198, 202 [115 Cal.Rptr.2d 853, 38 P.3d 1081]; see *Sandoval, supra,* 12 Cal.5th at p. 277.) However, the affirmative contribution need not be active conduct but may be a failure to act. (*Hooker, supra,* 27 Cal.4th at p. 212, fn. 3; see *Sandoval, supra,* 12 Cal.5th at p. 277.) "Affirmative contribution" means that there must be causation between the hirer's exercising retained control and the plaintiff's injury. Modification may be required if the defendant's failure to act is alleged pursuant to *Hooker*.

Sources and Authority

- "A hirer 'retains control' where it retains a sufficient degree of authority over the manner of performance of the work entrusted to the contractor. … So 'retained control' refers specifically to a hirer's authority over work entrusted to the contractor, i.e., work the contractor has agreed to perform. For simplicity we will often call this the 'contracted work'—irrespective of whether it's set out in a written contract or arises from an informal agreement. A hirer's authority over noncontract work—although potentially giving rise to other tort duties—thus does not give rise to a retained control duty unless it has the effect of creating authority over the contracted work." (*Sandoval, supra,* 12 Cal.5th at pp. 274–275.)

- "We conclude that a hirer of an independent contractor is not liable to an employee of the contractor merely because the hirer retained control over safety conditions at a worksite, but that a hirer is liable to an employee of a contractor insofar as a hirer's exercise of retained control *affirmatively contributed* to the employee's injuries." (*Hooker, supra,* 27 Cal.4th at p. 202, original italics.)

- "Imposing tort liability on a hirer of an independent contractor when the hirer's conduct has affirmatively contributed to the injuries of the contractor's employee is consistent with the rationale of our decisions in *Privette* [*v. Superior Court* (1993) 5 Cal.4th 689], *Toland* [*v. Sunland Housing Group, Inc.* (1998) 18 Cal.4th 253] and *Camargo* [*v. Tjaarda Dairy* (2001) 25 Cal.4th 1235] because the liability of the hirer in such a case is not ' "in essence 'vicarious' or 'derivative' in the sense that it derives from the 'act or omission' of the hired contractor." ' To the contrary, the liability of the hirer in such a case is *direct* in a much stronger sense of that term." (*Hooker, supra,* 27 Cal.4th at pp. 211–212, original italics, internal citations and footnote omitted.)'

- "The delegation of control over safety 'may be direct, when the hirer has contracted with the independent contractor, or indirect, when the hirer contracts with another contractor who then subcontracts the work to the independent contractor.' The *Privette* doctrine therefore bars liability against not only the hirer, but also any other entities in that 'chain of delegation.' " (*Collins v. Diamond Generating Corp.* (2024) 107 Cal.App.5th 1162, 1175 [328 Cal.Rptr.3d 714].)

- "Contract workers must prove that the hirer *both* retained control *and* actually exercised that retained control in such a way as to affirmatively contribute to the injury." (*Sandoval, supra,* 12 Cal.5th at p. 276, original italics.)

- "No existing case law quantifies the amount of control necessary to impose liability on the hirer, presumably due to the inquiry's fact-driven nature. Even case law discussing the retained control exception in the more circumscribed circumstances where the plaintiff is an employee primarily use the term 'any,' but sometimes refer to 'some' control with no apparent distinction being drawn between the two." (*Ruckman v. Ag-Wise Enterprises, Inc.* (2025) 117 Cal.App.5th 571, 594 [340 Cal.Rptr.3d 391], citations omitted.)

- "Such affirmative contribution need not always be in the form of actively directing a contractor or contractor's employee. There will be times when a hirer will be liable for its omissions. For example, if the hirer promises to undertake a particular safety measure, then the hirer's negligent failure to do so should result in liability if such negligence leads to an employee injury." (*Hooker, supra,* 27 Cal.4th at p. 212, fn. 3.)

- " 'Affirmative contribution' means that the hirer's exercise of retained control contributes to the injury in a way that isn't merely derivative of the contractor's contribution to the injury. Where the contractor's conduct is the immediate cause of injury, the affirmative contribution requirement can be satisfied only if the hirer in some respect induced—not just failed to prevent—the contractor's injury-causing conduct." (*Sandoval, supra,* 12 Cal.5th at p. 277, internal citation omitted.)

- "If a hirer entrusts work to an independent contractor, but retains control over safety conditions at a jobsite and then negligently exercises that control in a manner that affirmatively contributes to an employee's injuries, the hirer is liable for those injuries, based on its own negligent exercise of that retained control." (*Tverberg v. Fillner Constr., Inc.* (2012) 202 Cal.App.4th 1439, 1446 [136 Cal.Rptr.3d 521].)

- "[A]ffirmative contribution is a different sort of inquiry than substantial factor causation. For instance, a fact finder might reasonably conclude that a hirer's negligent hiring of the contractor was a substantial factor in bringing about a contract worker's injury, and yet negligent hiring is not affirmative contribution because the hirer's liability is essentially derivative of the contractor's conduct. Conversely, affirmative contribution does not itself require that the hirer's contribution to the injury be substantial." (*Sandoval, supra,* 12 Cal.5th at p. 278, internal citations omitted.)

- "A hirer's failure to correct an unsafe condition, by itself, does not establish an affirmative contribution." (*Khosh v. Staples Construction Co., Inc.* (2016) 4 Cal.App.5th 712, 718 [208 Cal.Rptr.3d 699].)

- "On facts [showing a contractor's awareness of a hazard], then, it is the contractor's responsibility, not the hirer's responsibility, to take the necessary precautions to protect its employees from a known workplace hazard. And should the contractor fail to take the necessary precautions, … its employees cannot fault the hirer for the contractor's own failure." (*McCullar v. SMC Contracting, Inc.* (2022) 83 Cal.App.5th 1005, 1017 [298 Cal.Rptr.3d 785].)

- "When the employer directs that work be done by use of a particular mode or otherwise interferes with the means and methods of accomplishing the work, an affirmative contribution occurs. When the hirer does not fully delegate the task of providing a safe working environment but in some manner actively participates in how the job is done, the hirer may be held liable to the employee if its participation affirmatively contributed to the employee's injury. [¶] By contrast, passively permitting an unsafe condition to occur rather than directing it to occur does not constitute affirmative contribution. The failure to institute specific safety measures is not actionable unless there is some evidence that the hirer or the contractor had agreed to implement these measures. Thus, the failure to exercise retained control does not constitute an affirmative contribution to an injury. Such affirmative contribution must be based on a negligent exercise of control. In order for a worker to recover on a retained control theory, the hirer must engage in some active participation." (*Tverberg, supra,* 202 Cal.App.4th at p. 1446, internal citations omitted.)

- "[F]or the retained control exception to apply, there must be … some indication the hirer *directed* that the contractor perform its work in a certain way or *interfered* with the means and methods by which the work was to be accomplished." (*Cordero v. Ghilotti Constr. Co., Inc.* (2026) 119

Cal.App.5th 1105, 1124 [343 Cal.Rptr.3d 282], internal citation omitted, original italics.)

- "Although plaintiffs concede that [contractor] had exclusive control over how the window washing would be done, they urge that [owner] nonetheless is liable because it affirmatively contributed to decedent's injuries 'not [by] active conduct *but … in the form of an omission to act*.' Although it is undeniable that [owner]'s failure to equip its building with roof anchors contributed to decedent's death, *McKown* [*v. Wal-Mart Stores, Inc.* (2002) 27 Cal.4th 219] does not support plaintiffs' suggestion that a passive omission of this type is actionable. … Subsequent Supreme Court decisions … have repeatedly rejected the suggestion that the passive provision of an unsafe workplace is actionable. … Accordingly, the failure to provide safety equipment does not constitute an 'affirmative contribution' to an injury within the meaning of *McKown*." (*Delgadillo v. Television Center, Inc.* (2018) 20 Cal.App.5th 1078, 1093 [229 Cal.Rptr.3d 594], original italics.)

- "[U]nder Government Code section 815.4, a public entity can be held liable under the retained control doctrine, provided a private person would be liable under the same circumstances. This means that the public entity must *negligently* exercise its retained control so as to affirmatively contribute to the injuries of the employee of the independent contractor." (*McCarty v. Department of Transportation* (2008) 164 Cal.App.4th 955, 985 [79 Cal.Rptr.3d 777], original italics.)

- "The *Privette* line of decisions establishes a presumption that an independent contractor's hirer 'delegates to that contractor its tort law duty to provide a safe workplace for the contractor's employees.'… [T]he *Privette* presumption affects the burden of producing evidence." (*Alvarez v. Seaside Transportation Services LLC* (2017) 13 Cal.App.5th 635, 642 [221 Cal.Rptr.3d 119], internal citations omitted.)

Secondary Sources

Friedman et al., California Practice Guide: Landlord-Tenant, Ch. 6-A, *Liability For Defective Conditions On Premises*, ¶ 6:1 et seq. (The Rutter Group)

1 Levy et al., California Torts, Ch. 15, *General Premises Liability*, § 15.08 (Matthew Bender)

11 California Real Estate Law and Practice, Ch. 381, *Tort Liability of Property Owners*, § 381.23 (Matthew Bender)

36 California Forms of Pleading and Practice, Ch. 421, *Premises Liability,* §§ 421.11, 421.12 (Matthew Bender)

17 California Points and Authorities, Ch. 178, *Premises Liability,* § 178.20 et seq. (Matthew Bender)

1100. Dangerous Condition on Public Property—Essential Factual Elements (Gov. Code, § 835)

[*Name of plaintiff***] claims that [he/she/***nonbinary pronoun***] was harmed by a dangerous condition of [***name of defendant***]'s property. To establish this claim, [***name of plaintiff***] must prove all of the following:**

1. **That [***name of defendant***] owned [or controlled] the property;**

2. **That the property was in a dangerous condition at the time of the injury;**

3. **That the dangerous condition created a reasonably foreseeable risk of the kind of injury that occurred;**

4. **[That negligent or wrongful conduct of [***name of defendant***]'s employee acting within the scope of employment created the dangerous condition;]**

   [or]

   [That [*name of defendant***] had notice of the dangerous condition for a long enough time to have protected against it;]**

5. **That [***name of plaintiff***] was harmed; and**

6. **That the dangerous condition was a substantial factor in causing [***name of plaintiff***]'s harm.**

New September 2003; Revised October 2008, December 2015, June 2016, May 2020

Directions for Use

For element 4, choose either or both options depending on whether liability is alleged under Government Code section 835(a), 835(b), or both.

See also CACI No. 1102, *Definition of "Dangerous Condition,"* and CACI No. 1103, *Notice*.

Sources and Authority

- Liability of Public Entity for Dangerous Condition of Property. Government Code section 835.
- Actual Notice. Government Code section 835.2(a).
- Constructive Notice. Government Code section 835.2(b).
- Definitions. Government Code section 830.
- "The Government Claims Act (§ 810 et seq.; the Act) 'is a comprehensive statutory scheme that sets forth the liabilities and immunities of public entities and public employees for torts.' Section 835 …

prescribes the conditions under which a public entity may be held liable for injuries caused by a dangerous condition of public property. Section 835 provides that a public entity may be held liable for such injuries 'if the plaintiff establishes that the property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, [and] that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred.' In addition, the plaintiff must establish that either: (a) '[a] negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition,' or (b) '[t]he public entity had . . . notice of the dangerous condition . . . a sufficient time prior to the injury to have taken measures to protect against the dangerous condition.' " (*Cordova v. City of Los Angeles* (2015) 61 Cal.4th 1099, 1104 [190 Cal.Rptr.3d 850, 353 P.3d 773], internal citations omitted.)

- "Under the Government Claims Act (Gov. Code, § 810 et seq.), a public entity can be held liable for either creating a dangerous condition on its property or failing to protect against such a condition when the entity had notice of the danger and sufficient time to remedy the situation." (*Tansavatdi v. City of Rancho Palos Verdes* (2023) 14 Cal.5th 639, 647 [307 Cal.Rptr.3d 346, 527 P.3d 873], internal citations omitted.)

- "[A] public entity may be liable for a dangerous condition of public property even when the immediate cause of a plaintiff's injury is a third party's negligent or illegal act (such as a motorist's negligent driving), if some physical characteristic of the property exposes its users to increased danger from third party negligence or criminality. Public entity liability lies under section 835 when some feature of the property increased or intensified the danger to users from third party conduct." (*Castro v. City of Thousand Oaks* (2015) 239 Cal.App.4th 1451, 1457−1458 [192 Cal.Rptr.3d 376], internal citation omitted.)

- "Subdivisions (a) and (b) of section 835 obviously address two different types of cases. However, what distinguishes the two types of cases is not simply whether the public entity has notice of the dangerous condition. Instead, what distinguishes the two cases in practice is who created the dangerous condition. Because an entity must act through its employees, virtually all suits brought on account of dangerous conditions created by the entity will be brought under subdivision (a). In contrast, subdivision (b) can also support suits based on dangerous conditions not created by the entity or its employees." (*Brown v. Poway Unified School Dist.* (1993) 4 Cal.4th 820, 836 [15 Cal.Rptr.2d 679, 843 P.2d 624].)

- "[T]he res ipsa loquitur presumption does not satisfy the requirements for holding a public entity liable under section 835, subdivision (a). Res ipsa loquitur requires the plaintiff to show only (1) that the accident was of a kind which ordinarily does not occur in the absence of negligence, (2) that the instrumentality of harm was within the defendant's exclusive control, and (3) that the plaintiff did not voluntarily contribute to his or her own injuries. Subdivision (a), in contrast, requires the plaintiff to show that an employee of the public entity 'created' the dangerous condition; in view of the legislative history … , the term 'created' must be defined as the sort of involvement by an employee that would justify a presumption of notice on the entity's part." (*Brown, supra,* 4 Cal.4th at p. 836.)

- "Focusing on the language in *Pritchard, supra,* 178 Cal. App. 2d at page 256, stating that where the public entity 'has itself created the dangerous condition it is per se culpable,' plaintiff argues that the negligence that section 835, subdivision (a), refers to is not common law negligence, but something

that exists whenever the public entity creates the dangerous condition of property. We disagree. If the Legislature had wanted to impose liability whenever a public entity created a dangerous condition, it would merely have required plaintiff to establish that an act or omission of an employee of the public entity within the scope of his employment created the dangerous condition. Instead, section 835, subdivision (a), requires the plaintiff to establish that a '*negligent or wrongful* act or omission of an employee of the public entity within the scope of his employment created the dangerous condition.' (Italics added.) Plaintiff's interpretation would transform the highly meaningful words 'negligent or wrongful' into meaningless surplusage, contrary to the rule of statutory interpretation that courts should avoid a construction that makes any word surplusage." (*Metcalf v. County of San Joaquin* (2008) 42 Cal.4th 1121, 1135 [72 Cal.Rptr.3d 382, 176 P.2d 654], original italics, internal citation omitted.)

- "In order to recover under Government Code section 835, it is not necessary for plaintiff to prove a negligent act *and* notice; either negligence *or* notice will suffice." (*Curtis v. State of California* (1982) 128 Cal.App.3d 668, 693 [180 Cal.Rptr. 843], original italics.)

- "A public entity may not be held liable under section 835 for a dangerous condition of property that it does not own or control." (*Goddard v. Department of Fish & Wildlife* (2015) 243 Cal.App.4th 350, 359 [196 Cal.Rptr.3d 625].)

- "For liability to be imposed on a public entity for a dangerous condition of property, the entity must be in a position to protect against or warn of the hazard. Therefore, the crucial element is not ownership, but rather control." (*Mamola v. State of California ex rel. Dept. of Transportation* (1979) 94 Cal.App.3d 781, 788 [156 Cal.Rptr. 614], internal citation omitted.)

- "The release and waiver [signed by the plaintiff] included a provision discharging the ride organizers, as well as any public entities providing facilities for the ride, from any liability for negligence. We conclude that such a release is 'against the policy of the law' under Civil Code section 1668 [] to the extent it purports to relieve the City of liability for negligently violating a statutory duty relating to public safety." (*Whitehead v. City of Oakland* (2025) 17 Cal.5th 735, 739 [332 Cal.Rptr.3d 134, 567 P.3d 701].)

- "Liability for injury caused by a dangerous condition of property has been imposed when an unreasonable risk of harm is created by a combination of defect in the property and acts of third parties. However, courts have consistently refused to characterize harmful third party conduct as a dangerous condition-absent some concurrent contributing defect in the property itself." (*Hayes v. State of California* (1974) 11 Cal.3d 469, 472 [113 Cal.Rptr. 599, 521 P.2d 855], internal citations omitted.)

- "[P]laintiffs in this case must show that a dangerous condition of property--that is, a condition that creates a substantial risk of injury to the public--proximately caused the fatal injuries their decedents suffered as a result of the collision with [third party]'s car. But nothing in the statute requires plaintiffs to show that the allegedly dangerous condition also caused the third party conduct that precipitated the accident." (*Cordova, supra,* 61 Cal. 4th at p. 1106.)

- "Although generally a question of fact, a property defect is not a dangerous condition as a matter of law if the court determines, 'viewing the evidence most favorably to the plaintiff, … that the risk

created by the condition was of such a minor, trivial or insignificant nature in view of the surrounding circumstances that no reasonable person would conclude that the condition created a substantial risk of injury … .' " (*Nunez v. City of Redondo Beach* (2022) 81 Cal.App.5th 749, 757 [297 Cal.Rptr.3d 461].)

- "[A] public entity is only required to maintain its property in a way that is safe for careful use. Or, [if] it can be shown that the property is safe when used with due care and that a risk of harm is created only when foreseeable users fail to exercise due care, then such property is not dangerous within the meaning of section 830, subdivision (a)." (*Pagan v. City of San Rafael* (2026) 119 Cal.App.5th 853, 864 [343 Cal.Rptr.3d 190], internal citations and quotation marks omitted.)

- "Whether a dangerous condition is sufficiently obvious that a public entity should be charged with constructive notice of it depends upon ' "all [of] the existing circumstances." ' In assessing whether a public entity 'acted negligently in not discovering' a dangerous condition, those circumstances include whether the entity employed a 'reasonably adequate' 'inspection system' for assessing whether its property remains safe for its intended uses." (*Yan v. City of Diamond Bar* (2026) 119 Cal.App.5th 21, 31 [342 Cal.Rptr.3d 311], internal citations omitted.)

Secondary Sources

5 Witkin, Summary of California Law (11th ed. 2017) Torts, §§ 425–426

Friedman et al., California Practice Guide: Landlord-Tenant, Ch. 6-C, *Immunity From Liability*, ¶ 6:91 et seq. (The Rutter Group)

Haning et al., California Practice Guide: Personal Injury, Ch. 2(III)-D, *Liability For "Dangerous Conditions" of Public Property*, ¶ 2:2785 et seq. (The Rutter Group)

2 California Government Tort Liability Practice (Cont.Ed.Bar 4th ed.) §§ 12.9–12.55

5 Levy et al., California Torts, Ch. 61, *Particular Liabilities and Immunities of Public Entities and Public Employees*, §§ 61.01–61.03 (Matthew Bender)

40 California Forms of Pleading and Practice, Ch. 464, *Public Entities and Officers: California Government Claims Act*, §§ 464.80–464.86 (Matthew Bender)

19A California Points and Authorities, Ch. 196, *Public Entities*, §§ 196.210–196.214 (Matthew Bender)

1203. Strict Liability—Design Defect—Consumer Expectation Test—Essential Factual Elements

[*Name of plaintiff***] claims the [***product***]'s design was defective because the [***product***] did not perform as safely as an ordinary consumer would have expected it to perform. To establish this claim, [***name of plaintiff***] must prove all of the following:**

1. **That [***name of defendant***] [manufactured/distributed/sold] the [***product***];**

2. **That the [***product***] did not perform as safely as an ordinary consumer would have expected it to perform when used or misused in an intended or reasonably foreseeable way;**

3. **That [***name of plaintiff***] was harmed; and**

4. **That the [***product***]'s failure to perform safely was a substantial factor in causing [***name of plaintiff***]'s harm.**

New September 2003; Revised December 2005, April 2009, December 2009, June 2011, January 2018, May 2020

Directions for Use

The consumer expectation test and the risk-benefit test for design defect are not mutually exclusive, and depending on the facts and circumstances of the case, both may be presented to the trier of fact in the same case. (*Demara v. The Raymond Corp.* (2017) 13 Cal.App.5th 545, 554 [221 Cal.Rptr.3d 102].) If both tests are asserted by the plaintiff, the burden-of-proof instructions must make it clear that the two tests are alternatives. (*Bracisco v. Beech Aircraft Corp.* (1984) 159 Cal.App.3d 1101, 1106–1107 [206 Cal.Rptr. 431].)

The court must make an initial determination as to whether the consumer expectation test applies to the product. In some cases, the court may determine that the product is one to which the test may, but not necessarily does, apply, leaving the determination to the jury. (See *Saller v. Crown Cork & Seal Co., Inc.* (2010) 187 Cal.App.4th 1220, 1233–1234 [115 Cal.Rptr.3d 151].) In such a case, modify the instruction to advise the jury that it must first determine whether the product is one about which an ordinary consumer can form reasonable minimum safety expectations.

To make a prima facie case, the plaintiff has the initial burden of producing evidence that the plaintiff was injured while the product was being used in an intended or reasonably foreseeable manner. If this prima facie burden is met, the burden of proof shifts to the defendant to prove that the plaintiff's injury resulted from a misuse of the product. (See *Perez v. VAS S.p.A.* (2010) 188 Cal.App.4th 658, 678 [115 Cal.Rptr.3d 590] [risk-benefit case]; see also CACI No. 1245, *Affirmative Defense—Product Misuse or Modification*.) Product misuse is a complete defense to strict products liability if the defendant proves that an unforeseeable abuse or alteration of the product after it left the manufacturer's hands was the sole cause of the plaintiff's injury. (*Campbell v. Southern Pacific Co.* (1978) 22 Cal.3d 51, 56 [148 Cal.Rptr. 596, 583 P.2d 121]; see CACI No. 1245.) Misuse or modification that was a substantial factor in, but not the sole cause of, plaintiff's harm may also be considered in determining the comparative fault of the

plaintiff or of third persons. See CACI No. 1207A, *Strict Liability—Comparative Fault of Plaintiff*, and CACI No. 1207B, *Strict Liability—Comparative Fault of Third Person*.

Sources and Authority

- "A manufacturer, distributor, or retailer is liable in tort if a defect in the manufacture or design of its product causes injury while the product is being used in a reasonably foreseeable way." (*Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 560 [34 Cal.Rptr.2d 607, 882 P.2d 298].)

- "[T]he term defect as utilized in the strict liability context is neither self-defining nor susceptible to a single definition applicable in all contexts." (*Johnson v. United States Steel Corp.* (2015) 240 Cal.App.4th 22, 31 [192 Cal.Rptr.2d 158].)

- "[A] product is defective in design either (1) if the product has failed to perform as safely as an ordinary consumer would expect when used in an intended or reasonably foreseeable manner, or (2) if, in light of the relevant factors … , the benefits of the challenged design do not outweigh the risk of danger inherent in such design." (*Barker v. Lull Engineering Co.* (1978) 20 Cal.3d 413, 418 [143 Cal.Rptr. 225, 573 P.2d 443].)

- "The [consumer-expectation and risk-benefit] tests provide alternative means for a plaintiff to prove design defect and do not serve as defenses to one another. A product may be defective under the consumer expectation test even if the benefits of the design outweigh the risks. [Citation.] On the other hand, a product may be defective if it satisfies consumer expectations but contains an excessively preventable danger in that the risks of the design outweigh its benefits." (*Chavez v. Glock, Inc.* (2012) 207 Cal.App.4th 1283, 1303 [144 Cal.Rptr.3d 326].)

- "In order to establish a design defect under the consumer expectation test when a ' " 'product is one within the common experience of ordinary consumers,' " ' the plaintiff must ' " 'provide[] evidence concerning (1) his or her use of the product; (2) the circumstances surrounding the injury; and (3) the objective features of the product which are relevant to an evaluation of its safety.' [Citation.] The test is that of a hypothetical reasonable consumer, not the expectation of the particular plaintiff in the case." ' " (*Trejo v. Johnson & Johnson* (2017) 13 Cal.App.5th 110, 157 [220 Cal.Rptr.3d 127].)

- "The rationale of the consumer expectations test is that '[t]he purposes, behaviors, and dangers of certain products are commonly understood by those who ordinarily use them.' Therefore, in some cases, ordinary knowledge of the product's characteristics may permit an inference that the product did not perform as safely as it should. '*If* the facts permit such a conclusion, and *if* the failure resulted from the product's design, a finding of defect is warranted without any further proof,' and the manufacturer may not defend by presenting expert evidence of a risk/benefit analysis. … Nonetheless, the inherent complexity of the product itself is not controlling on the issue of whether the consumer expectations test applies; a complex product 'may perform so unsafely that the defect is apparent to the common reason, experience, and understanding of its ordinary consumers.' " (*Saller, supra,* 187 Cal.App.4th at p. 1232, original italics, internal citations omitted.)

  "The critical question, in assessing the applicability of the consumer expectation test, is not whether the product, when considered in isolation, is beyond the ordinary knowledge of the consumer, but whether the product, *in the context of the facts and circumstances of its failure,* is one about which the

ordinary consumers can form minimum safety expectations." (*Pannu v. Land Rover North America, Inc.* (2011) 191 Cal.App.4th 1298, 1311–1312 [120 Cal.Rptr.3d 605]; see *Harcourt v. Tesla, Inc.* (2026) 119 Cal.App.5th 838, 850 [343 Cal.Rptr.3d 58] ["This case does not resemble any case in which the consumer expectations test previously has been held or said to apply"].)

- "Whether the jury should be instructed on either the consumer expectations test or the risk/benefit test depends upon the particular facts of the case. In a jury case, the trial court must initially determine as a question of foundation, within the context of the facts and circumstances of the particular case, whether the product is one about which the ordinary consumer can form reasonable minimum safety expectations. 'If the court concludes it is not, no consumer expectation instruction should be given. … If, on the other hand, the trial court finds there is sufficient evidence to support a finding that the ordinary consumer can form reasonable minimum safety expectations, the court should instruct the jury, consistent with Evidence Code section 403, subdivision (c), to determine whether the consumer expectation test applies to the product at issue in the circumstances of the case [or] to disregard the evidence about consumer expectations unless the jury finds that the test is applicable. If it finds the test applicable, the jury then must decide whether the product failed to perform as safely as an ordinary consumer would expect when the product is used in an intended or reasonably foreseeable manner.' " (*Saller, supra,* 187 Cal.App.4th at pp. 1233–1234, internal citations omitted.)

- "[The] dual standard for design defect assures an injured plaintiff protection from products that either fall below ordinary consumer expectations as to safety or that, on balance, are not as safely designed as they should be." (*Barker, supra,* 20 Cal.3d at p. 418.)

- "The consumer expectation test "acknowledges the relationship between strict tort liability for a defective product and the common law doctrine of warranty, which holds that a product's presence on the market includes an implied representation 'that it [will] safely do the jobs for which it was built.' " (*Soule, supra,* 8 Cal.4th at p. 562, internal citations omitted.)

- "[T]he jury may not be left free to find a violation of ordinary consumer expectations whenever it chooses. Unless the facts actually permit an inference that the product's performance did not meet the minimum safety expectations of its ordinary users, the jury must engage in the balancing of risks and benefits required by the second prong of *Barker*. Accordingly, as *Barker* indicated, instructions are misleading and incorrect if they allow a jury to avoid this risk-benefit analysis in a case where it is required." (*Soule, supra,* 8 Cal.4th at p. 568.)

- "[T]he consumer expectation test does not apply merely because the consumer states that he or she did not expect to be injured by the product." (*Trejo, supra,* 13 Cal.App.5th at p. 159.)

- "[T]he consumer expectation test is reserved for cases in which the *everyday experience* of the product's users permits a conclusion that the product's design violated *minimum* safety assumptions, and is thus defective *regardless of expert opinion about the merits of the design*." (*Soule, supra,* 8 Cal.4th at p. 567, original italics.)

- "[A] product's users include anyone whose injury was 'reasonably foreseeable.' " (*Demara, supra,* 13 Cal.App.5th at p. 559.)

- "If the facts permit an inference that the product at issue is one about which consumers may form

minimum safety assumptions in the context of a particular accident, then it is enough for a plaintiff, proceeding under the consumer expectation test, to show the circumstances of the accident and 'the objective features of the product which are relevant to an evaluation of its safety' [citation], leaving it to the fact finder to 'employ "[its] own sense of whether the product meets ordinary expectations as to its safety under the circumstances presented by the evidence." ' [Citations.] Expert testimony as to what consumers ordinarily 'expect' is generally improper." (*Chavez, supra,* 207 Cal.App.4th at p. 1303.)

- "That causation for a plaintiff's injuries was proved through expert testimony does not mean that an ordinary consumer would be unable to form assumptions about the product's safety. Accordingly, the trial court properly instructed the jury on the consumer expectations test." (*Romine v. Johnson Controls, Inc.* (2014) 224 Cal.App.4th 990, 1004 [169 Cal.Rptr.3d 208], internal citations omitted.)

- "Generally, ' "[e]xpert witnesses may not be used to demonstrate what an ordinary consumer would or should expect," because the idea behind the consumer expectations test is that the lay jurors have common knowledge about the product's basic safety.' However, 'where the product is in specialized use with a limited group of consumers[,] ... ' …expert testimony on the limited subject of what the product's actual consumers *do expect* may be proper" ' because ' "the expectations of the product's limited group of ordinary consumers are beyond the lay experience common to all jurors." ' " (*Verrazono v. Gehl Co.* (2020) 50 Cal.App.5th 636, 646–647 [263 Cal.Rptr.3d 663], original italics, internal citation omitted.)

- "In determining whether a product's safety satisfies [the consumer expectation test], the jury considers the expectations of a hypothetical reasonable consumer, rather than those of the particular plaintiff in the case." (*Campbell v. General Motors Corp.* (1982) 32 Cal.3d 112, 126, fn. 6 [184 Cal.Rptr. 891, 649 P.2d 224].)

- "[E]vidence as to what the scientific community knew about the dangers … and when they knew it is not relevant to show what the ordinary consumer of [defendant]'s product reasonably expected in terms of safety at the time of [plaintiff]' s exposure. It is the knowledge and reasonable expectations of the consumer, not the scientific community, that is relevant under the consumer expectations test." (*Morton v. Owens-Corning Fiberglas Corp.* (1995) 33 Cal.App.4th 1529, 1536 [40 Cal.Rptr.2d 22].)

- "Where liability depends on the proof of a design defect, no practical difference exists between negligence and strict liability; the claims merge." (*Lambert v. General Motors* (1998) 67 Cal.App.4th 1179, 1185 [76 Cal.Rptr.2d 657].)

- " '[T]he law now requires a manufacturer to foresee some degree of misuse and abuse of his product, either by the user or by third parties, and to take reasonable precautions to minimize the harm that may result from misuse and abuse. … [T]he extent to which designers and manufacturers of dangerous machinery are required to anticipate safety neglect presents an issue of fact.' " (*Wright v. Stang Manufacturing Co.* (1997) 54 Cal.App.4th 1218, 1235 [63 Cal.Rptr.2d 422].)

- "[T]he plaintiff bears an initial burden of making 'a prima facie showing that the injury was proximately caused by the product's design.' This showing requires evidence that the plaintiff was injured *while using the product in an intended or reasonably foreseeable manner* and that the plaintiff's ability to avoid injury was frustrated by the absence of a safety device, or by the nature of

the product's design. If this prima facie burden is met, the burden of proof shifts to the defendant to prove, in light of the relevant factors, that the product is not defective. Importantly, the plaintiff's prima facie burden of producing evidence that injury occurred while the product was being used in an intended or reasonably foreseeable manner must be distinguished from the ultimate burden of proof that rests with the defendant to establish that its product was not defective because the plaintiff's injury resulted from a misuse of the product." (*Perez, supra,* 188 Cal.App.4th at p. 678, original italics, internal citations omitted.)

- "The use of asbestos insulation is a product that is within the understanding of ordinary lay consumers." (*Saller, supra,* 187 Cal.App.4th at p. 1236.)

Secondary Sources

6 Witkin, Summary of California Law (11th ed. 2017) Torts, §§ 1615–1631

Haning et al., California Practice Guide: Personal Injury, Ch. 2(II)-D, *Strict Liability For Defective Products*, ¶¶ 2:1220–2:1222 (The Rutter Group)

California Products Liability Actions, Ch. 2, *Liability for Defective Products*, § 2.11, Ch. 7, *Proof*, § 7.02 (Matthew Bender)

40 California Forms of Pleading and Practice, Ch. 460, *Products Liability*, § 460.11 (Matthew Bender)

19 California Points and Authorities, Ch. 190, *Products Liability*, § 190.116 (Matthew Bender)

1501. Wrongful Use of Civil Proceedings

[*Name of plaintiff*] claims that [*name of defendant*] wrongfully brought a lawsuit against [him/her/*nonbinary pronoun*/it]. To establish this claim, [*name of plaintiff*] must prove all of the following:

1. **That [*name of defendant*] was actively involved in bringing [or continuing] the lawsuit;**

[2. That the lawsuit ended in [*name of plaintiff*]'s favor;]

[3. That no reasonable person in [*name of defendant*]'s circumstances would have believed that there were reasonable grounds to bring the lawsuit against [*name of plaintiff*];]

4. **That [*name of defendant*] acted primarily for a purpose other than succeeding on the merits of the claim;**

5. **That [*name of plaintiff*] was harmed; and**

6. **That [*name of defendant*]'s conduct was a substantial factor in causing [*name of plaintiff*]'s harm.**

[The law requires that the trial judge, rather than the jury, decide if [*name of plaintiff*] has proven element 2 above, whether the earlier lawsuit ended in [his/her/*nonbinary pronoun*/its] favor. But before I can do so, you must decide whether [*name of plaintiff*] has proven the following:

[*List all factual disputes that must be resolved by the jury.***]**

The special [verdict/interrogatory] form will ask for your finding on [this/these] issue[s].]

[The law [also] requires that the trial judge, rather than the jury, decide if [*name of plaintiff*] has proven element 3 above, whether [*name of defendant*] had reasonable grounds for bringing the earlier lawsuit against [him/her/*nonbinary pronoun*/it]. But before I can do so, you must decide whether [*name of plaintiff*] has proven the following:

[*List all factual disputes that must be resolved by the jury.***]**

The special [verdict/interrogatory] form will ask for your finding on [this/these] issue[s].]

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*New September 2003; Revised April 2008, October 2008, December 2026**

Directions for Use

Malicious prosecution (wrongful use of civil proceeding) requires that the proceeding have ended in the plaintiff's favor (element 2) and that the defendant did not reasonably believe that there were any grounds (probable cause) to initiate the proceeding (element 3). Probable cause is to be decided by the court as a

matter of law. However, the jury may be required to find some preliminary facts before the court can make its legal determination, including facts regarding what the defendant knew or did not know at the time. (See *Sheldon Appel Co. v. Albert & Oliker* (1989) 47 Cal.3d 863, 881 [254 Cal.Rptr. 336, 765 P.2d 498].) If so, include element 3 and also the bracketed part of the instruction that refers to element 3.

Favorable termination is handled in much the same way. If a proceeding is terminated other than on the merits, there may be disputed facts that the jury must find in order to determine whether there has been a favorable termination. (See *Fuentes v. Berry* (1995) 38 Cal.App.4th 1800, 1808 [45 Cal.Rptr.2d 848].) If so, include element 2 and also the bracketed part of the instruction that refers to element 2. Once these facts are determined, the jury does not then make a second determination as to whether there has been a favorable termination. The matter is determined by the court based on the resolution of the disputed facts. (See *Sierra Club Found. v. Graham* (1999) 72 Cal.App.4th 1135, 1159 [85 Cal.Rptr.2d 726] [element of favorable termination is for court to decide].)

Either or both of the elements of probable cause and favorable termination should be omitted if there are no disputed facts regarding that element for the jury to decide.

Element 4 expresses the malice requirement.

Sources and Authority

- Public Employee Immunity. Government Code section 821.6.

- "To establish a cause of action for the malicious prosecution of a civil proceeding, a plaintiff must plead and prove that the prior action (1) was commenced by or at the direction of the defendant and was pursued to a legal termination in his, plaintiff's, favor; (2) was brought without probable cause; and (3) was initiated with malice." (*Bertero v. National General Corp.* (1974) 13 Cal.3d 43, 50 [118 Cal.Rptr. 184, 529 P.2d 608], internal citations omitted.)

- "The remedy of a malicious prosecution action lies to recompense the defendant who has suffered out of pocket loss in the form of attorney fees and costs, as well as emotional distress and injury to reputation because of groundless allegations made in pleadings which are public records." (*Sagonowsky v. More* (1998) 64 Cal.App.4th 122, 132 [75 Cal.Rptr.2d 118], internal citations omitted.)

- "The malicious commencement of a civil proceeding is actionable because it harms the individual against whom the claim is made, and also because it threatens the efficient administration of justice. The individual is harmed because he is compelled to defend against a fabricated claim which not only subjects him to the panoply of psychological pressures most civil defendants suffer, but also the additional stress of attempting to resist a suit commenced out of spite or ill will, often magnified by slanderous allegations in the pleadings." (*Merlet v. Rizzo* (1998) 64 Cal.App.4th 53, 59 [75 Cal.Rptr.2d 83], internal citation omitted.)

- "[The litigation privilege of Civil Code section 47] has been interpreted to apply to virtually all torts except malicious prosecution." (*Kimmel v. Goland* (1990) 51 Cal.3d 202, 209 [271 Cal.Rptr. 191, 793 P.2d 524].)

- "Liability for malicious prosecution is not limited to one who initiates an action. A person who did not file a complaint may be liable for malicious prosecution if he or she 'instigated' the suit or 'participated in it at a later time.' " (*Nunez v. Pennisi* (2015) 241 Cal.App.4th 861, 873 [193 Cal.Rptr.3d 912].)

- "[A] cause of action for malicious prosecution lies when predicated on a claim for affirmative relief asserted in a cross-pleading even though intimately related to a cause asserted in the complaint." (*Bertero, supra,* 13 Cal.3d at p. 53.)

- "A claim for malicious prosecution need not be addressed to an entire lawsuit; it may … be based upon only some of the causes of action alleged in the underlying lawsuit." (*Franklin Mint Co. v. Manatt, Phelps & Phillips, LLP* (2010) 184 Cal.App.4th 313, 333 [109 Cal.Rptr.3d 143].)

- "[F]avorable termination requires favorable resolution of the underlying action in its entirety, not merely a single cause of action. '[I]f the defendant in the underlying action prevails on all of the plaintiff's claims, he or she may successfully sue for malicious prosecution if any one of those claims was subjectively malicious and objectively unreasonable. But if the underlying plaintiff succeeds on any of his or her claims, the favorable termination requirement is unsatisfied and the malicious prosecution action cannot be maintained.' " (*Citizens of Humanity, LLC v. Ramirez* (2021) 63 Cal.App.5th 117, 128 [277 Cal.Rptr.3d 501], internal citation omitted.)

- "[A] lawyer is not immune from liability for malicious prosecution simply because the general area of law at issue is complex and there is no case law with the same facts that establishes that the underlying claim was untenable. Lawyers are charged with the responsibility of acquiring a reasonable understanding of the law governing the claim to be alleged. That achieving such an understanding may be more difficult in a specialized field is no defense to alleging an objectively untenable claim." (*Franklin Mint Co., supra,* 184 Cal.App.4th at p. 346.)

- "Our repeated references in *Bertero* to the types of harm suffered by an 'individual' who is forced to defend against a baseline suit do not indicate … that a malicious prosecution action can be brought only by an individual. On the contrary, there are valid policies which would be furthered by allowing nonindividuals to sue for malicious prosecution." (*City of Long Beach v. Bozek* (1982) 31 Cal.3d 527, 531 [183 Cal.Rptr. 86, 645 P.2d 137], reiterated on remand from United States Supreme Court at 33 Cal.3d 727 [but holding that public entity cannot sue for malicious prosecution].)

- "[T]he courts have refused to permit malicious prosecution claims when they are based on a prior proceeding that is (1) less formal or unlike the process in the superior court (i.e., a small claims hearing, an investigation or application not resulting in a formal proceeding), (2) purely defensive in nature, or (3) a continuation of an existing proceeding." (*Merlet, supra,* 64 Cal.App.4th at p. 60.)

- "[I]t is not enough that the present plaintiff (former defendant) prevailed in the action. The termination must ' "reflect on the merits," ' and be such that it 'tended to indicate [the former defendant's] innocence of or lack of responsibility for the alleged misconduct.' " (*Drummond v. Desmarais* (2009) 176 Cal.App.4th 439, 450 [98 Cal.Rptr.3d 183], internal citations omitted.)

- " 'The entry of summary judgment for the defense on an underlying claim on grounds of insufficient evidence does not establish as a matter of law that the litigant necessarily can "state[] and

substantiate[]" … a subsequent malicious prosecution claim.' " (*Cuevas-Martinez v. Sun Salt Sand, Inc.* (2019) 35 Cal.App.5th 1109, 1120 [248 Cal.Rptr.3d 200].)

- " '[A] voluntary dismissal on technical grounds, such as lack of jurisdiction, laches, the statute of limitations or prematurity, does not constitute a favorable termination because it does not reflect on the substantive merits of the underlying claim. … ' " (*Drummond, supra,* 176 Cal.App.4th at p. 456.)

- "[Code of Civil Procedure] Section 581c, subdivision (c) provides that where a motion for judgment of nonsuit is granted, 'unless the court in its order for judgment otherwise specifies, the judgment of nonsuit operates as an adjudication upon the merits.' … [¶] We acknowledge that not every judgment of nonsuit should be grounds for a subsequent malicious prosecution action. Some will be purely technical or procedural and will not reflect the merits of the action. In such cases, trial courts should exercise their discretion to specify that the judgment of nonsuit shall not operate as an adjudication upon the merits." (*Nunez, supra,* 241 Cal.App.4th at p. 874.)

- " ' "[T]hat a malicious prosecution suit may be maintained where only one of several claims in the prior action lacked probable cause [citation] does not alter the rule there must first be a favorable termination of the entire action." ' Thus, if the defendant in the underlying action prevails on all of the plaintiff's claims, he or she may successfully sue for malicious prosecution if any one of those claims was subjectively malicious and objectively unreasonable. But if the underlying plaintiff succeeds on any of his or her claims, the favorable termination requirement is unsatisfied and the malicious prosecution action cannot be maintained." (*Lane v. Bell* (2018) 20 Cal.App.5th 61, 64 [228 Cal.Rptr.3d 605], original italics.)

- "We hold that a malicious prosecution plaintiff, who has succeeded in all respects in defending a multiple-claim case, need not show that *all* such claims were resolved on the merits as long as *at least one claim* was terminated on the merits." (*Maleti v. Wickers* (2022) 82 Cal.App.5th 181, 195 [298 Cal.Rptr.3d 284], original italics, additional emphasis omitted.)

- " ' "A voluntary dismissal may be an implicit concession that the dismissing party cannot maintain the action and may constitute a decision on the merits. [Citations.] 'It is not enough, however, merely to show that the proceeding was dismissed.' [Citation.] The reasons for the dismissal of the action must be examined to determine whether the termination reflected on the merits." [Citations.]' Whether that dismissal is a favorable termination for purposes of a malicious prosecution claim depends on whether the dismissal of the [earlier] Lawsuit is considered to be on the merits reflecting [plaintiff's 'innocence' of the misconduct alleged." (*JSJ Limited Partnership v. Mehrban* (2012) 205 Cal.App.4th 1512, 1524 [141 Cal.Rptr.3d 338], internal citations omitted.)

- "If a conflict arises as to the circumstances explaining a failure to prosecute an action further, the determination of the reasons underlying the dismissal is a question of fact." (*Fuentes, supra,* 38 Cal.App.4th at p. 1808, internal citations omitted.)

- "[W]hen a dismissal results from negotiation, settlement, or consent, a favorable termination is normally not recognized. Under these latter circumstances, the dismissal reflects ambiguously on the merits of the action." (*Weaver v. Superior Court* (1979) 95 Cal.App.3d 166, 184–185 [156 Cal.Rptr. 745], internal citations omitted, disapproved on other grounds in *Sheldon Appel Co., supra,* 47 Cal.3d at p. 882.)

- "Not every case in which a terminating sanctions motion is granted necessarily results in a 'favorable termination.' But where the record from the underlying action is devoid of any attempt during discovery to substantiate allegations in the complaint, and the court's dismissal is justified by the plaintiff's lack of evidence to submit the case to a jury at trial, a prima facie showing of facts sufficient to satisfy the 'favorable termination' element of a malicious prosecution claim is established … ." (*Daniels v. Robbins* (2010) 182 Cal.App.4th 204, 219 [105 Cal.Rptr.3d 683].)

- "[T]he existence or absence of probable cause has traditionally been viewed as a question of law to be determined by the court, rather than a question of fact for the jury …. [¶] [It] requires a sensitive evaluation of legal principles and precedents, a task generally beyond the ken of lay jurors ... ." (*Sheldon Appel Co., supra,* 47 Cal.3d at p. 875.)

- "When there is a dispute as to the state of the defendant's knowledge and the existence of probable cause turns on resolution of that dispute, … the jury must resolve the threshold question of the defendant's factual knowledge or belief. Thus, when … there is evidence that the defendant may have known that the factual allegations on which his action depended were untrue, the jury must determine what facts the defendant knew before the trial court can determine the legal question whether such facts constituted probable cause to institute the challenged proceeding." (*Sheldon Appel Co., supra,* 47 Cal.3d at p. 881, internal citations omitted.)

- "Whereas the malice element is directly concerned with the *subjective* mental state of the defendant in instituting the prior action, the probable cause element calls on the trial court to make an objective determination of the 'reasonableness' of the defendant's conduct, i.e., to determine whether, on the basis of the facts known to the defendant, the institution of the prior action was legally tenable." (*Sheldon Appel Co., supra,* 47 Cal.3d at p. 878, original italics.)

- "The CACI distillation differs somewhat from the common law. The common law called this fourth element 'malice,' which is less helpful than the CACI formulation, because 'malice' is a protean and hence mischievous term." (*Peterson v. Zhang* (2025) 116 Cal.App.5th 956, 974–975 [339 Cal.Rptr.3d 783].)

- " 'The benchmark for legal tenability is whether any reasonable attorney would have thought the claim was tenable. [Citation.]' " (*Oviedo v. Windsor Twelve Properties, LLC* (2012) 212 Cal.App.4th 97, 114 [151 Cal.Rptr.3d 117], internal citation omitted.)

- " 'The facts to be analyzed for probable cause are those known to the defendant [in the malicious prosecution action] at the time the underlying action was filed.' " (*Walsh v. Bronson* (1988) 200 Cal.App.3d 259, 264 [245 Cal.Rptr. 888], internal citations omitted.)

- "A litigant will lack probable cause for his action either if he relies upon facts which he has no reasonable cause to believe to be true, or if he seeks recovery upon a legal theory which is untenable under the facts known to him." (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 292 [46 Cal.Rptr.3d 638, 139 P.3d 30].)

- "[W]e reject their contention that unpled hidden theories of liability are sufficient to create probable cause." (*Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1542 [161 Cal.Rptr.3d 700].)

- "California courts have held that victory at *trial,* though reversed on appeal, conclusively establishes probable cause." (*Roberts v. Sentry Life Insurance* (1999) 76 Cal.App.4th 375, 383 [90 Cal.Rptr.2d 408], original italics.)

- "California courts have long embraced the so-called interim adverse judgment rule, under which 'a trial court judgment or verdict in favor of the plaintiff or prosecutor in the underlying case, unless obtained by means of fraud or perjury, establishes probable cause to bring the underlying action, even though the judgment or verdict is overturned on appeal or by later ruling of the trial court.' This rule reflects a recognition that '[c]laims that have succeeded at a hearing on the merits, even if that result is subsequently reversed by the trial or appellate court, are not so lacking in potential merit that a reasonable attorney or litigant would necessarily have recognized their frivolousness.' That is to say, if a claim succeeds at a hearing on the merits, then, unless that success has been procured by certain improper means, the claim cannot be 'totally and completely without merit.' Although the rule arose from cases that had been resolved after trial, the rule has also been applied to the 'denial of defense summary judgment motions, directed verdict motions, and similar efforts at pretrial termination of the underlying case.' " (*Parrish v. Latham & Watkins* (2017) 3 Cal.5th 767, 776–777 [221 Cal.Rptr.3d 432, 400 P.3d 1], internal citations omitted.)

- "[T]he fraud exception requires ' "knowing use of false and perjured testimony." ' " (*Antounian v. Louis Vuitton Malletier* (2010) 189 Cal.App.4th 438, 452 [117 Cal.Rptr.3d 3].)

- "Probable cause may be present even where a suit lacks merit. ... Suits which all reasonable lawyers agree totally lack merit—that is, those which lack probable cause—are the least meritorious of all meritless suits. Only this subgroup of meritless suits present[s] no probable cause." (*Roberts, supra,* 76 Cal.App.4th at p. 382.)

- "[A]n attorney may be held liable for malicious prosecution for continuing to prosecute a lawsuit discovered to lack probable cause." (*Zamos v. Stroud* (2004) 32 Cal.4th 958, 970 [12 Cal.Rptr.3d 54, 87 P.3d 802].)

- "Although attorneys may rely on their clients' allegations at the outset of a case, they may not continue to do so if the evidence developed through discovery indicates the allegations are unfounded or unreliable." (*Cuevas-Martinez, supra,* 35 Cal.App.5th at p. 1121.)

- "[W]here several claims are advanced in the underlying action, each must be based on probable cause." (*Lanz v. Goldstone* (2015) 243 Cal.App.4th 441, 459 [197 Cal.Rptr.3d 227].)

- "As an element of the tort of malicious prosecution, malice at its core refers to an improper *motive* for bringing the prior action. As an element of liability it reflects the core function of the tort, which is to secure compensation for harm inflicted by *misusing* the judicial system, i.e., using it for something other than to enforce legitimate rights and secure remedies to which the claimant may tenably claim an entitlement. Thus the cases speak of malice as being present when a suit is actuated by hostility or ill will, or for some purpose other than to secure relief. It is also said that a plaintiff acts with malice when he asserts a claim with knowledge of its falsity, because one who seeks to establish such a claim 'can only be motivated by an improper purpose.' A lack of probable cause will therefore support an inference of malice." (*Drummond, supra,* 176 Cal.App.4th at pp. 451–452, original italics, internal citations omitted.)

- "A lack of probable cause is a factor that may be considered in determining if the claim was prosecuted with malice [citation], but the lack of probable cause must be supplemented by other, additional evidence." (*Silas v. Arden* (2013) 213 Cal.App.4th 75, 90 [152 Cal.Rptr.3d 255].)

- "Because malice concerns the former plaintiff's actual mental state, it necessarily presents a question of fact." (*Drummond, supra,* 176 Cal.App.4th at p. 452.)

- " 'Since parties rarely admit an improper motive, malice is usually proven by circumstantial evidence and inferences drawn from the evidence.' '[M]alice can be inferred when a party *continues* to prosecute an action after becoming aware that the action lacks probable cause.' " (*Cuevas-Martinez, supra,* 35 Cal.App.5th at p. 1122, original italics.)

- "Negligence does not equate with malice. Nor does the negligent filing of a case necessarily constitute the malicious prosecution of that case." (*Grindle v. Lorbeer* (1987) 196 Cal.App.3d 1461, 1468 [242 Cal.Rptr. 562].)

- "The motive of the defendant must have been something other than that of bringing a perceived guilty person to justice or the satisfaction in a civil action of some personal or financial purpose." (*Downey Venture v. LMI Insurance Co.* (1998) 66 Cal.App.4th 478, 494 [78 Cal.Rptr.2d 142], internal citations omitted.)

- "Malice does not require that the defendants harbor actual ill will toward the plaintiff in the malicious prosecution case, and liability attaches to attitudes that range ' "from open hostility to indifference. [Citations.]" ' " (*Cole v. Patricia A. Meyer & Associates, APC* (2012) 206 Cal.App.4th 1095, 1113–1114 [142 Cal.Rptr.3d 646], internal citations omitted.)

- " ' "Suits with the hallmark of an improper purpose" include, but are not necessarily limited to, "those in which: ' "… (1) the person initiating them does not believe that his claim may be held valid; (2) the proceedings are begun primarily because of hostility or ill will; (3) the proceedings are initiated solely for the purpose of depriving the person against whom they are initiated of a beneficial use of his property; (4) the proceedings are initiated for the purpose of forcing a settlement which has no relation to the merits of the claim." ' " [Citation.] [¶] Evidence tending to show that the defendants did not subjectively believe that the action was tenable is relevant to whether an action was instituted or maintained with malice. [Citation.]' " (*Oviedo, supra,* 212 Cal.App.4th at pp. 113–114.)

- "Although *Zamos* [*supra*] did not explicitly address the malice element of a malicious prosecution case, its holding and reasoning compel us to conclude that malice formed after the filing of a complaint is actionable." (*Daniels, supra,* 182 Cal.App.4th at p. 226.)

Secondary Sources

5 Witkin, Summary of California Law (11th ed. 2017) Torts, §§ 554, 557, 562–569, 571–606

Restatement Third of Torts: Liability for Economic Harm § 24 (2020)

Ahart, California Practice Guide: Enforcing Judgments & Debts, Ch. 2-C, *Liability For Unfair Collection Practices—Tort Liability,* ¶ 2:428 (The Rutter Group)

4 Levy et al., California Torts, Ch. 43, *Malicious Prosecution and Abuse of Process,* §§ 43.01-43.10 (Matthew Bender)

31 California Forms of Pleading and Practice, Ch. 357, *Malicious Prosecution and Abuse of Process*, § 357.10 et seq. (Matthew Bender)

14 California Points and Authorities, Ch. 147, *Malicious Prosecution and Abuse of Process*, § 147.20 et seq. (Matthew Bender)

1903. Negligent Misrepresentation

[*Name of plaintiff***] claims [he/she/***nonbinary pronoun***/it] was harmed because [***name of defendant***] negligently misrepresented a fact. To establish this claim, [***name of plaintiff***] must prove all of the following:**

1. **That [***name of defendant***] represented to [***name of plaintiff***] that a fact was true;**

2. **That [***name of defendant***]'s representation was not true;**

3. **That [although [***name of defendant***] may have honestly believed that the representation was true,] [[***name of defendant***]/he/she/***nonbinary pronoun***] had no reasonable grounds for believing the representation was true when [he/she/***nonbinary pronoun***] made it;**

4. **That [***name of defendant***] intended that [***name of plaintiff***] rely on this representation;**

5. **That [***name of plaintiff***] reasonably relied on [***name of defendant***]'s representation;**

6. **That [***name of plaintiff***] was harmed; and**

7. **That [***name of plaintiff***]'s reliance on [***name of defendant***]'s representation was a substantial factor in causing [his/her/***nonbinary pronoun***/its] harm.**

New September 2003; Revised December 2009, December 2013

Directions for Use

Give this instruction in a case in which it is alleged that the defendant made certain representations with no reason to believe that they were true. (See Civ. Code, § 1710(2).) If element 5 is contested, give CACI No. 1907, *Reliance*, and CACI No. 1908, *Reasonable Reliance*.

If both negligent misrepresentation and intentional misrepresentation are alleged in the alternative, give both this instruction and CACI No.1900, *Intentional Misrepresentation*. If only negligent misrepresentation is alleged, the bracketed reference to the defendant's honest belief in the truth of the representation in element 3 may be omitted. (See *Bily v. Arthur Young & Co.* (1992) 3 Cal.4th 370, 407–408 [11 Cal.Rptr.2d 51, 834 P.2d 745].)

Sources and Authority

- Negligent Misrepresentation. Civil Code section 1710.

- "Negligent misrepresentation is a separate and distinct tort, a species of the tort of deceit. 'Where the defendant makes false statements, honestly believing that they are true, but without reasonable ground for such belief, he may be liable for negligent misrepresentation, a form of deceit.' " (*Bily, supra,* 3 Cal.4th at p. 407, internal citations omitted.)

- "This is not merely a case where the defendants made false representations of matters within their personal knowledge which they had *no reasonable grounds for believing to be true*. Such acts clearly would constitute actual fraud under California law. In such situations the defendant *believes* the representations to be true but is without reasonable grounds for such belief. His liability is based on negligent misrepresentation which has been made a form of actionable deceit. On the contrary, in the instant case, the court found that the defendants *did not believe* in the truth of the statements. Where a person makes statements which he does not believe to be true, in a reckless manner without knowing whether they are true or false, the element of scienter is satisfied and he is liable for intentional misrepresentation." (*Yellow Creek Logging Corp. v. Dare* (1963) 216 Cal.App.2d 50, 57 [30 Cal.Rptr. 629], original italics, internal citations omitted.)

- "Negligent misrepresentation requires an assertion of fact, falsity of that assertion, and the tortfeasor's lack of reasonable grounds for believing the assertion to be true. It also requires the tortfeasor's intent to induce reliance, justifiable reliance by the person to whom the false assertion of fact was made, and damages to that person. An implied assertion of fact is 'not enough' to support liability." *(SI 59 LLC v. Variel Warner Ventures, LLC* (2018) 29 Cal.App.5th 146, 154 [239 Cal.Rptr.3d 788], internal citation omitted.)

- " 'To be actionable deceit, the representation need not be made with knowledge of actual falsity, but need only be an "assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true" and made "with intent to induce [the recipient] to alter his position to his injury or his risk. ..." ' The elements of negligent misrepresentation also include justifiable reliance on the representation, and resulting damage." (*B.L.M. v. Sabo & Deitsch* (1997) 55 Cal.App.4th 823, 834 [64 Cal.Rptr.2d 335], internal citations omitted.)

- "[Plaintiffs] do not allege negligence. They allege negligent misrepresentation. They are different torts, as the Supreme Court expressly observed in [*Bily, supra,* 3 Cal.4th at p. 407]: '[N]either the courts (ourselves included), the commentators, nor the authors of the Restatement Second of Torts have made clear or careful distinctions between the tort of negligence and the separate tort of negligent misrepresentation. The distinction is important not only because of the different statutory bases of the two torts, but also because it has practical implications for the trial of cases in complex areas … . [¶] Negligent misrepresentation is a separate and distinct tort, a species of the tort of deceit.' In short, the elements of each tort are different. Perhaps more importantly, the policies behind each tort sometimes call for different results even when applied to the same conduct." (*Bock v. Hansen* (2014) 225 Cal.App.4th 215, 227−228 [170 Cal.Rptr.3d 293].)

- "As is true of negligence, responsibility for negligent misrepresentation rests upon the existence of a legal duty, imposed by contract, statute or otherwise, owed by a defendant to the injured person. The determination of whether a duty exists is primarily a question of law." (*Eddy v. Sharp* (1988) 199 Cal.App.3d 858, 864 [245 Cal.Rptr. 211], internal citations omitted.)

- "The tort of negligent misrepresentation is similar to fraud, except that it does not require scienter or an intent to defraud. … [T]he same elements of intentional fraud also comprise a cause of action for negligent misrepresentation, with the exception that there is no requirement of intent to induce reliance … ." (*Tenet Healthsystem Desert, Inc. v. Blue Cross of California* (2016) 245 Cal.App.4th 821, 845 [199 Cal.Rptr.3d 901], internal citation omitted.)

- "In our view, and to clarify, the proper formulation of the elements is that negligent misrepresentation *does* require proof of ' "intent to induce another's reliance on the fact misrepresented[.]" ' However, negligent misrepresentation does *not* require proof of an intent to defraud." (*Borman v. Brown* (2021) 59 Cal.App.5th 1048, 1061 [273 Cal.Rptr.3d 868], original italics, internal citation omitted.)

- " ' " 'Where the defendant makes false statements, honestly believing that they are true, but without reasonable ground for such belief, he may be liable for negligent misrepresentation, a form of deceit.' ' If defendant's belief 'is both honest and reasonable, the misrepresentation is innocent and there is no tort liability.' " (*Diediker v. Peelle Financial Corp.* (1997) 60 Cal.App.4th 288, 297 [70 Cal.Rptr.2d 442], internal citations omitted.)

- "[A] cause of action for misrepresentation requires an affirmative statement, not an implied assertion." (*RSB Vineyards, LLC v. Orsi* (2017) 15 Cal.App.5th 1089, 1102 [223 Cal.Rptr.3d 458].)

- "Whether a defendant had reasonable ground for believing his or her false statement to be true is ordinarily a question of fact." (*Quality Wash Group V, Ltd. v. Hallak* (1996) 50 Cal.App.4th 1687, 1696 [58 Cal.Rptr.2d 592], internal citations omitted.)

- "[T]here are two causation elements in a fraud cause of action. First, the plaintiff's actual and justifiable reliance on the defendant's misrepresentation must have caused him to take a detrimental course of action. Second, the detrimental action taken by the plaintiff must have caused his alleged damage." (*Beckwith v. Dahl* (2012) 205 Cal.App.4th 1039, 1062 [141 Cal.Rptr.3d 142].)

- "The law is well established that actionable misrepresentations must pertain to past or existing material facts. Statements or predictions regarding future events are deemed to be mere opinions which are not actionable." (*Cansino v. Bank of America* (2014) 224 Cal.App.4th 1462, 1469 [169 Cal.Rptr.3d 619], internal citation omitted.)

- "Where, as here, a negligent misrepresentation claim is brought against the provider of a professional opinion based on special knowledge, information or expertise regarding a company's value, the California Supreme Court requires the following: 'The representation must have been made with the intent to induce plaintiff, or a particular class of persons to which plaintiff belongs, to act in reliance upon the representation in a specific transaction, or a specific type of transaction, that defendant intended to influence. Defendant is deemed to have intended to influence [its client's] transaction with plaintiff whenever defendant knows with substantial certainty that plaintiff, or the particular class of persons to which plaintiff belongs, will rely on the representation in the course of the transaction. [However,] [i]f others become aware of the representation and act upon it, there is no liability even though defendant should reasonably have foreseen such a possibility.' " (*Public Employees' Retirement System v. Moody's Investors Service, Inc.* (2014) 226 Cal.App.4th 643, 667−668 [172 Cal.Rptr.3d 238].)

- "[P]laintiffs rely on section 311 of the Restatement Second of Torts (section 311), which addresses negligent misrepresentation involving physical harm. Under section 311(1), '[o]ne who negligently gives false information to another is subject to liability for physical harm caused by action taken by the other in reasonable reliance upon such information, where such harm results [¶] … [¶] to such third persons as the actor should expect to be put in peril by the action taken.' [¶] Section 311's theory of liability is intended to be 'somewhat broader' than that for mere pecuniary loss. It 'finds

particular application where it is a part of the actor's business or profession to give information upon which the safety of the recipient or a third person depends.' This court applied and followed section 311 … " (*T.H. v. Novartis Pharmaceuticals Corp.* (2017) 4 Cal.5th 145, 162–163 [226 Cal.Rptr.3d 336, 407 P.3d 18], internal citations omitted.)

- "In [a negligent misrepresentation case involving a risk of physical harm], our high court has set forth the elements slightly differently, relying on the Restatement Second of Torts, section 311: ' "One who negligently gives false information to another is subject to liability for physical harm caused by action taken by the other in reasonable reliance upon such information," ' where the other person, or someone else the speaker should expect to be put in peril, is harmed. No special relationship is required for liability under this theory." (*Sproul v. Vallee* (2025) 116 Cal.App.5th 285, 298 [339 Cal.Rptr.3d 277], internal citation omitted.)

Secondary Sources

5 Witkin, Summary of California Law (11th ed. 2017) Torts, §§ 940–942, 946–949

Chin et al., California Practice Guide: Employment Litigation, Ch. 5(I)-H,, *Negligent Misrepresentation*, ¶ 5:781 et seq. (The Rutter Group)

Croskey et al., California Practice Guide: Insurance Litigation, Ch. 11-D, *Negligent Misrepresentation*, ¶ 11:41 et seq. (The Rutter Group)

3 Levy et al., California Torts, Ch. 40, *Fraud and Deceit and Other Business Torts*, § 40.10 (Matthew Bender)

23 California Forms of Pleading and Practice, Ch. 269, *Fraud and Deceit*, § 269.14 (Matthew Bender)

10 California Points and Authorities, Ch. 105, *Fraud and Deceit*, § 105.270 et seq. (Matthew Bender)

California Civil Practice: Torts §§ 22:13–22:15 (Thomson Reuters)

2507. "Substantial Motivating Reason" Explained

A "substantial motivating reason" is a reason that actually contributed to the [*specify adverse employment action***]. It must be more than a remote or trivial reason. It does not have to be the only reason motivating the [***adverse employment action***].**

New December 2007; Revised June 2013

Directions for Use

Read this instruction with CACI No. 2500, *Disparate Treatment—Essential Factual Elements*, CACI No. 2505, *Retaliation—Essential Factual Elements*, CACI No. 2540, *Disability Discrimination—Disparate Treatment—Essential Factual Elements,* CACI No. 2560, *Religious Creed Discrimination—Failure to Accommodate—Essential Factual Elements,* or CACI No. 2570, *Age Discrimination—Disparate Treatment—Essential Factual Elements*.

Sources and Authority

- Discrimination Prohibited Under Fair Employment and Housing Act. Government Code section 12940(a).
- Causation Under Federal Law. Title 42 United States Code section 2000e-2(m).
- "Substantial Motivating Factor" Explained. Title 2 California Code of Regulations section 11009(c).
- "Because of the similarity between state and federal employment discrimination laws, California courts look to pertinent federal precedent when applying our own statutes." (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 354 [100 Cal.Rptr.2d 352, 8 P.3d 1089].)
- "While a complainant need not prove that [discriminatory] animus was the sole motivation behind a challenged action, he must prove by a preponderance of the evidence that there was a 'causal connection' between the employee's protected status and the adverse employment decision." (*Mixon v. Fair Employment and Housing Com.* (1987) 192 Cal.App.3d 1306, 1319 [237 Cal.Rptr. 884].)
- "The employee need not show 'he would have in any event been rejected or discharged solely on the basis of his race, without regard to the alleged deficiencies. ...' In other words, 'while a complainant need not prove that racial animus was the sole motivation behind the challenged action, he must prove by a preponderance of the evidence that there was a "causal connection" between the employee's protected status and the adverse employment decision.' " (*Clark v. Claremont University Center* (1992) 6 Cal.App.4th 639, 665 [8 Cal.Rptr.2d 151], citing *McDonald v. Santa Fe Trail Transp. Co*. (1976) 427 U.S. 273, 282, fn. 10 [96 S.Ct. 2574, 49 L.Ed.2d 493, 502] and *Mixon*, *supra*, 192 Cal.App.3d at p. 1319.)
- "Requiring the plaintiff to show that discrimination was a *substantial* motivating factor, rather than simply *a* motivating factor, more effectively ensures that liability will not be imposed based on

evidence of mere thoughts or passing statements unrelated to the disputed employment decision. At the same time, … proof that discrimination was a *substantial* factor in an employment decision triggers the deterrent purpose of the FEHA and thus exposes the employer to liability, even if other factors would have led the employer to make the same decision at the time." (*Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 232 [152 Cal.Rptr.3d 392, 294 P.3d 49], original italics.)

- "We do not suggest that discrimination must be alone sufficient to bring about an employment decision in order to constitute a substantial motivating factor. But it is important to recognize that discrimination can be serious, consequential, and even by itself determinative of an employment decision without also being a ~~"but for"~~ 'but for' cause." (*Harris, supra,* 56 Cal.4th at p. 229.)

- "Although [plaintiff] contends that a jury in an employment discrimination case would not draw any meaningful distinction between 'a motivating reason' and 'a substantial motivating reason' in deciding whether there was unlawful discrimination, the Supreme Court reached a contrary conclusion in *Harris* [*supra*]. The court specifically concluded that '[r]equiring the plaintiff to show that discrimination was a substantial motivating factor, rather than simply a motivating factor, more effectively ensures that liability will not be imposed based on evidence of mere thoughts or passing statements unrelated to the disputed employment decision.' " (*Alamo v. Practice Management Information Corp.* (2013) 219 Cal.App.4th 466, 479 [161 Cal.Rptr.3d 758].)

Secondary Sources

Chin et al., California Practice Guide: Employment Litigation, Ch. 7-A, *Title VII And The California Fair Employment And Housing Act,* ¶¶ 7:485–7:508 (The Rutter Group)

1 Wrongful Employment Termination Practice (Cont.Ed.Bar 2d ed.) Discrimination Claims, §§ 2.61–2.65, 2.87

2 Wilcox, California Employment Law, Ch. 41, *Substantive Requirements Under Equal Employment Opportunity Laws*, § 41.11[1] (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 115, *Civil Rights: Employment Discrimination*, § 115.23[2] (Matthew Bender)

California Civil Practice: Employment Litigation, §§ 2:20–2:21, 2:75 (Thomson Reuters)

2521A. Work Environment Harassment—Conduct Directed at Plaintiff—Essential Factual Elements—Employer or Entity Defendant (Gov. Code, §§ 12923, 12940(j))

[*Name of plaintiff***] claims that [he/she/***nonbinary pronoun***] was subjected to harassment based on [his/her/***nonbinary pronoun***] [***describe protected characteristic or combination of characteristics***] at [***name of defendant***] and that this harassment created a work environment that was hostile, intimidating, offensive, oppressive, or abusive.**

To establish this claim, [*name of plaintiff***] must prove all of the following:**

1. **That [***name of plaintiff***] was [an employee of/an applicant for a position with/a person providing services under a contract with/an unpaid intern with/a volunteer with] [***name of defendant***];**

2. **That [***name of plaintiff***] was subjected to harassing conduct based on [his/her/***nonbinary pronoun***] [***protected characteristic or combination of characteristics***];**

3. **That the harassing conduct was severe or pervasive;**

4. **That a reasonable [***describe person with protected characteristic or combination of characteristics***] in [***name of plaintiff***]'s circumstances would have considered the work environment to be hostile, intimidating, offensive, oppressive, or abusive;**

5. **That [***name of plaintiff***] considered the work environment to be hostile, intimidating, offensive, oppressive, or abusive;**

6. **[***Select applicable basis of defendant's liability:***]**

   [That a supervisor engaged in the conduct;]

   [*or***]**

   [That [*name of defendant***] [or [his/her/***nonbinary pronoun***/its] supervisors or agents] knew or should have known of the conduct and failed to take immediate and appropriate corrective action;]**

7. **That [***name of plaintiff***] was harmed; and**

8. **That the conduct was a substantial factor in causing [***name of plaintiff***]'s harm.**

Derived from former CACI No. 2521 December 2007; Revised June 2013, December 2015, May 2018, July 2019, May 2020, November 2021, November 2023, May 2024*, December 2025, July 2026*

Directions for Use

This instruction is for use in a hostile work environment case when the defendant is an employer or other entity covered by the FEHA. If the defendant is a labor organization, employment agency, apprenticeship

training program or any training program leading to employment (rather than an employer), the instruction should be modified as appropriate. (See Gov. Code, § 12940(j)(1).) Further modification may be necessary if the defendant is a business-entity agent of an employer. (*Raines v. U.S. Healthworks Medical Group* (2023) 15 Cal.5th 268, 291 [312 Cal.Rptr.3d 301, 534 P.3d 40].) The relevant provision protects an employee, an applicant, an unpaid intern or volunteer, or a person providing services under a contract. (See *ibid.*) If the alleged harassment did not occur in the workplace, the instruction should be modified as appropriate. (See *Doe v. Capital Cities* (1996) 50 Cal.App.4th 1038, 1051 [58 Cal.Rptr.2d 122] ["[A]s long as the harassment occurs in a work-related context, the employer is liable"]; *Kruitbosch v. Bakersfield Recovery Services, Inc.* (2025) 114 Cal.App.5th 200, 218 [336 Cal.Rptr.3d 815] ["[T]he work-related nature of conduct is examined under the totality of the circumstances"].)

For an individual defendant, such as the alleged harasser or plaintiff's coworker, see CACI No. 2522A, *Work Environment Harassment—Conduct Directed at Plaintiff—Essential Factual Elements—Individual Defendant.* For a case in which the plaintiff is not the target of the harassment, see CACI No. 2521B, *Work Environment Harassment—Conduct Directed at Others—Essential Factual Elements—Employer or Entity Defendant.* For an instruction for use if the hostile environment is due to sexual favoritism, see CACI No. 2521C, *Work Environment Harassment—Sexual Favoritism—Essential Factual Elements—Employer or Entity Defendant.* Also read CACI No. 2523, *"Harassing Conduct" Explained*, and CACI No. 2524, *"Severe or Pervasive" Explained*.

Modify element 2 if plaintiff does not allege harassment because of a protected characteristic or combination of characteristics but alleges harassment because the plaintiff was (1) perceived to have a protected characteristic or combination of characteristics; or (2) perceived to be associated with someone who has, or is perceived to have, a protected characteristic or combination of characteristics. (Gov. Code, § 12926(o).)

For a definition of "supervisor," see CACI No. 2525, *Harassment—"Supervisor" Defined*. If there are both employer and individual supervisor defendants (see CACI No. 2522A, *Work Environment Harassment—Conduct Directed at Plaintiff—Essential Factual Elements—Individual Defendant*) and both are found liable, they are both jointly and severally liable for any damages. Comparative fault and Proposition 51 do not apply to the employer's strict liability for supervisor harassment. (*State Dept. of Health Servs. v. Superior Court* (2003) 31 Cal.4th 1026, 1041–1042 [6 Cal.Rptr.3d 441, 79 P.3d 556]; see *Bihun v. AT&T Information Systems, Inc.* (1993) 13 Cal.App.4th 976, 1000 [16 Cal.Rptr.2d 787], disapproved on other grounds in *Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 664 [25 Cal.Rptr.2d 109, 863 P.2d 179]; see also *Rashtian v. BRAC-BH, Inc.* (1992) 9 Cal.App.4th 1847, 1851 [12 Cal.Rptr.2d 411] [Proposition 51 cannot be applied to those who are without fault and only have vicarious liability by virtue of some statutory fiat].) Employers may be liable for the conduct of certain agents. (See Gov. Code, §§ 12925(d), 12926(d), and 12940(j)(1); and *Raines, supra,* 15 Cal.5th at p. 291.)

Sources and Authority

- Legislative Intent With Regard to Application of the Laws About Harassment. Government Code section 12923.
- Harassment Prohibited Under Fair Employment and Housing Act. Government Code section 12940(j)(1).

- "Employer" Defined for Harassment. Government Code section 12940(j)(4)(A).
- Harassment Because of Sex. Government Code section 12940(j)(4)(C).
- Person Providing Services Under Contract. Government Code section 12940(j)(5).
- Aiding and Abetting Fair Employment and Housing Act Violations. Government Code section 12940(i).
- Combination of Characteristics, Perception, and Perceived Association. Government Code section 12926(o).
- "The California Fair Employment and Housing Act, which defines 'employer' to 'include[]' 'any person acting as an agent of an employer,' permits a business entity acting as an agent of an employer to be held directly liable as an employer for employment discrimination in violation of the FEHA in appropriate circumstances when the business-entity agent has at least five employees and carries out FEHA-regulated activities on behalf of an employer. We do not decide the significance, if any, of employer control over the act(s) of the agent that gave rise to the FEHA violation, and we also do not decide whether our conclusion extends to business-entity agents that have fewer than five employees. We base our conclusion on our interpretation of the FEHA's definition of employer; we express no view of the scope of a business entity agent's possible liability under the FEHA's aider and abettor provision." (*Raines, supra,* 15 Cal.5th at p. 291, internal citations omitted.)
- "To establish a prima facie case of a hostile work environment, [the plaintiff] must show that (1) [plaintiff] is a member of a protected class; (2) [plaintiff] was subjected to unwelcome harassment; (3) the harassment was based on [plaintiff's] protected status; (4) the harassment unreasonably interfered with [plaintiff's] work performance by creating an intimidating, hostile, or offensive work environment; and (5) defendants are liable for the harassment." (*Ortiz v. Dameron Hospital Assn.* (2019) 37 Cal.App.5th 568, 581 [250 Cal.Rptr.3d 1].)
- "[T]he adjudicator's inquiry should center, dominantly, on whether the discriminatory conduct has unreasonably interfered with the plaintiff's work performance. To show such interference, 'the plaintiff need not prove that his or her tangible productivity has declined as a result of the harassment.' It suffices to prove that a reasonable person subjected to the discriminatory conduct would find, as the plaintiff did, that the harassment so altered working conditions as to 'make it more difficult to do the job.' " (*Harris v. Forklift Sys.* (1993) 510 U.S. 17, 25 [114 S.Ct. 367, 126 L.Ed.2d 295], conc. opn. of Ginsburg, J.; see Gov. Code, § 12923(a) endorsing this language as reflective of California law.)
- "[A]n employer is strictly liable for all acts of sexual harassment by a supervisor." (*State Dept. of Health Servs., supra,* 31 Cal.4th at p. 1042.)
- "The applicable language of the FEHA does not suggest that an employer's liability for sexual harassment by a supervisor is constrained by principles of agency law. Had the Legislature so intended, it would have used language in the FEHA imposing the negligence standard of liability on acts of harassment by an employee 'other than an agent,' 'not acting as the employer's agent,' or 'not acting within the scope of an agency for the employer.' By providing instead in section 12940,

subdivision (j)(1), that the negligence standard applies to acts of harassment 'by an employee other than an agent *or supervisor*' (italics added), the Legislature has indicated that *all* acts of harassment by a supervisor are to be exempted from the negligence standard, whether or not the supervisor was then acting as the employer's agent, and that agency principles come into play only when the harasser is *not* a supervisor." (*State Dept. of Health Servs., supra,* 31 Cal.4th at p. 1041, original italics.)

- "When the harasser is a nonsupervisory employee, employer liability turns on a showing of negligence (that is, the employer knew or should have known of the harassment and failed to take appropriate corrective action)." (*Rehmani v. Superior Court* (2012) 204 Cal.App.4th 945, 952 [139 Cal.Rptr.3d 464].)

- "If an employee other than an agent or supervisor commits the harassment, and the employer takes immediate and appropriate corrective action when it becomes or reasonably should become aware of the conduct—for example, when the victim or someone else informs the employer—there simply is no 'unlawful employment practice' that the FEHA governs." (*Carrisales v. Dept. of Corrections* (1999) 21 Cal.4th 1132, 1136 [90 Cal.Rptr.2d 804, 988 P.2d 1083], called into doubt on other grounds by statute.)

- "Under FEHA, an employer is strictly liable for harassment by a supervisor. However, an employer is only strictly liable under FEHA for harassment by a supervisor 'if the supervisor is acting in the capacity of supervisor when the harassment occurs.' 'The employer is *not* strictly liable for a supervisor's acts of harassment resulting from a completely private relationship unconnected with the employment and not occurring at the workplace or during normal working hours.' " (*Atalla v. Rite Aid Corp.* (2023) 89 Cal.App.5th 294, 309 [306 Cal.Rptr.3d 1], internal citations omitted, original italics.)

- "An employer's response to harassment occurring outside the physical or digital workplace can independently create a hostile work environment." (*Kruitbosch, supra,* 114 Cal.App.5th at p. 220.)

- "Here, [defendant] was jointly liable with its employees on a respondeat superior or vicarious liability theory on every cause of action in which it was named as a defendant." (*Bihun, supra,* 13 Cal.App.4th at p. 1000.)

- "The *McDonnell Douglas* burden-shifting framework does not apply to [plaintiff]'s harassment claim either. Since 'there is no possible justification for harassment in the workplace,' an employer cannot offer a legitimate nondiscriminatory reason for it." (*Cornell v. Berkeley Tennis Club* (2017) 18 Cal.App.5th 908, 927 [227 Cal.Rptr.3d 286].)

- "[A]lthough no California cases have directly addressed racial harassment in the workplace, the California courts have applied the federal threshold standard to claims of sexual harassment and held that FEHA is violated when the harassment was 'sufficiently severe or pervasive to alter the conditions of the victim's employment.' " (*Etter v. Veriflo Corp.* (1998) 67 Cal.App.4th 457, 464–465 [79 Cal.Rptr.2d 33], internal citations and footnote omitted.)

- "When the workplace is permeated with discriminatory intimidation, ridicule and insult that is 'sufficiently severe or pervasive to alter the conditions of the victim's employment and create an

abusive working environment,' the law is violated." (*Kelly-Zurian v. Wohl Shoe Co., Inc.* (1994) 22 Cal.App.4th 397, 409 [27 Cal.Rptr.2d 457], internal citation omitted.)

- "[Defendant's] position that a plaintiff must be harassed to her face is inconsistent with the long-standing principle that ' "a person can perceive, and be affected by, harassing conduct" in the relevant environment "by knowledge of that harassment" as well as by "personal observation." ' [¶] FEHA does not reward discretion in harassing behaviors. Rather, it protects victims from workplace environments poisoned by inappropriate conduct—whether 'sung, shouted, or whispered.' " (*Carranza v. City of Los Angeles* (2025) 111 Cal.App.5th 388, 406–407 [332 Cal.Rptr.3d 778].)

- "[W]e conclude that an isolated act of harassment may be actionable if it is sufficiently severe in light of the totality of the circumstances, and that a coworker's use of an unambiguous racial epithet, such as the N-word, may be found to suffice." (*Bailey v. San Francisco Dist. Attorney's Office* (2024) 16 Cal.5th 611, 620 [323 Cal.Rptr.3d 369, 552 P.3d 430].)

- "[N]ot every utterance of a racial slur in the workplace violates the FEHA or Title VII. As the United States Supreme Court has recognized in the context of sexual harassment: '[N]ot all workplace conduct that may be described as "harassment" affects a "term, condition, or privilege" of employment within the meaning of Title VII. For sexual harassment to be actionable, it must be sufficiently severe or pervasive "to alter the conditions of [the victim's] employment and create an abusive working environment." ' . . . 'Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment—an environment that a reasonable person would find hostile or abusive—is beyond Title VII's purview. Likewise, if the victim does not subjectively perceive the environment to be abusive, the conduct has not actually altered the conditions of the victim's employment, and there is no Title VII violation.' . . . California courts have adopted the same standard in evaluating claims under the FEHA." (*Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, 129–130 [87 Cal.Rptr.2d 132, 980 P.2d 846], internal citations omitted, disapproved in part by *Bailey, supra,* 16 Cal.5th at p. 631, fn. 6.)

- "To be actionable, 'a sexually objectionable environment must be both objectively and subjectively offensive, one that a reasonable person would find hostile or abusive, and one that the victim in fact did perceive to be so.' That means a plaintiff who subjectively perceives the workplace as hostile or abusive will not prevail under the FEHA, if a reasonable person in the plaintiff's position, considering all the circumstances, would not share the same perception. Likewise, a plaintiff who does not perceive the workplace as hostile or abusive will not prevail, even if it objectively is so." (*Lyle v. Warner Brothers Television Productions* (2006) 38 Cal.4th 264, 284 [42 Cal.Rptr.3d 2, 132 P.3d 211], internal citations omitted.)

- "The objective severity of harassment should be judged from the perspective of a reasonable person in the plaintiff's position. We acknowledge, as has the Ninth Circuit before us, that '[r]acially motivated comments or actions may appear innocent or only mildly offensive to one who is not a member of the targeted group,' but 'intolerably abusive or threatening when understood from the perspective of a plaintiff who is a member of the targeted group.' We must therefore consider allegations of a racially hostile workplace 'from the perspective of a reasonable person belonging to the racial or ethnic group of the plaintiff.' This allows us to 'recognize forms of discrimination that are real and hurtful, and yet may be overlooked if considered solely from the perspective of an

adjudicator belonging to a different group than the plaintiff.' " (*Bailey, supra,* 16 Cal.5th at p. 629, internal citations omitted.)

- "The stray remarks doctrine … allows a court to weigh and assess the remarks in isolation, and to disregard the potentially damaging nature of discriminatory remarks simply because they are made by 'nondecisionmakers, or [made] by decisionmakers unrelated to the decisional process.' [Defendant] also argues that ambiguous remarks are stray, irrelevant, prejudicial, and inadmissible. However, 'the task of disambiguating ambiguous utterances is for trial, not for summary judgment.' Determining the weight of discriminatory or ambiguous remarks is a role reserved for the jury." (*Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 540–541 [113 Cal.Rptr.3d 327, 235 P.3d 988], internal citations omitted.)

- "[I]n reviewing the trial court's grant of [defendant]'s summary judgment motion, the Court of Appeal properly considered evidence of alleged discriminatory comments made by decision makers and coworkers along with all other evidence in the record." (*Reid, supra,* 50 Cal.4th at p. 545.)

- "[M]any employment cases present issues of intent, and motive, and hostile working environment, issues not determinable on paper. Such cases, we caution, are rarely appropriate for disposition on summary judgment, however liberalized it be." (*Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 286 [100 Cal.Rptr.3d 296].)

- "In contending that the 'subjectively offensive' element was not proven, a defendant 'will assert that a plaintiff consented to the conduct through active participation in it, or was not injured because the plaintiff did not subjectively find it abusive.' [¶] [Evidence Code] Section 1106 limits the evidence the defendant may use to support this assertion. It provides that '[i]n any civil action alleging conduct which constitutes sexual harassment, sexual assault, or sexual battery, opinion evidence, reputation evidence, and evidence of specific instances of the plaintiff's sexual conduct, or any of that evidence, is not admissible by the defendant in order to prove consent by the plaintiff or the absence of injury to the plaintiff … .' This general rule is, however, subject to the exception that it 'does not apply to evidence of the plaintiff's sexual conduct with the alleged perpetrator.' The term 'sexual conduct' within the meaning of section 1106 has been broadly construed to include 'all active or passive behavior (whether statements or actions), that either directly or through reasonable inference establishes a plaintiff's willingness to engage in sexual activity,' including 'racy banter, sexual horseplay, and statements concerning prior, proposed, or planned sexual exploits.' " (*Meeks v. AutoZone, Inc.* (2018) 24 Cal.App.5th 855, 874 [235 Cal.Rptr.3d 161], internal citations omitted.)

- "[A]llegations of a racially hostile work-place must be assessed from the perspective of a reasonable person belonging to the racial or ethnic group of the plaintiff." (*McGinest v. GTE Serv. Corp.* (9th Cir. 2004) 360 F.3d 1103, 1115.)

- "Under … FEHA, sexual harassment can occur between members of the same gender as long as the plaintiff can establish the harassment amounted to discrimination *because of sex*." (*Lewis v. City of Benicia* (2014) 224 Cal.App.4th 1519, 1525 [169 Cal.Rptr.3d 794], original italics.)

- "[T]here is no requirement that the *motive* behind the sexual harassment must be sexual in nature. '[H]arassing conduct need not be motivated by sexual desire to support an inference of discrimination on the basis of sex.' Sexual harassment occurs when, as is alleged in this case, sex is used as a

weapon to create a hostile work environment." (*Singleton v. United States Gypsum Co.* (2006) 140 Cal.App.4th 1547, 1564 [45 Cal.Rptr.3d 597], original italics, internal citation omitted.)

- "The plaintiff must show that the harassing conduct took place because of the plaintiff's sex, but need not show that the conduct was motivated by sexual desire. For example, a female plaintiff can prevail by showing that the harassment was because of the defendant's bias against women; she need not show that it was because of the defendant's sexual interest in women. In every case, however, the plaintiff must show a discriminatory intent or motivation based on gender." (*Pantoja v. Anton* (2011) 198 Cal.App.4th 87, 114 [129 Cal.Rptr.3d 384], internal citations omitted.)

- "[A] heterosexual male is subjected to harassment because of sex under the FEHA when attacks on his heterosexual identity are used as a tool of harassment in the workplace, irrespective of whether the attacks are motivated by sexual desire or interest." (*Taylor v. Nabors Drilling USA, LP* (2014) 222 Cal.App.4th 1228, 1239–1240 [166 Cal.Rptr.3d 676].)

- "A recent legislative amendment modifies section 12940, subdivision (j)(4)(C) (a provision of FEHA specifying types of conduct that constitute harassment because of sex) to read: 'For purposes of this subdivision, "harassment" because of sex includes sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions. *Sexually harassing conduct need not be motivated by sexual desire*.' " (*Lewis, supra,* 224 Cal.App.4th at p. 1527, fn. 8, original italics.)

- "California courts have held so-called 'me too' evidence, that is, evidence of gender bias against employees other than the plaintiff, may be admissible evidence in discrimination and harassment cases." (*Meeks, supra,* 24 Cal.App.5th at p. 871.)

Secondary Sources

3 Witkin, Summary of California Law (11th ed. 2017) Agency and Employment, §§ 353, 370

Chin et al., California Practice Guide: Employment Litigation, Ch. 10-A, *Sources Of Law Prohibiting Harassment*, ¶¶ 10:18–10:19, 10:22, 10:31 (The Rutter Group)

Chin et al., California Practice Guide: Employment Litigation, Ch. 10-B, *Sexual Harassment*, ¶¶ 10:40, 10:110–10:260 (The Rutter Group)

1 Wrongful Employment Termination Practice (Cont.Ed.Bar 2d ed.) Discrimination Claims, §§ 2.68, 2.75, Sexual and Other Harassment, §§ 3.1, 3.14, 3.17, 3.21, 3.36, 3.45

2 Wilcox, California Employment Law, Ch. 41, *Substantive Requirements Under Equal Employment Opportunity Laws*, §§ 41.80[1][a], 41.81[1][b] (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 115, *Civil Rights: Employment Discrimination*, § 115.36 (Matthew Bender)

California Civil Practice: Employment Litigation § 2:56 (Thomson Reuters)

2570. Age Discrimination—Disparate Treatment—Essential Factual Elements

[*Name of plaintiff***] claims that [***name of defendant***] subjected [him/her/***nonbinary pronoun***] to age discrimination. To establish this claim, [***name of plaintiff***] must prove all of the following:**

1. **That [***name of defendant***] was [an employer/[***other covered entity***]];**

2. **That [***name of plaintiff***] [was an employee of [***name of defendant***]/applied to [***name of defendant***] for a job/[***describe other covered relationship to defendant***]];**

3. **[That [***name of defendant***] [discharged/refused to hire/[***other adverse employment action***]] [***name of plaintiff***];]**

   [or]

   [That [*name of defendant***] subjected [***name of plaintiff***] to an adverse employment action;]**

   [or]

   [That [*name of plaintiff***] was constructively discharged;]**

4. **That [***name of plaintiff***] was age 40 or older at the time of the [discharge/[***other adverse employment action***]];**

5. **That [***name of plaintiff***]'s age was a substantial motivating reason for [***name of defendant***]'s [decision to [discharge/refuse to hire/[***other adverse employment action***]] [***name of plaintiff***]/conduct];**

6. **That [***name of plaintiff***] was harmed; and**

7. **That [name of defendant]'s conduct was a substantial factor in causing [***name of plaintiff***]'s harm.**

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*New June 2011; Revised June 2012, June 2013, May 2020, July 2026, December 2026**

Directions for Use

Read the first option for element 3 if there is no dispute as to whether the employer's acts constituted an adverse employment action. Read the second option and also give CACI No. 2509, *"Adverse Employment Action" Explained*, if whether there was an adverse employment action is a question of fact for the jury. If constructive discharge is alleged, give the third option for element 3 and also give CACI No. 2510, *"Constructive Discharge" Explained*. Select "conduct" in element 5 if ~~the~~ either the second or third option is included for element 3.

Note that there are two causation elements. There must be a causal link between the discriminatory animus based on age and the adverse action (see element 5), and there must be a causal link between the

adverse action and the damage (see element 7). (See *Mamou v. Trendwest Resorts, Inc.* (2008) 165 Cal.App.4th 686, 713 [81 Cal.Rptr.3d 406].)

Element 5 requires that the plaintiff's age ~~discrimination~~ be a substantial motivating reason for the adverse action. (See *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 232 [152 Cal.Rptr.3d 392, 294 P.3d 49]; see also CACI No. 2507, *"Substantial Motivating Reason" Explained*.)

Under the *McDonnell Douglas* (*McDonnell Douglas Corp. v. Green* (1973) 411 U.S. 792 [93 S.Ct. 1817, 36 L.Ed.2d 668]) process for allocating burdens of proof and producing evidence, which is used in California for disparate-treatment cases under FEHA, the employee must first present a prima facie case of discrimination. The burden then shifts to the employer to produce evidence of a nondiscriminatory reason for the adverse action. At that point, the burden shifts back to the employee to show that the employer's stated reason was in fact a pretext for a discriminatory act.

Whether or not the employee has met the employee's prima facie burden, and whether or not the employer has rebutted the employee's prima facie showing, are questions of law for the trial court, not questions of fact for the jury. (See *Caldwell v. Paramount Unified School Dist.* (1995) 41 Cal.App.4th 189, 201 [48 Cal.Rptr.2d 448].) In other words, by the time that the case is submitted to the jury, the plaintiff has already established a prima facie case, and the employer has already proffered a legitimate, nondiscriminatory reason for the adverse employment decision. The *McDonnell Douglas* shifting burden drops from the case. The jury is left to decide which evidence it finds more convincing, that of the employer's discriminatory intent or that of the employer's age-neutral reasons for the employment decision. (See *Muzquiz v. City of Emeryville* (2000) 79 Cal.App.4th 1106, 1118, fn. 5 [94 Cal.Rptr.2d 579].)~~.~~

Under FEHA, age-discrimination cases require the employee to show that the employee's job performance was satisfactory at the time of the adverse employment action as a part of the employee's prima facie case (see *Sandell v. Taylor-Listug, Inc.* (2010) 188 Cal.App.4th 297, 321 [115 Cal.Rptr.3d 453]), even though it is the employer's burden to produce evidence of a nondiscriminatory reason for the action. Poor job performance is the most common nondiscriminatory reason that an employer advances for the action. Even though satisfactory job performance may be an element of the employee's prima facie case, it is not an element that the employee must prove to the trier of fact. Under element 5 and CACI No. 2507, the burden remains with the employee to ultimately prove that age discrimination was a substantial motivating reason for the action. (See *Muzquiz, supra,* 79 Cal.App.4th at p. 1119.)

See also the Sources and Authority to CACI No. 2500, *Disparate Treatment—Essential Factual Elements*.

Sources and Authority

- Age Discrimination Prohibited Under Fair Employment and Housing Act. Government Code section 12940(a).
- "Age" Defined. Government Code section 12926(b).
- Disparate Treatment; Layoffs Based on Salary. Government Code section 12941.
- "In order to make out a prima facie case of age discrimination under FEHA, a plaintiff must

present evidence that the plaintiff (1) is over the age of 40; (2) suffered an adverse employment action; (3) was performing satisfactorily at the time of the adverse action; and (4) suffered the adverse action under circumstances that give rise to an inference of unlawful discrimination, i.e., evidence that the plaintiff was replaced by someone significantly younger than the plaintiff." (*Sandell, supra,* 188 Cal.App.4th at p. 321.)

- "In other words, '[b]y the time that the case is submitted to the jury, . . . the plaintiff has already established his or her prima facie case, and the employer has already proffered a legitimate, nondiscriminatory reason for the adverse employment decision, leaving only the issue of the employer's discriminatory intent for resolution by the trier of fact. Otherwise, the case would have been disposed of as a matter of law for the trial court. That is to say, if the plaintiff cannot make out a prima facie case, the employer wins as a matter of law. If the employer cannot articulate a nondiscriminatory reason for the adverse employment decision, the plaintiff wins as a matter of law. In those instances, no fact-finding is required, and the case will never reach a jury. [¶] In short, if and when the case is submitted to the jury, the construct of the shifting burden "drops from the case," and the jury is left to decide which evidence it finds more convincing, that of the employer's discriminatory intent, or that of the employer's race or age-neutral reasons for the employment decision.' " (*Muzquiz, supra,* 79 Cal.App.4th at p. 1118, fn. 5.)

- "Because the only issue properly before the trier of fact was whether the [defendant]'s adverse employment decision was motivated by discrimination on the basis of age, the shifting burdens of proof regarding appellant's prima facie case and the issue of legitimate nondiscriminatory grounds were actually irrelevant." (*Muzquiz, supra,* 79 Cal.App.4th at p. 1119.)

- "An employee alleging age discrimination must ultimately prove that the adverse employment action taken was based on his or her age. Since direct evidence of such motivation is seldom available, the courts use a system of shifting burdens as an aid to the presentation and resolution of age discrimination cases. That system necessarily establishes the basic framework for reviewing motions for summary judgment in such cases." (*Hersant v. Dept. of Social Servs.* (1997) 57 Cal.App.4th 997, 1002 [67 Cal.Rptr.2d 483], internal citations omitted.)

- "Requiring the plaintiff to show that discrimination was a *substantial* motivating factor, rather than simply *a* motivating factor, more effectively ensures that liability will not be imposed based on evidence of mere thoughts or passing statements unrelated to the disputed employment decision. At the same time, … proof that discrimination was a *substantial* factor in an employment decision triggers the deterrent purpose of the FEHA and thus exposes the employer to liability, even if other factors would have led the employer to make the same decision at the time." (*Harris, supra,* 56 Cal.4th at p. 232, original italics.)

- "We do not suggest that discrimination must be alone sufficient to bring about an employment decision in order to constitute a substantial motivating factor. But it is important to recognize that discrimination can be serious, consequential, and even by itself determinative of an employment decision without also being a "but for" cause." (*Harris, supra,* 56 Cal.4th at p. 229.)

- "While we agree that a plaintiff must demonstrate some basic level of competence at his or her job in order to meet the requirements of a prima facie showing, the burden-shifting framework established in *McDonnell Douglas* compels the conclusion that any measurement of such

competency should, to the extent possible, be based on objective, rather than subjective, criteria. A plaintiff's burden in making a prima facie case of discrimination is not intended to be 'onerous.' Rather, the prima facie burden exists in order to weed out patently unmeritorious claims." (*Sandell, supra,* 188 Cal.App.4th at p. 322, internal citations omitted.)

- "A discharge is not 'on the ground of age' within the meaning of this prohibition unless age is a 'motivating factor' in the decision. Thus, ' "an employer would be entitled to judgment as a matter of law if the record conclusively revealed some other, nondiscriminatory reason for the employer's decision." ' '[A]n employee claiming discrimination must offer substantial evidence that the employer's stated nondiscriminatory reason for the adverse action was untrue or pretextual, or evidence the employer acted with a discriminatory animus, or a combination of the two, such that a reasonable trier of fact could conclude the employer engaged in intentional discrimination.' " (*West v. Bechtel Corp.* (2002) 96 Cal.App.4th 966, 978 [117 Cal.Rptr.2d 647].)

- "[D]ownsizing alone is not necessarily a sufficient explanation, under the FEHA, for the consequent dismissal of an age-protected worker. An employer's freedom to consolidate or reduce its work force, and to eliminate positions in the process, does not mean it may 'use the occasion as a convenient opportunity to get rid of its [older] workers.' " (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 358 [100 Cal.Rptr.2d 352, 8 P.3d 1089].)

Secondary Sources

8 Witkin, Summary of California Law (11th ed. 2017) Constitutional Law, §§ 1041–1044

Chin et al., California Practice Guide: Employment Litigation, Ch. 8-B, *California Fair Employment and Housing Act*, ¶¶ 8:740, 8:800 et seq. (The Rutter Group)

2 Wilcox, California Employment Law, Ch. 41, *Substantive Requirements Under Equal Employment Opportunity Laws*, § 41.31 (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 115, *Civil Rights: Employment Discrimination*, § 115.22 (Matthew Bender)

10 California Points and Authorities, Ch. 100, *Employer and Employee: Wrongful Termination and Discipline*, § 100.43 (Matthew Bender)

3060. Unruh Civil Rights Act—Essential Factual Elements (Civ. Code, §§ 51, 52)

[*Name of plaintiff***] claims that [***name of defendant***] denied [him/her/***nonbinary pronoun***] full and equal [accommodations/advantages/facilities/privileges/services] because of [his/her/***nonbinary pronoun***] [sex/race/color/religion/ancestry/national origin/disability/medical condition/genetic information/marital status/sexual orientation/citizenship/primary language/immigration status/[***any combination of those characteristics***]/[***insert other actionable or protected characteristic or combination of characteristics***]]. To establish this claim, [***name of plaintiff***] must prove all of the following:**

1. **That [***name of defendant***] [denied/aided or incited a denial of/discriminated or made a distinction that denied] full and equal [accommodations/advantages/facilities/privileges/services] to [***name of plaintiff***];**

2. **[That a substantial motivating reason for [***name of defendant***]'s conduct was [its perception of] [***name of plaintiff***]'s [sex/race/color/religion/ancestry/national origin/ medical condition/genetic information/marital status/sexual orientation/ citizenship/primary language/immigration status/[***any combination of those characteristics***]/[***insert other actionable or protected characteristic or combination of characteristics***];]**

   [That the [sex/race/color/religion/ancestry/national origin/medical condition/genetic information/marital status/sexual orientation/ citizenship/primary language/immigration status/[*any combination of those characteristics***]/[***insert other actionable or protected characteristic or combination of characteristics***]] of a person whom [***name of plaintiff***] was associated with was a substantial motivating reason for [***name of defendant***]'s conduct;]**

3. **That [***name of plaintiff***] was harmed; and**

4. **That [***name of defendant***]'s conduct was a substantial factor in causing [***name of plaintiff***]'s harm.**

New September 2003; Revised December 2011, June 2012; Renumbered from CACI No. 3020 December 2012; Revised June 2013, June 2016, December 2025

Directions for Use

Select the bracketed option from element 2 that is most appropriate to the facts of the case.

Note that element 2 uses the term "substantial motivating reason" to express both intent and causation between the protected characteristic or combination of characteristics and the defendant's conduct. "Substantial motivating reason" has been held to be the appropriate standard under the Fair Employment and Housing Act to address the possibility of both discriminatory and nondiscriminatory motives. (*Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 232 [152 Cal.Rptr.3d 392, 294 P.3d 49]; CACI No. 2507, *"Substantial Motivating Reason" Explained*.) Whether the FEHA standard applies under the Unruh Civil Rights Act has not been addressed by the courts.

With the exception of claims that are also violations of the Americans With Disabilities Act (ADA) (see *Munson v. Del Taco, Inc.* (2009) 46 Cal.4th 661, 665 [94 Cal.Rptr.3d 685, 208 P.3d 623]), intentional discrimination is required for violations of the Unruh Civil Rights Act. (*Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1149 [278 Cal.Rptr. 614, 805 P.2d 873].) The intent requirement is encompassed within the motivating-reason element. For claims that are also violations of the ADA, do not give element 2.

Note that there are two causation elements. There must be a causal link between the discriminatory intent and the adverse action (see element 2), and there must be a causal link between the adverse action and the harm (see element 4).

For an instruction on damages under the Unruh Civil Rights Act, see CACI No. 3067, *Unruh Civil Rights Act—Damages*. Note that the jury may award a successful plaintiff up to three times actual damages but not less than $4,000 regardless of any actual damages. (Civ. Code, § 52(a).) In this regard, harm is presumed, and elements 3 and 4 may be considered as established if no actual damages are sought. (See *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 33 [219 Cal.Rptr. 133, 707 P.2d 195] [Unruh Civil Rights Act violations are per se injurious]; Civ. Code, § 52(a) [provides for minimum statutory damages for every violation regardless of the plaintiff's actual damages]; see also Civ. Code, § 52(h) ["actual damages" means special and general damages].)

The judge may decide the issue of whether the defendant is a business establishment as a matter of law. (*Rotary Club of Duarte v. Bd. Of Directors* (1986) 178 Cal.App.3d 1035, 1050 [224 Cal.Rptr. 213].) Special interrogatories may be needed if there are factual issues. This element has been omitted from the instruction because it is unlikely to go to a jury.

The Act is not limited to the categories expressly mentioned in the statute. Other forms of arbitrary discrimination by business establishments are prohibited. (*Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721, 736 [180 Cal.Rptr. 496, 640 P.2d 115].) Therefore, this instruction allows the user to "*insert other actionable or protected characteristic or combination of characteristics*" throughout. Nevertheless, there are limitations on expansion beyond the statutory characteristics. First, the claim must be based on a personal characteristic or combination of characteristics similar to those listed in the statute. Second, the court must consider whether the alleged discrimination was justified by a legitimate business reason. Third, the consequences of allowing the claim to proceed must be taken into account. (*Semler v. General Electric Capital Corp.* (2011) 196 Cal.App.4th 1380, 1392–1393 [127 Cal.Rptr.3d 794]; see *Harris, supra,* 52 Cal.3d at pp. 1159–1162.) However, these issues are most likely to be resolved by the court rather than the jury. (See *Harris, supra,* 52 Cal.3d at p. 1165.) Therefore, no elements are included to address what may be an "other actionable or protected characteristic or combination of characteristics." If there are contested factual issues, additional instructions or special interrogatories may be necessary.

Sources and Authority

- Unruh Civil Rights Act. Civil Code section 51.
- Combination of Characteristics, Perception, and Perceived Association. Civil Code section 51(e)(7).
- Remedies Under Unruh Civil Rights Act. Civil Code section 52.

- "The Unruh Act was enacted to 'create and preserve a nondiscriminatory environment in California business establishments by "banishing" or "eradicating" arbitrary, invidious discrimination by such establishments.' " (*Flowers v. Prasad* (2015) 238 Cal.App.4th 930, 937 [190 Cal.Rptr.3d 33].)

- "Invidious discrimination is the treatment of individuals in a manner that is malicious, hostile, or damaging." (*Javorsky v. Western Athletic Clubs, Inc.* (2015) 242 Cal.App.4th 1386, 1404 [195 Cal.Rptr.3d 706].)

- "A plaintiff can recover under the Unruh Civil Rights Act on two alternate theories: (1) a violation of the ADA [citation]; or (2) denial of access to a business establishment based on intentional discrimination." (*Martin v. Thi E-Commerce, LLC* (2023) 95 Cal.App.5th 521, 527 [313 Cal.Rptr.3d 488].)

- "To state a claim under the Unruh Civil Rights Act, a plaintiff must allege the defendant is a business establishment that intentionally discriminates against and/or denies plaintiff full and equal treatment of a service, advantage, or accommodation based on plaintiff's protected status." (*Liapes v. Facebook, Inc.* (2023) 95 Cal.App.5th 910, 922 [313 Cal.Rptr.3d 330].)

- "A person who aids and abets the commission of an offense, such as an intentional tort, may be liable if the person ' "knows the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other to so act" ' or ' "gives substantial assistance to the other in accomplishing a tortious result and the person's own conduct, separately considered, constitutes a breach of duty to the third person." ' A person can be liable for aiding and abetting violations of civil rights laws." (*Liapes, supra,* 95 Cal.App.5th at p. 926, internal citations omitted.)

- " 'The Legislature used the words "all" and "of every kind whatsoever" in referring to business establishments covered by the Unruh Act, and the inclusion of these words without any exception and without specification of particular kinds of enterprises, leaves no doubt that the term "business establishments" was used in the broadest sense reasonably possible. The word "business" embraces everything about which one can be employed, and it is often synonymous with "calling, occupation, or trade, engaged in for the purpose of making a livelihood or gain." The word "establishment," as broadly defined, includes not only a fixed location, such as the "place where one is permanently fixed for residence or business," but also a permanent "commercial force or organization" or "a permanent settled position, (as in life or business)." ' " (*O'Connor v. Village Green Owners Assn.* (1983) 33 Cal.3d 790, 795 [191 Cal.Rptr. 320, 662 P.2d 427], internal citations omitted.)

- "[W]e proceed to decide whether [defendant] is a business establishment. The resolution of this issue is one of law." (*Rotary Club of Duarte, supra,* 178 Cal.App.3d at p. 1050.)

- "When a plaintiff has visited a business's website with intent to use its services and alleges that the business's terms and conditions exclude him or her from full and equal access to its services, the plaintiff need not enter into an agreement with the business to establish standing under the Unruh Civil Rights Act. In general, a person suffers discrimination under the Act when the person presents himself or herself to a business with an intent to use its services but encounters an exclusionary policy or practice that prevents him or her from using those services. We conclude that this rule applies to

online businesses and that visiting a website with intent to use its services is, for purposes of standing, equivalent to presenting oneself for services at a brick-and-mortar store. Although mere awareness of a business's discriminatory policy or practice is not enough for standing under the Act, entering into an agreement with the business is not required." (*White v. Square, Inc.* (2019) 7 Cal.5th 1019, 1023 [250 Cal.Rptr.3d 770, 446 P.3d 276].)

- "We hold that including websites connected to a physical place of public accommodation is not only consistent with the plain language of Title III, but it is also consistent with Congress's mandate that the ADA keep pace with changing technology to effectuate the intent of the statute." (*Thurston v. Midvale Corp.* (2019) 39 Cal.App.5th 634, 644 [252 Cal.Rptr.3d 292].)

- "[T]he intentionality required by the [Unruh Civil Rights Act] relates to the purposefulness of the discriminatory action; it does not necessarily entail malice or a bias-driven rationale for the discriminatory act or policy." (*Civil Rights Dept. v. Cathy's Creations, Inc.* (2025) 109 Cal.App.5th 204, 233 [329 Cal.Rptr.3d 846].)

- "As to intentional discrimination, the California Supreme Court has held that the discriminatory effect of a facially neutral policy or action is not alone a basis for inferring intentional discrimination under the Unruh Civil Rights Act. It follows that we cannot infer intentional discrimination from [plaintiff's] alleged facts that he made [defendant] aware of the discriminatory effect of [defendant's] facially neutral website, and that [defendant] did not ameliorate these effects." (*Martinez v. Cot'n Wash, Inc.* (2022) 81 Cal.App.5th 1026, 1032 [297 Cal.Rptr.3d 712], internal citation omitted.)

- "Beyond the pleading stage, if a plaintiff wants to prevail on an Unruh Civil Rights Act claim, he or she must present sufficient evidence to overcome the online defendant's argument that he or she 'did not actually possess a *bona fide intent* to sign up for or use its services.' " (*Thurston v. Omni Hotels Management Corp.* (2021) 69 Cal.App.5th 299, 307 [284 Cal.Rptr.3d 341], internal citation omitted, original italics.)

- "Here, the City was not acting as a business establishment. It was amending an already existing municipal code section to increase the minimum age of a responsible person from the age of 21 years to 30. The City was not directly discriminating against anyone and nothing in the plain language of the Unruh Civil Rights Act makes its provisions applicable to the actions taken by the City." (*Harrison v. City of Rancho Mirage* (2015) 243 Cal.App.4th 162, 175 [196 Cal.Rptr.3d 267].)

- "[T]he protection against discrimination afforded by the Unruh Act applies to 'all persons,' and is not reserved for restricted categories of prohibited discrimination." (*Marina Point, Ltd., supra,* 30 Cal.3d at p. 736.)

- "Nevertheless, the enumerated categories, bearing the 'common element' of being 'personal' characteristics of an individual, necessarily confine the Act's reach to forms of discrimination based on characteristics similar to the statutory classifications—such as 'a person's geographical origin, physical attributes, and personal beliefs.' The 'personal characteristics' protected by the Act are not defined by 'immutability, since some are, while others are not [immutable], but that they represent traits, conditions, decisions, or choices fundamental to a person's identity, beliefs and self-definition.' " (*Candelore v. Tinder, Inc.* (2018) 19 Cal.App.5th 1138, 1145 [228 Cal.Rptr.3d 336].)

- "In addition to the particular forms of discrimination specifically outlawed by the Act (sex, race, color, etc.), courts have held the Act 'prohibit[s] discrimination based on several classifications which are not specifically enumerated in the statute.' These judicially recognized classifications include unconventional dress or physical appearance, families with children, homosexuality, and persons under 18." (*Hessians Motorcycle Club v. J.C. Flanagans* (2001) 86 Cal.App.4th 833, 836 [103 Cal.Rptr.2d 552], internal citations omitted.)

- "The Act applies not merely in situations where businesses exclude individuals altogether, but also 'where unequal treatment is the result of a business practice.' 'Unequal treatment includes offering price discounts on an arbitrary basis to certain classes of individuals.' " (*Candelore, supra,* 19 Cal.App.5th at pp. 1145–1146, internal citations omitted.)

- "Race discrimination claims under … the Unruh Civil Rights Act follow the analytical framework established under federal employment law. Although coaches are different from 'ordinary employers,' the *McDonnell Douglas* framework strikes the appropriate balance in evaluating race discrimination claims brought by college athletes:… ." (*Mackey v. Board of Trustees of California State University* (2019) 31 Cal.App.5th 640, 661 [242 Cal.Rptr.3d 757], internal citations omitted.)

- "[T]he language and history of the Unruh Act indicate that the legislative object was to prohibit intentional discrimination in access to public accommodations. We have been directed to no authority, nor have we located any, that would justify extension of a disparate impact test, which has been developed and applied by the federal courts primarily in employment discrimination cases, to a general discrimination-in-public-accommodations statute like the Unruh Act. Although evidence of adverse impact on a particular group of persons may have probative value in public accommodations cases and should therefore be admitted in appropriate cases subject to the general rules of evidence, a plaintiff must nonetheless plead and prove a case of intentional discrimination to recover under the Act." (*Harris, supra,* 52 Cal.3d at p. 1149.)

- "On examining the language, statutory context, and history of section 51, subdivision (f), we conclude … [t]he Legislature's intent in adding subdivision (f) was to provide disabled Californians injured by violations of the ADA with the remedies provided by section 52. A plaintiff who establishes a violation of the ADA, therefore, need not prove intentional discrimination in order to obtain damages under section 52." (*Munson, supra,* 46 Cal.4th at p. 665.)

- "Civil Code section 51, subdivision (f) states: 'A violation of the right of any individual under the federal [ADA] shall also constitute a violation of this section.' The ADA provides in pertinent part: 'No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who … operates a place of public accommodation.' The ADA defines discrimination as 'a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations.' " (*Baughman v. Walt Disney World Co.* (2013) 217 Cal.App.4th 1438, 1446 [159 Cal.Rptr.3d 825], internal citations omitted.)

- " 'Although the Unruh Act proscribes "any form of arbitrary discrimination,"~~,~~ certain types of

discrimination have been denominated "reasonable" and, therefore, not arbitrary.' Thus, for example, 'legitimate business interests may justify limitations on consumer access to public accommodations.' " (*Hankins v. El Torito Restaurants, Inc.* (1998) 63 Cal.App.4th 510, 520 [74 Cal.Rptr.2d 684], internal citations omitted.)

- "Discrimination may be reasonable, and not arbitrary, in light of the nature of the enterprise or its facilities, legitimate business interests (maintaining order, complying with legal requirements, and protecting business reputation or investment), and public policy supporting the disparate treatment." (*Javorsky, supra,* 242 Cal.App.4th at p. 1395.)

- "[T]he Act's objective of prohibiting 'unreasonable, arbitrary or invidious discrimination' is fulfilled by examining whether a price differential reflects an 'arbitrary, class-based generalization.' … [A] policy treating age groups differently in this respect may be upheld, at least if the pricing policy (1) ostensibly provides a social benefit to the recipient group; (2) the recipient group is disadvantaged economically when compared to other groups paying full price; and (3) there is no invidious discrimination." (*Javorsky, supra,* 242 Cal.App.4th at p. 1399.)

- "Unruh Act issues have often been decided as questions of law on demurrer or summary judgment when the policy or practice of a business establishment is valid on its face because it bears a reasonable relation to commercial objectives appropriate to an enterprise serving the public." (*Harris, supra,* 52 Cal.3d at p. 1165, internal citations omitted.)

- "It is thus manifested by section 51 that all persons are entitled to the full and equal privilege of associating with others in any business establishment. And section 52, liberally interpreted, makes clear that discrimination by such a business establishment against one's right of association on account of the associates' color, is violative of the Act. It follows ... that discrimination by a business establishment against persons on account of their association with others of the black race is actionable under the Act." (*Winchell v. English* (1976) 62 Cal.App.3d 125, 129 [133 Cal.Rptr. 20].)

- "Appellant is disabled as a matter of law not only because she is HIV positive, but also because it is undisputed that respondent 'regarded or treated' her as a person with a disability. The protection of the Unruh Civil Rights Act extends both to people who are currently living with a physical disability that limits a life activity and to those who are regarded by others as living with such a disability. … 'Both the policy and language of the statute offer protection to a person who is not actually disabled, but is wrongly perceived to be. The statute's plain language leads to the conclusion that the "regarded as" definition casts a broader net and protects *any* individual "regarded" or "treated" by an employer "as having, or having had, any physical condition that makes achievement of a major life activity difficult" or may do so in the future.' Thus, even an HIV-positive person who is outwardly asymptomatic is protected by the Unruh Civil Rights Act." (*Maureen K. v. Tuschka* (2013) 215 Cal.App.4th 519, 529−530 [155 Cal.Rptr.3d 620], original italics, internal citations omitted.)

- "[T]he Unruh Civil Rights Act prohibits arbitrary discrimination in public accommodations with respect to trained service dogs, but not to service-animals-in-training." (*Miller v. Fortune Commercial Corp.* (2017) 15 Cal.App.5th 214, 224 [223 Cal.Rptr.3d 133].)

Secondary Sources

8 Witkin, Summary of California Law (11th ed. 2017) Constitutional Law, §§ 994–1016

Chin et al., California Practice Guide: Employment Litigation, Ch.7-G, *Unruh Civil Rights Act*, ¶ 7:1525 et seq. (The Rutter Group)

11 California Forms of Pleading and Practice, Ch. 116, *Civil Rights: Discrimination in Business Establishments*, §§ 116.10–116.16 (Matthew Bender)

3 California Points and Authorities, Ch. 35, *Civil Rights: Unruh Civil Rights Act,* § 35.20 et seq. (Matthew Bender)

4603. Whistleblower Protection—Essential Factual Elements (Lab. Code, § 1102.5)

[*Name of plaintiff***] claims that [***name of defendant***] [discharged/[***other adverse employment action***]] [him/her/***nonbinary pronoun***] in retaliation for [his/her/***nonbinary pronoun***] [disclosure of information of/refusal to participate in] an unlawful act. To establish this claim, [***name of plaintiff***] must prove all of the following are more likely true than not true:**

1. **That [***name of defendant***] was [***name of plaintiff***]'s employer;**

2. **[That [[***name of plaintiff***] disclosed/[***name of defendant***] believed that [***name of plaintiff***] [had disclosed/might disclose]] to a [government agency/law enforcement agency/person with authority over [***name of plaintiff***]/ [or] an employee with authority to investigate, discover, or correct legal [violations/noncompliance]] that [***specify information disclosed***];]**

   [*or***]**

   [That [*name of plaintiff***] [provided information to/testified before] a public body that was conducting an investigation, hearing, or inquiry;]**

   [*or***]**

   [That [*name of plaintiff***] refused to [***specify activity in which plaintiff refused to participate***];]**

3. **[That [***name of plaintiff***] had reasonable cause to believe that the information disclosed [a violation of a [state/federal] statute/[a violation of/noncompliance with] a [local/state/federal] rule or regulation];]**

   [*or***]**

   [That [*name of plaintiff***] had reasonable cause to believe that the [information provided to/testimony before] the public body disclosed [a violation of a [state/federal] statute/[a violation of/noncompliance with] a [local/state/federal] rule or regulation];]**

   [*or***]**

   [That [*name of plaintiff***]'s participation in [***specify activity***] would result in [a violation of a [state/federal] statute/[a violation of/noncompliance with] a [local/state/federal] rule or regulation];]**

4. **That [***name of defendant***] [discharged/[***other adverse employment action***]] [***name of plaintiff***];**

5. **That [[***name of plaintiff***]'s [disclosure of information/refusal to [***specify***]]/[***name of defendant***]'s belief that [***name of plaintiff***] [had disclosed/might disclose] information]**

was a contributing factor in [*name of defendant***]'s decision to [discharge/[***other adverse employment action***]] [***name of plaintiff***];**

6. **That [***name of plaintiff***] was harmed; and**

7. **That [***name of defendant***]'s conduct was a substantial factor in causing [***name of plaintiff***]'s harm.**

A "contributing factor" is any factor, which alone or in connection with other factors, tends to affect the outcome of a decision. A contributing factor can be proved even when other legitimate factors also contributed to the employer's decision.

[The disclosure of policies that an employee believes to be merely unwise, wasteful, gross misconduct, or the like, is not protected. Instead, [*name of plaintiff***] must have reasonably believed that [***name of defendant***]'s policies violated federal, state, or local statutes, rules, or regulations.]**

[It is not [*name of plaintiff***]'s motivation for [his/her/***nonbinary pronoun***] disclosure, but only the content of that disclosure, that determines whether the disclosure is protected.]**

[A disclosure is protected even though disclosing the information may be part of [*name of plaintiff***]'s job duties.]**

[A disclosure is protected even though the [agency/employer] already knew about the information disclosed.]

New December 2012; Revised June 2013, December 2013; Revoked June 2014; Restored and Revised December 2014; Renumbered from CACI No. 2730 and Revised June 2015; Revised June 2016, November 2019, May 2020, December 2022, May 2023, November 2023

Directions for Use

The whistleblower protection statute of the Labor Code prohibits retaliation against an employee who, or whose family member, discloses information about, or refuses to participate in, an illegal activity. (Lab. Code, § 1102.5(b), (c), (h).) Liability may be predicated on retaliation by "any person acting on behalf of the employer." (Lab. Code, § 1102.5(a)−(d).) Select any of the optional paragraphs as appropriate to the facts of the case. For claims under Labor Code section 1102.5(c), the plaintiff must show that the activity in question actually would result in a violation of or noncompliance with a statute, rule, or regulation, which is a legal determination that the court is required to make. (*Nejadian v. County of Los Angeles* (2019) 40 Cal.App.5th 703, 719 [253 Cal.Rptr.3d 404].)

Modifications to the instruction may be required if liability is predicated on an agency theory and the agent is also a defendant. Modifications will also be required if the retaliation is against an employee whose family member engaged in the protected activity.

Select the first option for elements 2 and 3 for claims based on actual disclosure of information or a belief that plaintiff disclosed or might disclose information. (Cf. *Rope v. Auto-Chlor System of Washington, Inc.* (2013) 220 Cal.App.4th 635, 648−649 [163 Cal.Rptr.3d 392] [under prior version of statute, no liability

for anticipatory or preemptive retaliation based on fear that plaintiff might file a complaint in the future].) Select the second options for providing information to or testifying before a public body conducting an investigation, hearing, or inquiry. Select the third options for refusal to participate in an unlawful activity, and instruct the jury that the court has made the determination that the specified activity would have been unlawful.

Labor Code section 1102.5(b) applies even when an employee discloses information to an employer or agency that already knew about the violation. (*People ex rel. Garcia-Brower v. Kolla's Inc.* (2023) 14 Cal.5th 719, 721 [308 Cal.Rptr.3d 388, 529 P.3d 49].)

"Adverse employment action" is viewed the same as it is under the Fair Employment and Housing Act. (*Patten v. Grant Joint Union High School Dist.* (2005) 134 Cal.App.4th 1378, 1387 [37 Cal.Rptr.3d 113], disapproved on other grounds by *Lawson v. PPG Architectural Finishes, Inc.* (2022) 12 Cal.5th 703, 718 [289 Cal.Rptr.3d 572, 503 P.3d 659]; see CACI No. 2505, *Retaliation—Essential Factual Elements.*) Element 4 may be modified to allege constructive discharge or adverse acts that might not be obviously prejudicial. See CACI No. 2509, *"Adverse Employment Action" Explained,* and CACI No. 2510, *"Constructive Discharge" Explained,* for instructions that may be adapted for use with this instruction.

The employee must demonstrate by a preponderance of evidence that a protected activity was a contributing factor in the adverse action against the employee. (*Lawson, supra,* 12 Cal.5th at p. 718.) The employer may then attempt to prove by clear and convincing evidence that the action would have been taken anyway for legitimate, independent reasons even if the employee had not engaged in the protected activities. (See Lab. Code, § 1102.6; CACI No. 4604, *Affirmative Defense—Same Decision*.)

Sources and Authority

- Retaliation Against Whistleblower Prohibited. Labor Code section 1102.5.

- "[W]e now clarify that section 1102.6, and not *McDonnell Douglas*, supplies the applicable framework for litigating and adjudicating section 1102.5 whistleblower claims." (*Lawson, supra,* 12 Cal.5th at p. 712.)

- "By its terms, section 1102.6 describes the applicable substantive standards and burdens of proof for both parties in a section 1102.5 retaliation case: First, it must be 'demonstrated by a preponderance of the evidence' that the employee's protected whistleblowing was a 'contributing factor' to an adverse employment action. Then, once the employee has made that necessary threshold showing, the employer bears 'the burden of proof to demonstrate by clear and convincing evidence' that the alleged adverse employment action would have occurred 'for legitimate, independent reasons' even if the employee had not engaged in protected whistleblowing activities." (*Lawson, supra,* 12 Cal.5th at p. 712, internal citation omitted.)

- "Section 1102.6 prescribes a two-part burden-shifting framework for deciding employee retaliation claims. It states: 'In a civil action or administrative proceeding brought pursuant to Section 1102.5, once it has been demonstrated by a preponderance of the evidence that an activity proscribed by Section 1102.5 was a contributing factor in the alleged prohibited action against the employee, the employer shall have the burden of proof to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if

the employee had not engaged in activities protected by Section 1102.5.' " (*Zirpel v. Alki David Productions, Inc.* (2023) 93 Cal.App.5th 563, 573 [310 Cal.Rptr.3d 730], internal citation omitted.)

- "In order to prove a claim under section 1102.5(b), the plaintiff must establish a prima facie case of retaliation. It is well-established that such a prima facie case includes proof of the plaintiff's employment status." (*Bennett v. Rancho California Water Dist.* (2019) 35 Cal.App.5th 908, 921 [248 Cal.Rptr.3d 21], internal citations omitted.)

- "To prove a claim of retaliation under this statute, the plaintiff 'must demonstrate that he or she has been subjected to an adverse employment action that materially affects the terms, conditions, or privileges of employment.' 'Minor or relatively trivial adverse actions by employers or fellow employees that, from an objective perspective, are reasonably likely to do no more than anger or upset an employee do not materially affect the terms or conditions of employment.' This requirement " ' "guards against both "judicial micromanagement of business practices" [citation] and frivolous suits over insignificant slights." ' " (*Francis v. City of Los Angeles* (2022) 81 Cal.App.5th 532, 540–541 [297 Cal.Rptr.3d 362], internal citations omitted.)

- "[T]he purpose of … section 1102.5(b) 'is to "encourag[e] workplace whistle-blowers to report unlawful acts without fearing retaliation." ' " (*Diego v. Pilgrim United Church of Christ* (2014) 231 Cal.App.4th 913, 923 [180 Cal.Rptr.3d 359].)

- "[T]he relevant inquiry is not whether the conduct actually violated any specific statute or regulation, but whether the plaintiff *reasonably believed* that there was a violation." (*Contreras v. Green Thumb Produce, Inc.* (2025) 116 Cal.App.5th 1251, 1259−1260 [339 Cal.Rptr.3d 906], original italics, internal quotations omitted.)

- "Once it is determined that the activity would result in a violation or noncompliance with a statute, rule, or regulation, the jury must then determine whether the plaintiff refused to participate in that activity and, if so, whether that refusal was a contributing factor in the defendant's decision to impose an adverse employment action on the plaintiff." (*Nejadian, supra,* 40 Cal.App.5th at p. 719.)

- "The question here is whether a report of unlawful activities made to an employer or agency that already knew about the violation is a protected 'disclosure' within the meaning of section 1102.5(b). We hold it is." (*People ex rel. Garcia-Brower, supra,* 14 Cal.5th at p. 721.)

- "The court erred in failing to distinguish between the disclosure of policies that plaintiff believed to be unwise, wasteful, gross misconduct or the like, which are subject to the [debatable differences of opinion concerning policy matters] limitation, and the disclosure of policies that plaintiff reasonably believed violated federal or state statutes, rules, or regulations, which are not subject to this limitation, even if these policies were also claimed to be unwise, wasteful or to constitute gross misconduct." (*Mize-Kurzman v. Marin Community College Dist.* (2012) 202 Cal.App.4th 832, 847 [136 Cal.Rptr.3d 259], disapproved on other grounds in *People ex rel. Garcia-Brower, supra,* 14 Cal.5th at p. 734.)

- "[I]t is not the *motive* of the asserted whistleblower, but the nature of the communication that

determines whether it is covered." (*Mize-Kurzman, supra,* 202 Cal.App.4th at p. 852, original italics, disapproved on other grounds in *People ex rel. Garcia-Brower, supra,* 14 Cal.5th at p. 734.)

- "[I]f we interpret section 1102.5 to require an employee to go to a different public agency or directly to a law enforcement agency before he or she can be assured of protection from retaliation, we would be encouraging public employees who suspected wrongdoing to do nothing at all. Under the scenario envisioned by the [defendant], if the employee reports his or her suspicions to the agency… , he or she will have to suffer any retaliatory conduct with no legal recourse. If the employee reports suspicions to an outside agency or law enforcement personnel, he or she risks subjecting the agency to negative publicity and loss of public support which could ensue without regard to whether the charges prove to be true. At the same time, a serious rift in the employment relationship will have occurred because the employee did not go through official channels within the agency which was prepared to investigate the charges. We see no reason to interpret the statute to create such anomalous results." (*Gardenhire v. Housing Authority* (2000) 85 Cal.App.4th 236, 243 [101 Cal.Rptr.2d 893].)

- "Labor Code section 1102.5, subdivision (b) protects employee reports of unlawful activity by third parties such as contractors and employees, as well unlawful activity by an employer. In support of our conclusion, we note that an employer may have a financial motive to suppress reports of illegal conduct by employees and contractors that reflect poorly on that employer." (*McVeigh v. Recology San Francisco* (2013) 213 Cal.App.4th 443, 471 [152 Cal.Rptr.3d 595], internal citation omitted.)

- "The report of 'publicly known' information or 'already known' information is distinct from a rule in which only the first employee to report or disclose unlawful conduct is entitled to protection from whistleblower retaliation." (*Hager v. County of Los Angeles* (2014) 228 Cal.App.4th 1538, 1548−1553 [176 Cal.Rptr.3d 268], disapproved on other grounds in *Lawson, supra,* 12 Cal.5th at p. 718.)

- "Protection only to the first employee to disclose unlawful acts would defeat the legislative purpose of protecting workplace whistleblowers, as employees would not come forward to report unlawful conduct for fear that someone else already had done so. The 'first report' rule would discourage whistleblowing. Thus, the [defendant]'s interpretation is a disincentive to report unlawful conduct. We see no such reason to interpret the statute in a manner that would contradict the purpose of the statute." (*Hager, supra,* 228 Cal.App.4th at p. 1550, disapproved on other grounds in *Lawson, supra,* 12 Cal.5th at p. 718.)

- "Matters such as transferring employees, writing up employees, and counseling employees are personnel matters. 'To exalt these exclusively internal personnel disclosures with whistleblower status would create all sorts of mischief. Most damagingly, it would thrust the judiciary into micromanaging employment practices and create a legion of undeserving protected "whistleblowers" arising from the routine workings and communications of the job site. … ' " (*Mueller v. County of Los Angeles* (2009) 176 Cal.App.4th 809, 822 [98 Cal.Rptr.3d 281].)

- " 'A wrongful termination action is viable where the employee alleges he [or she] was terminated for reporting illegal activity which could cause harm, not only to the interests of the employer but

also to the public.' 'An action brought under the whistleblower statute is inherently such an action.' To preclude a whistleblower from revealing improper conduct by the government based on confidentiality would frustrate the legislative intent underlying the whistleblower statutes. For reasons of public policy, actions against a public entity for claims of discharge from or termination of employment grounded on a whistleblower claim are not barred by governmental immunity." (*Whitehall v. County of San Bernardino* (2017) 17 Cal.App.5th 352, 365 [225 Cal.Rptr.3d 321], internal citations omitted.)

- "Although [the plaintiff] did not expressly state in his disclosures that he believed the County was violating or not complying with a specific state or federal law, Labor Code section 1102.5, subdivision (b), does not require such an express statement. It requires only that an employee disclose information and that the employee reasonably believe the information discloses unlawful activity." (*Ross v. County of Riverside* (2019) 36 Cal.App.5th 580, 592–593 [248 Cal.Rptr.3d 696].)

- "Section 1102.6 requires whistleblower plaintiffs to show that retaliation was a 'contributing factor' in their termination, demotion, or other adverse action. This means plaintiffs may satisfy their burden of proving unlawful retaliation even when other, legitimate factors also contributed to the adverse action." (*Lawson, supra,* 12 Cal.5th at 713–714.)

Secondary Sources

3 Witkin, Summary of California Law (11th ed. 2017) Agency and Employment, §§ 302–307A, 373, 374

Chin et al., California Practice Guide: Employment Litigation, Ch. 5(II)-A, *Retaliation Under Title VII and FEHA*, ¶ 5:1538 (The Rutter Group)

4 Wilcox, California Employment Law, Ch. 60, *Liability for Wrongful Termination and Discipline*, § 60.03[2][c] (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 118, *Civil Service*, § 118.55 et seq. (Matthew Bender)

10 California Points and Authorities, Ch. 100, *Public Entities and Officers: False Claims Actions*, §§ 100.48, 100.60–100.61A (Matthew Bender)

Rules Committee Action Request Form

Item number: 03

Rules Committee Meeting Date: November 10, 2026

Action requested: Recommend JC approval (without public comment)

Title of proposal: Family Law: Implementation of Assembly Bill 1267 Prohibiting a Minor from Marrying or Establishing a Domestic Partnership

Proposed rules, forms, standards, or jury instructions (include amend/revise/adopt/approve/etc.)**:**
Repeal Cal. Rules of Court, rule 5.448 and revoke forms FL-910, FL-912, and FL-915

Advisory committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee

Staff contact (name, phone, and email)**:**
Gabrielle D. Selden, 415-865-8085, gabrielle.selden@jud.ca.gov

Annual agenda approved by Rules Committee on: October 22, 2026
Project description from annual agenda: 1. Family Law: Implementation of AB 1267 regarding minors marrying or establishing a domestic partnership. Develop rule and form recommendations as appropriate to implement Assembly Bill 1267 (Pellerin; Stats. 2026, ch. 850), which repeals numerous code provisions which in effect repeal authorization for minors to be issued a marriage license or to establish a domestic partnership, from marrying or establishing domestic partnerships. AB 1267 will likely require amending or repealing rules and revoking forms.

Implementation Date and Circulation Notes: (If requesting an effective date other than January 1 or a special invitation-to-comment cycle, please explain.) Legislation effective date: January 1, 2027. This is a special cycle report that was prepared without circulating for public comment to ensure the the rule and form correctly reflect the law when AB 1267 becomes effective.

The committee is seeking a Rules Committee finding that compelling circumstances exist to for the recommended rule repeal and form revocations to go to Judicial Council for approval without circulating for comment. The committee believes compelling circumstances exist because, as of January 1, 2027, there will be no statutory authority for a minor to seek a court order to marry or establish a domestic partnership and the associated, implementing rule and forms should not be retained in the absence of the underlying statutory authority.

Additional Information for Rules Committee: (To facilitate Rules Committee's review of your proposal, please include any other relevant information.)

Information for JC staff (Complete the following for proposals recommending forms.)

- **Form Translations** (check all that apply)
  Proposal includes forms that: ☐ staff requests be translated, ☐ are required by statute to be translated.
  Provide citations to code that mandates translation:
- **Website Content** (check all that apply)
  ☐ New or revised form descriptions are needed for the California Courts website. (If checked, form descriptions should be approved by a supervisor after council approval.)
  ☐ Changes or additions to self-help guide website are needed.

(Revised 2026)

Judicial Council of California

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 26-182

For business meeting on December 11, 2026

Family Law: Implementation of Assembly Bill 1267 Prohibiting a Minor from Marrying or Establishing a Domestic Partnership (DRAFT)

Judicial Council Report Details

Rules, Forms, Standards, or Statutes Affected
Repeal Cal. Rules of Court, rule 5.448;
revoke forms FL-910, FL-912, and FL-915

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Tari L. Cody, Cochair
Hon. Stephanie E. Hulsey, Cochair

Report Type
Action Required

Effective Date
January 1, 2027

Date of Report
October 21, 2026

Contact
Gabrielle D. Selden, 415-865-8085
gabrielle.selden@jud.ca.gov

Executive Summary

Effective January 1, 2027, Assembly Bill 1267 (Stats. 2026, ch. 850) prohibits persons under 18 years old from being issued a marriage license or establishing a domestic partnership. AB 1267 repeals the Family Code provisions that authorize a minor to obtain a court order permitting a marriage or domestic partnership, including sections 297.1, 298.8, 302, 303, and 304. It also makes related conforming amendments to sections 297, 423, and 2210. As a result, courts will no longer have authority to grant a minor permission to marry or establish a domestic partnership, and the procedures and forms used for those requests will no longer be authorized by statute. To conform Judicial Council rules and forms to the new law and avoid continued use of obsolete procedures, the Family and Juvenile Law Advisory Committee recommends repealing one rule and revoking three forms.

Recommendation

To implement AB 1267, the Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2027:

1. Repeal California Rules of Court, rule 5.448; and

2. Revoke *Request of Minor to Marry or Establish a Domestic Partnership* (form FL-910), *Consent for Minor to Marry or Establish a Domestic Partnership* (form FL-912), and *Order and Notices to Minor on Request to Marry or Establish a Domestic Partnership* (form FL-915).

The proposed repealed rule and revoked forms are attached at pages 6–16.

Relevant Previous Council Action

The Judicial Council approved forms FL-910 and FL-915, effective January 1, 2009, as required by Family Code sections 302 and 304.[1] Both forms were revised, effective January 1, 2012, to allow a request and order for a minor to marry or establish a domestic partnership.[2]

In 2019, Senate Bill 273 (Stats. 2018, ch. 660) took effect, amending several Family Code sections relating to marriage and domestic partnerships involving minors. The amendments to Family Code sections 297.1 and 304 added a list of responsibilities for Family Court Services (FCS) and judicial officers when a minor sought permission to marry.[3] In response, the Judicial Council adopted rule 5.448, approved form FL-912, and revised forms FL-910 and FL-915.[4]

Analysis/Rationale

AB 1267 repeals, effective January 1, 2027, the Family Code provisions that authorize a person under 18 years of age to marry or establish a domestic partnership with a court order and, where applicable, parental or guardian consent. It also makes related conforming amendments to Family Code sections 297, 423, and 2210.

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[1] Judicial Council of Cal., Advisory Com. Rep., *Family Law: Miscellaneous Forms* (Oct. 2, 2008).

[2] Judicial Council of Cal., Advisory Com. Rep., *Family Law: Permission for Minors to Enter into Domestic Partnerships* (Nov. 10, 2011).

[3] The legislation required that FCS separately interview the parties intending to marry or establish a domestic partnership; interview, if applicable, at least one of the parents or the guardian of each party who is a minor, prepare and submit to the court a report of any potential force, threat, persuasion, fraud, or coercion or duress by either of the parties or their family members relating to the intended marriage or domestic partnership; and report to the court recommendations for granting or denying permission to the parties to marry or establish a domestic partnership. It also required the court to separately interview the parties in camera before making a final determination, consider whether there is any evidence of coercion or undue influence on the minor, provide the minor with specific information on issuing an order granting permission to marry or establish a domestic partnership, and document certain statistical data of the parties on the order.

[4] Judicial Council of Cal., Advisory Com. Rep., *Family Law: Rules and Forms for Minor to Marry or Establish a Domestic Partnerships* (Sep. 5, 2019).

The amendments to Family Code section 2210(a) establish a bright line between the old and the new law based on the operative date of AB 1267. Section 2210(a) generally requires that a person under 18 years of age (who commenced an action in family court under the former law) be married or have registered their domestic partnership before January 1, 2027. If not, section 2210(a) provides that the minor's marriage or domestic partnership "…is voidable and may be adjudged a nullity." The amended statutory language clarifies that the court is not authorized to enter orders under the old law for cases pending in family court after January 1, 2027.

To conform the council's rules and forms to these statutory changes, the committee recommends repealing rule 5.448 and revoking forms FL-910, FL-912, and FL-915 on an expedited basis, without public comment.

Prompt action required

The new law prohibiting minors from marrying or establishing a domestic partnership becomes operative on January 1, 2027. Repealing the rule and revoking the forms, effective January 1, 2027, will prevent courts, court users, and justice partners from relying on obsolete procedures or submitting forms requesting relief that the court is no longer statutorily authorized to provide.

Repeal rule 5.448

Rule 5.448 sets forth procedures specific to cases in which a minor seeks the court's permission to marry or establish a domestic partnership. The rule implements the statutory requirements that applied to Family Court Services personnel and judicial officers, including requirements concerning interviews, preparation and distribution of the Family Court Services report, confidentiality and storage of the report, and judicial review and determination of the request. Because AB 1267 repeals the statutory authorization for these requests and the related statutory duties of court professionals, there will be no new proceedings to which rule 5.448 will apply after January 1, 2027.

Revoke forms FL-910, FL-912, and FL-915

All three forms described below implement the existing statutory scheme, which AB 1267 repeals:

- *Request of Minor to Marry or Establish a Domestic Partnership* (form FL-910) is the mandatory form used by a minor to seek a court order granting permission to marry or establish a domestic partnership.

- *Consent for Minor to Marry or Establish a Domestic Partnership* (form FL-912) documents the written consent of a parent or legal guardian to support a minor's request to marry or establish a domestic partnership.

- *Order and Notices to Minor on Request to Marry or Establish a Domestic Partnership* (form FL-915) is the mandatory form used by a judicial officer to make the findings and orders required by law. It also contains statutory notices and instructions concerning the consequences and next steps associated with an order granting or denying the request.

With the repeal of the statutes, there will no longer be a statutory basis for retaining any of the forms.

Policy implications

The key policy implication is to ensure that Judicial Council rules and forms are consistent with statutes and other rules. The recommended actions are consistent with *The Strategic Plan for California's Judicial Branch*, specifically Goal II, Independence and Accountability, by preserving the rule of law and maintaining the highest standards of accountability for its use of public resources and adherence to its statutory and constitutional mandates.[5]

Comments

The proposed rule repeal and forms revocation have been considered by the advisory committee and the Rules Committee without circulating them for public comment. The Rules Committee has determined that compelling circumstances necessitate the urgent adoption of these changes, without circulating them for public comment, because retaining the rule and forms would be inconsistent with the law on January 1, 2027. (See Cal. Rules of Court, rule 10.22(g).) No alternative Judicial Council rule or form is necessary to implement the remaining statutory scheme.[6] The proposed changes are needed to prevent parties, attorneys, and courts from unknowingly relying on a process and forms that are no longer legally valid after December 31, 2026.

Alternatives considered

The committee considered whether to retain or revise rule 5.448 and forms FL-910, FL-912, and FL-915 for use after January 1, 2027. The committee concluded that neither option would be appropriate because AB 1267 eliminates the underlying statutory authority for the court proceeding and the related forms. Repealing rule 5.448 and revoking forms FL-910, FL-912, and FL-915 is, therefore, necessary to conform the Judicial Council's rules and forms to AB 1267.

Fiscal and Operational Impacts

The committee anticipates that implementing AB 1267 will require courts to remove forms FL-910, FL-912, and FL-915 from forms packets and other materials made available to court users, including self-help materials, and to update court websites and other online content. Courts may also need to update their case management systems and other internal procedures, notify and train court staff; and ensure that court clerks are prepared to identify and decline filings seeking court permission for a minor to marry or establish a domestic partnership on or after January 1, 2027. These are one-time implementation activities associated with the change in law.

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[5] For more information, see Goal II, Independence and Accountability.

[6] Under AB 1267, a minor will have until December 31, 2026, to enter into a legal marriage or domestic partnership. (Fam. Code, § 2210(a).) Thus, maintaining the rule and forms until the end of the year may allow a minor with a pending family court case the opportunity to obtain the court's permission and then take the next appropriate steps to become married or establish a domestic partnership under the current law.

Beyond the impacts required to implement AB 1267, the committee does not anticipate other significant fiscal and operational impacts from the recommended rule and form changes.

Attachments and Links

1. Cal. Rules of Court, rule 5.448, at pages 6–8
2. Forms FL-910, FL-912, and FL-915, at pages 9–16
3. Link A: Assem. Bill 1267

Rule 5.448 of the California Rules of Court is repealed, effective January 1, 2027:

~~Chapter 19. Minor Marriage or Domestic Partnership~~

~~Article 1: General Provisions~~

~~Rule 5.448. Minor's request to marry or establish a domestic partnership~~

~~(a) Application~~

~~(1) This rule implements Family Code sections 297.1, 303, and 304, allowing a person under 18 years of age (a minor) to seek a court order for permission to marry or establish a domestic partnership.~~

~~(2) The responsibilities of Family Court Services under (c) apply equally to courts that adopt a confidential child custody mediation program, recommending child custody counseling, or a tiered/hybrid program.~~

~~(3) For the purpose of this rule, the terms "parent" and "parent with legal authority" are used interchangeably.~~

~~(b) Required initial filings~~

~~(1) The minor and the minor's proposed spouse or domestic partner must complete and file with the court clerk a *Request of Minor to Marry or Establish a Domestic Partnership* (form FL-910).~~

~~(2) Unless the minor has no parent or legal guardian capable of consenting, each minor must file, in addition to form FL-910, the written consent from a parent with legal authority to provide consent or a legal guardian. *Consent for Minor to Marry or Establish a Domestic Partnership* (form FL-912) may be used for this purpose.~~

~~(c) Responsibilities of Family Court Services~~

~~Unless the minor is 17 years of age and has achieved a high school diploma or a high school equivalency certificate, Family Court Services must:~~

~~(1) Interview the parties intending to marry or establish a domestic partnership.~~

~~(A) The parties must initially be interviewed separately; and~~

~~(B) The parties may subsequently be interviewed together.~~

~~(2) Interview at least one of the parents or the legal guardian of each party who is a minor, if the minor has a parent or legal guardian. If more than one parent~~

~~or legal guardian is interviewed, the parents or guardians must be interviewed separately.~~

~~(3) Inform the parties that Family Court Services must:~~

~~(A) Prepare a written report, including recommendations for granting or denying the parties permission to marry or establish a domestic partnership;~~

~~(B) Provide the parties and the court with a copy of the report; and~~

~~(C) Submit a report of known or suspected child abuse or neglect to the county child protective services agency if Family Court Services knows or reasonably suspects that either party is a victim of child abuse or neglect.~~

~~(4) Prepare a written report, which must:~~

~~(A) Include an assessment of any potential force, threat, persuasion, fraud, coercion, or duress by either of the parties or their family members relating to the intended marriage or domestic partnership;~~

~~(B) Include recommendations for granting or denying the parties permission to marry or establish a domestic partnership; and~~

~~(C) Be submitted to the parties and the court.~~

~~(5) Protect party confidentiality in:~~

~~(A) Storage and disposal of records and any personal information gathered during the interviews; and~~

~~(B) Management of written reports containing recommendations for either granting or denying permission for a minor to marry or establish a domestic partnership.~~

~~(d) Responsibilities of judicial officer~~

~~In determining whether to issue a court order granting permission for the minor to marry or establish a domestic partnership:~~

~~(1) The judicial officer must:~~

~~(A) If Family Court Services is required to interview the parties, do the following before making a final determination:~~

(i) Separately and privately interview each of the parties; and

(ii) Consider whether there is any evidence of coercion or undue influence on the minor.

(B) Complete *Order and Notices to Minor on Request to Marry or Establish a Domestic Partnership* (form FL-915).

(2) The judicial officer may order that the parties:

(A) Appear at a hearing to consider whether it is in the best interest of the minor to marry or establish a domestic partnership.

(B) Participate in counseling concerning the social, economic, and personal responsibilities incident to the marriage or domestic partnership before the marriage or domestic partnership is established. The judicial officer:

(i) Must not require the parties to confer with counselors provided by religious organizations of any denomination;

(ii) Must consider, among other factors, the ability of the parties to pay for the counseling in determining whether to order the parties to participate in counseling;

(iii) May impose a reasonable fee to cover the cost of any counseling provided by the county or the court; and

(iv) May require the parties to file a certificate of completion of counseling before granting permission to marry or establish a domestic partnership.

(e) Waiting period

After obtaining a court order granting a minor permission to marry or establish a domestic partnership, the parties must wait 30 days from the date the court made the order before filing a marriage license or filing a declaration of domestic partnership. This waiting period is not required if the minor is:

(1) 17 years of age and has a high school diploma or a high school equivalency certificate; or

(2) 16 or 17 years of age and is pregnant or whose prospective spouse or domestic partner is pregnant.

FL-910 Request of Minor to Marry or Establish a Domestic Partnership

Clerk stamps date here when form is filed.

1 Minor Requesting Court Order

Name: _____ Date of birth: _____

Gender *(Optional):* ☐ Male ☐ Female ☐ Nonbinary

Address: _____

City: _____ State: _____ Zip: _____

Telephone number: _____

2 Minor's Proposed Spouse or Domestic Partner

Name: _____ Date of birth: _____

Gender *(Optional):* ☐ Male ☐ Female ☐ Nonbinary

Address: _____

City: _____ State: _____ Zip: _____

Telephone 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:

3 Your Lawyer's Information *(if you have a lawyer):*

Name: _____ State Bar No.: _____

Firm Name: _____

Address: _____

Telephone number: _____ E-mail Address: _____

REVOKED January 1, 2027

4 Request

We request that the court grant us permission to ☐ marry ☐ establish a domestic partnership.

5 Minor's Age and Education

a. Is the person in 1 17 years of age? ☐ Yes ☐ No

b. Does the person in 1 have a high school diploma or a high school equivalency certificate? ☐ Yes ☐ No

c. Is the person in 2 a minor? ☐ Yes ☐ No Is the person in 2 17 years of age? ☐ Yes ☐ No

d. Does the person in 2 have a high school diploma or a high school equivalency certificate? ☐ Yes ☐ No

6 Written Consent

Unless the minor has no parent or guardian with the legal authority to consent (or capable of consenting), each person under 18 years of age must file with the request the written consent of a parent with legal authority or a legal guardian for the minor to marry or establish a domestic partnership. Form FL-912 may be used for this purpose.

Person in 1 *(Check all that apply and specify name of the parent with legal authority or legal guardian):*

a. ☐ Parent with legal authority ☐ Legal guardian *(specify name):* _____

b. ☐ Parent with legal authority ☐ Legal guardian *(specify name):* _____

c. ☐ Parent with legal authority ☐ Legal guardian *(specify name):* _____

d. ☐ I am a minor, but have no parent, parent capable of consenting, or legal guardian.

Person in 2 *(Check all that apply and specify name of the parent with legal authority or legal guardian):*

a. ☐ Parent with legal authority ☐ Legal guardian *(specify name):* _____

b. ☐ Parent with legal authority ☐ Legal guardian *(specify name):* _____

c. ☐ Parent with legal authority ☐ Legal guardian *(specify name):* _____

d. ☐ I am ☐ not a minor ☐ a minor, but have no parent, parent capable of consenting, or legal guardian.

Case Number:

7 **I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.**

Date: _____

▶ _____
Person in 1 signs here

Date: _____

▶ _____
Person in 2 signs here

When *you* file this request, the court must determine whether to grant permission for *you* to marry or establish a domestic partnership.

1. Unless *the minor* is 17 years of age and has achieved a high school diploma or high school equivalency certificate, the law requires that all of the following be completed *before* the court can make a decision in *your* case:

a. Family Court Services must:

(1) Interview *the parties* separately.

(2) Interview at least one of the parents or the guardians of each party who is a minor if the minor has a parent or guardian who has legal authority to consent to the minor's intended marriage or domestic partnership.

If the minor has more than one parent or guardian with legal authority, Family Court Services must interview them separately.

(3) Prepare a written report based on the information collected from the interviews and give it to the court.

b. The judge must:

(1) Review the report and recommendations written by Family Court Services;

(2) Interview each of the parties separately and privately; and

(3) Make an order on the request to marry or establish a domestic partnership.

2. Court order

The court will make an order on the *party's* request using *Order and Notices to Minor on Request to Marry or Establish a Domestic Partnership* (form FL-915). Important notices are included with the order. *You* may want to review the notices before *you* file the request.

3. Order for counseling

If the court considers it necessary, and the court determines that *the parties* can afford it, the law allows the judge to require *the parties* to participate in counseling before obtaining a marriage license or establishing a domestic partnership. As to this order:

a. The counseling must relate to the social, economic, and personal responsibilities incident to marriage or domestic partnership.

b. The court must consider, among other factors, the ability of the parties to pay for counseling before ordering the parties to attend counseling.

c. The court cannot order the parties to participate in counseling that is provided by religious organizations of any denomination.

d. The court may require the parties to pay a reasonable fee to cover the cost of any counseling provided by the county or the court.

4. Data collection

Gender: Parties are not required to specify their gender on form FL-910. If the parties volunteer this information, the court must include it in the order.

Age: The parties must specify their ages on form FL-910. By law, the court order must include this information in the order.

The judge does not use the age and gender information in form FL-910 to decide whether to grant the request.

The parties' ages are reported to the State Registrar or the Secretary of State to allow them to document and update each year the number of recorded marriages and domestic partnerships in which one or both of the parties were minors at the time the parties married or registered the domestic partnership.

REVOKED January 1, 2027

FL-912 Consent for Minor to Marry or Establish a Domestic Partnership

Clerk stamps date here when form is filed.

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 Minor Requesting Court Order

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone number: _____

2 Minor's Proposed Spouse or Domestic Partner

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone number: _____

3 Minor's Parent With Legal Authority or Legal Guardian

Name: _____

I am the *(check one):* ☐ parent with legal authority ☐ legal guardian

of the minor in *(check one):* ☐ 1 ☐ 2.

Address: _____

City: _____ State: _____ Zip: _____

Telephone number: _____

Use a separate form FL-912 for each parent with legal authority or legal guardian who is giving written consent to the minor's intended marriage or domestic partnership.

REVOKED January 1, 2027

4 Consent

a. I consent to my child's intended *(check one):* ☐ marriage ☐ domestic partnership.

b. I understand that Family Court Services may be required to interview me before the court makes an order in this case. I authorize Family Court Services to contact me using the information provided in 3.

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: _____

▶ _____

Person in 3 signs here

REVOKED January 1, 2027

FL-915 Order and Notices to Minor on Request to Marry or Establish a Domestic Partnership

Clerk stamps date here when form is filed.

1 Minor Requesting Court Order

Name: _____ Date of birth: _____

Gender: ☐ Male ☐ Female ☐ Nonbinary ☐ Not provided

Address: _____

City: _____ State: ____ Zip: _____

Telephone number: _____

2 Minor's Proposed Spouse or Domestic Partner

Name: _____ Date of birth: _____

Gender: ☐ Male ☐ Female ☐ Nonbinary ☐ Not provided

Address: _____

City: _____ State: ____ Zip: _____

Telephone 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:

3 Lawyer's Information *(If parties have a lawyer):*

Name: _____ State Bar No.: _____

Firm Name: _____

Address: _____

Telephone number: _____ E-Mail Address: _____

REVOKED January 1, 2027

4 Review. The court has considered:

a. The request of minor to ☐ marry ☐ establish a domestic partnership

b. ☐ The written consent from each minor's parent with legal authority or legal guardian.

c. ☐ The written report submitted to the court by Family Court Services.

d. ☐ The court's own separate and private interview of the parties.

4c and 4d do not apply if the minor is 17 years of age and has achieved a high school diploma or a high school equivalency certificate.

e. ☐ The ability of the parties to pay for counseling.

f. ☐ Other *(specify):* _____

5 Findings. The court makes the following findings:

a. There ☐ is ☐ is no evidence of force, threat, persuasion, fraud, coercion, or duress on the minor relating to the intended marriage or domestic partnership.

b. ☐ The minor in ☐ 1 ☐ 2 does not have a parent, a parent capable of consenting, or a legal guardian.

c. ☐ This couple ☐ has ☐ does not have the ability to pay for premarital or prepartnership counseling.

d. ☐ Other *(specify):* _____

6 ☐ Hearing Required

The court is considering whether it is in the best interest of the person or persons under 18 years of age to marry or establish a domestic partnership at this time. The matter is scheduled for a hearing on

Hearing Date è Date: _____ Time: _____ ☐ a.m. ☐ p.m.

Dept./Rm. or Address: _____

This is a Court Order.

Case Number:

7 The court makes the following orders:

a. ☐ This couple may get married if they meet all other requirements to get a marriage license.

b. ☐ This couple may establish a domestic partnership if they meet all other requirements to file a Declaration for Domestic Partnership with the Secretary of State.

c. ☐ After considering the ability of the couple to pay for counseling, the court orders that this couple must go to counseling to learn about the social, economic, and personal responsibilities of being in a marriage or domestic partnership.

☐ This couple must show a certificate of completion of counseling before permission is granted.

d. ☐ This couple may not get married or establish a domestic partnership at this time.

e. ☐ Other *(specify):*

8 ☐ **Other** *(specify):*

REVOKED

Date: _____

_____
Judicial Officer

January 1, 2027

What to do with this order.

1 File it with the court. This order must be filed with the clerk of the court where your case is filed.

2 Get certified copies. Make copies of the signed order and ask the clerk of the court where your case is filed to certify the copies.

3 Apply for the license to marry or register a domestic partnership.

For marriages, present a certified copy of the order to the county clerk at the time you apply for the marriage license. For domestic partnerships, present the certified copy of the order to the Secretary of State (with the Declaration of Domestic Partnership) at the time the domestic partnership is registered.

4 Keep copies. Keep copies of the order and other documents for your records.

Is there a waiting period before we can request a marriage license or file a declaration of domestic partnership?

YES	The parties MUST wait 30 days from the date the court made the order granting permission to marry or establish a domestic partnership before filing a marriage license or filing a declaration of domestic partnership.
NO	There is NO waiting period if a minor in the relationship is: 17 years of age and has a high school diploma or a high school equivalency certificate. OR 16 or 17 years of age and is pregnant or whose prospective spouse or domestic partner is pregnant.

This is a Court Order.

Notices to Minor

Case Number:

1 Where to get help

This notice gives you only basic information and is not legal advice. If you want legal advice, ask a lawyer for help. You may:

- Contact the family law facilitator or self-help center in your court for information, court forms, and referrals to local legal resources. For more information, see *courts.ca.gov/courtresources*.
- Find a lawyer through a certified lawyer referral service on the State Bar of California's website: *www.calbar.ca.gov/LRS* or by calling 866-442-2529 (toll-free).
- Hire a private mediator. For more information about court and private services, see *www.courts.ca.gov/selfhelp-adr.htm*.
- Find information on the California Courts Online Self-Help Center website: www.courts.ca.gov/selfhelp.
- Find free and low-cost legal help (if you qualify) at www.lawhelpcalifornia.org.
- Find information at your local law library or public library.

National Domestic Violence Hotline

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. Help is available in over 100 languages.

National Sexual Assault Hotline

Anyone affected by sexual assault, whether it happened to you or someone you care about, can find support by contacting the National Sexual Assault Hotline at:

1-800-656.HOPE (4673).

You can also visit rainn.org to receive online support by confidential online chat.

2 What it means to be an emancipated minor

If you are under the age of 18 years and have an order allowing you to marry or register a domestic partnership, you are considered to be an emancipated minor when you have entered into a valid marriage or domestic partnership.

When you are emancipated, you are no longer under the care and control of your parents or legal guardian. If you are a dependent or ward of the juvenile court, your legal status also changes when you are emancipated. This affects certain rights relating to you and your parents or legal guardians. For example:

- You give up the right to financial support from your parents or legal guardians.
- Your parents or legal guardians lose the right to control your finances, and they are no longer required to support you.

3 Rights of an emancipated minor

As specified in Family Code sections 7050 through 7052, as an emancipated minor you have the right to:

- Decide where you want to live;
- Enroll yourself in school;
- Apply for a work permit;
- Make or revoke a will;
- Keep the money you earn;
- Decide how to spend the money you earn;
- Enter into contracts, get a bank loan or credit card;
- File a lawsuit or be sued in your own name;
- Consent to your own medical, dental, and psychiatric care; and
- Buy, sell, lease, exchange, or transfer any interest you have in real estate or personal property.

REVOKED January 1, 2027

Case Number:

4 Other rights of an emancipated minor

With respect to shares of stock in a domestic or foreign corporation, a membership in a nonprofit corporation, or other property held by an emancipated minor, you may do all of the following:

- Vote in person, and give proxies to exercise any voting rights, with respect to the shares, membership, or property;
- Waive notice of any meeting or give consent to the holding of any meeting; and
- Authorize, ratify, approve, and affirm any action that could be taken by shareholders, members, or property owners.

5 Limits on the rights of an emancipated minor

Even if you have been declared an emancipated minor:

- You must still attend school as required by law.
- If you are charged with a crime, your case will be in the Juvenile Court.
- Labor laws relating to minors still apply to you and prevent you from performing dangerous kinds of work.
- You must still meet the age requirements in California for obtaining a driver's license.
- You cannot consent to sexual intercourse with anyone who is not your legal spouse or domestic partner. This means that any other adult who has sex with an emancipated minor can still be prosecuted for unlawful sexual intercourse with a minor.

6 Alternatives to emancipation

As an alternative to emancipation, you can consider:

- Family counseling to help improve your relationship with your parents while living with them.
- Obtaining an order to make someone you trust your legal guardian until you become 18 years old.
- Getting help from public or private agencies in your area.
- Making an informal agreement with your parents that allows you to live with someone else. Note: The law allows the caregiver to enroll you in school and obtain basic medical care for you by completing a Caregiver's Authorization Affidavit, even if the caregiver does not have a court order for child custody. The affidavit can be found online at *http://www.courts.ca.gov/documents/caregiver.pdf*

7 Rights of *un*emancipated minors

A minor who is 12 years or older may file for a domestic violence restraining order in the minor's own name.

A minor may consent to the matters provided in Family Code sections 6920 to 6930, subject to certain limitations, and the consent of the minor's parent or legal guardian is not necessary. For example:

Mental health treatment, outpatient counseling, emergency residential shelter service

A minor who is 12 years of age or older may consent to mental health treatment or counseling on an outpatient basis, or to residential shelter services or other supportive services on a temporary or emergency basis. Both of the following requirements must be satisfied:

(1) The minor, in the opinion of the attending professional person, is mature enough to participate intelligently in the outpatient services or residential shelter services.

(2) The minor (A) would present a danger of physical or mental harm to self or to others without the mental health treatment or counseling or residential shelter services, or (B) is the alleged victim of incest or child abuse.

Other rights

(1) A minor who is 12 years of age or older may consent to medical care and counseling relating to the diagnosis and treatment of a drug- or alcohol-related problem, prevention of a sexually transmitted disease, or prevention or treatment of pregnancy.

(2) A minor may make a contract in the same manner as an adult. However, the contract can be disaffirmed if the law so permits.

(3) Minors may never (A) give a delegation of power (B) contract relating to real property, or (C) contract relating to personal property not within the minor's immediate possession or control.

REVOKED January 1, 2027

Case Number:

8 Annulments: void marriage or domestic partnership

The law describes circumstances in which a marriage or domestic partnership is void (not legally valid) from the very beginning.

Bigamous relationship: One or both people are already married to (or in a registered domestic partnership with) someone else. For more information, see Family Code section 2201.

Incestuous relationship: This is a marriage or partnership between two people who are close blood relatives. See Family Code section 2200.

9 Annulments: voidable marriage or domestic partnership

Family Code section 2210 describes circumstances in which a marriage or domestic partnership can be declared invalid (or voidable). The following must have taken place at the time the parties married or registered the domestic partnership:

Under age: The person filing for annulment was under 18 years old.

Unsound mind: Either party was unable to understand the nature of the marriage or domestic partnership, including the obligations that come with it.

Fraud: Either party decided to marry or register the domestic partnership as a result of fraud. The party was deceived about something vital to the relationship that directly affected the decision to marry or become a domestic partner. Some examples are hiding the inability to have children or just wanting to get a green card.

Force: Either party was forced to consent.

Physical incapacity: One of the parties was physically incapable of "consummating" the relationship (having sexual intercourse) and the incapacity appears to be "incurable."

Prior existing marriage or domestic partnership: The marriage or domestic partnership took place after the former spouse or domestic partner was absent for five years and not known to be living, or was thought to be dead.

Note: See Family Code section 2211 for the time limits for filing to nullify a voidable legal relationship.

10 How to annul a marriage or domestic partnership

There are a number of forms and steps to complete when filing for annulment. For information and procedures for filing and responding to an annulment case that is filed in family court, you can:

- Visit the California Courts Online Self-Help Center at *www.courts.ca.gov/1037.htm#legal.*
- Talk to a lawyer. For help finding a lawyer, go to *www.courts.ca.gov/selfhelp-findlawyer.htm.*
- Visit your local court's self-help center at *www.courts.ca.gov/selfhelp-selfhelpcenters.htm.*

11 How to end a marriage, domestic partnership, or both

Dissolution (Divorce): A divorce judgment ends your marriage or domestic partnership, or both. You will be legally a single person again. In a divorce case you can ask the judge to make orders about parenting issues, child support, spousal or partner support, and dividing property and debts.

Legal Separation: A legal separation does not end a marriage or domestic partnership. A couple may decide to file for legal separation instead of a divorce for religious reasons, financial reasons, or because they just want to live apart and have court orders about money, property, and parenting issues.

For information about divorce and legal separation, including the procedures for filing in family court go to www.courts.ca.gov/selfhelp-divorce.htm.

Read *Legal Steps for a Divorce or Legal Separation* (form FL-107-INFO). This form can be found online at *www.courts.ca.gov/documents/fl107info.pdf.*

Summary Dissolution: This type of action is available for couples who have been married or domestic partners for less than five years, do not have children together, do not seek an order for support, do not own real estate or land, and have limited debts and property. For more information, go to:

http://www.courts.ca.gov/1241.htm;

http://www.courts.ca.gov/1242.htm; and

http://www.courts.ca.gov/16430.htm.

REVOKED January 1, 2027

Rules Committee Action Request Form

Item number: 04

Rules Committee Meeting Date: November 10, 2026

Action requested: Recommend JC approval (without public comment)

Title of proposal: Probate Conservatorship and Guardianship: Accounting Waiver Form

Proposed rules, forms, standards, or jury instructions (include amend/revise/adopt/approve/etc.)**:**
Revise form GC-410

Advisory committee or other entity submitting the proposal:
Probate and Mental Health Advisory Committee

Staff contact (name, phone, and email)**:**
Corby Sturges, 415-865-4507, corby.sturges@jud.ca.gov

Annual agenda approved by Rules Committee on: October 22, 2026
Project description from annual agenda: Develop rule and form changes as necessary to make corrections and adjustments meeting the criteria in rule 10.22(d)(2): "a nonsubstantive technical change or correction or a minor substantive change that is unlikely to create controversy…." These include revisions to forms containing dollar amounts that the Judicial Council is mandated to adjust on a regular basis based on statutory criteria and updates to form numbers in current forms to reflect recent additions or updates.

Implementation Date and Circulation Notes: (If requesting an effective date other than January 1 or a special invitation-to-comment cycle, please explain.) This proposal was not circulated for public comment because it recommends a noncontroversial minor substantive change and is therefore within the Judicial Council's purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).)

Additional Information for Rules Committee: (To facilitate Rules Committee's review of your proposal, please include any other relevant information.)

Information for JC staff (Complete the following for proposals recommending forms.)

- **Form Translations** (check all that apply)
  Proposal includes forms that: ☐ staff requests be translated, ☐ are required by statute to be translated.
  Provide citations to code that mandates translation:
- **Website Content** (check all that apply)
  ☐ New or revised form descriptions are needed for the California Courts website. (If checked, form descriptions should be approved by a supervisor after council approval.)
  ☐ Changes or additions to self-help guide website are needed.

(Revised 2026)

Judicial Council of California

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courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

Item No.:

For business meeting on December 11, 2026

Probate Conservatorship and Guardianship: Accounting Waiver Form (DRAFT)

Judicial Council Report Details

Rules, Forms, Standards, or Statutes Affected
Revise form GC-410

Recommended by
Probate and Mental Health Advisory Committee
Hon. Aaron W. Heisler, Chair

Report Type
Action Required

Effective Date
January 1, 2027

Date of Report
October 27, 2026

Contact
Corby Sturges, 415-865-4507
corby.sturges@jud.ca.gov

Executive Summary

In response to legislation that increased the maximum total net value and monthly income of a conservatorship or guardianship estate for that estate to qualify for a waiver of an otherwise required accounting, the Probate and Mental Health Advisory Committee recommends revising one form to replace the superseded dollar amounts with the new, higher amounts. The recommendation also includes minor stylistic and technical changes and other improvements.

Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective January 1, 2027, revise *Request and Order for Waiver of Accounting* (form GC-410) to update the dollar amounts of the maximum total net value and monthly income of an estate managed by a conservator or guardian to conform to the law and make minor stylistic and technical changes and other improvements.

The proposed revised form is attached at pages 4–5.

Relevant Previous Council Action

The Judicial Council approved form GC-410 for optional use in probate conservatorship and guardianship proceedings effective January 1, 2020, to prompt a petitioner for an accounting waiver to provide information sufficient for the court to determine whether the estate qualifies.[1]

Analysis/Rationale

Probate Code section 2628(a) authorizes the court to waive accountings otherwise required by statute if at the beginning and the end of the accounting period both the total net value of the estate property, excluding the conservatee's or ward's personal residence, and the monthly estate income fall below specific maximum dollar amounts. Effective January 1, 2027, Assembly Bill 2090 (Stats. 2026, ch. 72) amends Probate Code section 2628(a) to increase these amounts from $15,000 to $30,000 and $2,000 to $3,200, respectively. Consistent with current law, form GC-410 uses the lower amounts. The committee recommends revising the form to replace the lower amounts with the new, higher amounts on the same date the amended law takes effect.

Policy implications

The recommended form revisions will ensure that the form correctly reflects the law. The recommendation therefore promotes Modernization of Management and Administration (Goal III of *The Strategic Plan for California's Judicial Branch*) and Quality of Justice and Service to the Public (Goal IV).

Comments

Comments were not solicited for this recommendation because it is a minor substantive change unlikely to generate controversy, and the Rules Committee may therefore recommend that the Judicial Council approve it without public comment. (Cal. Rules of Court, rule 10.22(d)(2).)

Alternatives considered

The committee did not consider making no change to the form, as the current form will be incorrect when the new law takes effect on January 1, 2027. The committee considered recommending more extensive revisions to the form but determined that no further revisions were warranted at this time.

Fiscal and Operational Impacts

The courts, other entities, or Judicial Council staff do not need to take any significant action to implement the recommendation. The recommendation has no effect on court operations and imposes no court costs other than the cost of replacing the old form with the revised form.

[1] Judicial Council of Cal., Advisory Com. Rep., *Probate Conservatorship and Guardianship: Accounting* (Sept. 6, 2019).

Attachments and Links

1. Form GC-410, at pages 4–5
2. Link A: Assem. Bill 2090

DRAFT - NOT APPROVED BY THE JUDICIAL COUNCIL

GC-410

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	FOR COURT USE ONLY
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
EMAIL ADDRESS:		
ATTORNEY FOR (*name*):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF *(name):*		CASE NUMBER:
REQUEST AND ORDER FOR WAIVER OF ACCOUNTING		HEARING DATE AND TIME: DEPT.:

1. I, *(name):*
   conservator or guardian of the estate ☐ and the person of *(name):*
   request that the court make an order waiving the accounting otherwise due on *(date):*
   covering the period from *(date):* to *(date):* .

2. The conservatee or ward named in item 1 is now living at *(residence address):*

   ☐ This address is the conservatee's or ward's personal residence.

3. ☐ An inventory and appraisal of the estate was filed with the court on *(date):* .

4. At both the beginning and the end of the period covered by this request, the estate had a total net value of less than $30,000, excluding the value of the personal residence described in item 5b.
   (Initial here to verify this statement):

5. The estate of the conservatee or ward contains the following property *(check all that apply):*
   a. ☐ Cash or bank accounts in the amount of: $
   b. ☐ A personal residence. If not the residence listed in item 2, the personal residence is located at *(street address):*

      A verified copy of each of the following documents that applies to the residence is included as Attachment 5b:
      (1) ☐ A true copy of the most recent residential property tax bill;
      (2) ☐ A true copy of the declarations page from the current homeowner's insurance policy covering the residence;
      (3) ☐ A true copy of the most recent statement for any mortgage or loan secured by the residence; and
      (4) ☐ A true copy of the most recent fee or dues statement for any homeowners' association or similar association.
   c. ☐ Other real or personal property valued at: $ *(describe the estate property here):*

      ☐ Additional property is described on Attachment 5c.

6. The estate's income for each month of the period covered by this request, excluding public benefits, was less than $3,200.
   (Initial here to verify this statement): ____

☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF *(name):*	CASE NUMBER:

7. During the period covered by this request, all the estate's income, if any, was used for the benefit of the conservatee or ward. *(Initial here to verify this statement):* ____

8. The estate receives the following income each month *(list each source and amount, then give total amount):*

Source of income (e.g., pension, trust, social security)	Amount
	$
	$
	$
	$
	$

☐ Additional sources and amounts of income are provided on Attachment 8.

TOTAL (including all amounts from Attachment 8): $

9. Neither the sources nor the amounts of the estate's income are expected to change in the foreseeable future, except for automatic cost-of-living adjustments.

10. This request covers estate activity during the period shown in item 1, which begins with (1) the end of the period covered by the last accounting filed with and approved by the court or (2) the date the court last made an order excusing an accounting under Probate Code section 2628, whichever is later, and ends on the date of the fiduciary's signature, below.

Date:

Type or Print Name

▶ Signature of Attorney

Each fiduciary must sign here and initial items 4, 6, and 7.

I declare under penalty of perjury under the laws of the State of California that the information provided on this form and on any attachment is true and correct.

Date:

Type or Print Name

▶ Signature of Fiduciary

Date:

Type or Print Name

▶ Signature of Fiduciary

ORDER

The request for an order waiving the accounting for the period stated in item 1 is ☐ granted ☐ denied.

This order does not waive or excuse the requirement to file a final accounting in this matter.

Date:

Judicial Officer

Rules Committee Action Request Form

Item number: 05

Rules Committee Meeting Date: November 10, 2026

Action requested: Recommend JC approval (without public comment)

Title of proposal: Civil Practice and Procedure: Form Revisions to Implement AB 2781

Proposed rules, forms, standards, or jury instructions (include amend/revise/adopt/approve/etc.)**:**
Revise forms ADR-103, ADR-104, ADR-106, CIV-170, PLD-C-001, and PLD-PI-001

Advisory committee or other entity submitting the proposal:
Civil and Small Claims Advisory Committee

Staff contact (name, phone, and email)**:**
Jenny Grantz, 415-865-4394, jenny.grantz@jud.ca.gov

Annual agenda approved by Rules Committee on: October 22, 2026
Project description from annual agenda: 2. Review Enacted Legislation

Review all enacted legislation referred to the committee by the Judicial Council's Governmental Affairs office that may have an impact on issues within the advisory committee's purview and, where appropriate, propose to the council rules and forms to implement the legislation or to bring rules and forms into conformity with it.

4. Miscellaneous Technical Changes

Develop rule and form changes as necessary to make corrections and adjustments meeting the criteria of rule 10.22(d)(2): "a nonsubstantive technical change or correction or a minor substantive change that is unlikely to create controversy." These changes include revisions to forms that contain dollar figures based on statutory criteria that the Judicial Council is mandated to adjust on a regular basis.

Implementation Date and Circulation Notes: (If requesting an effective date other than January 1 or a special invitation-to-comment cycle, please explain.)

Additional Information for Rules Committee: (To facilitate Rules Committee's review of your proposal, please include any other relevant information.) The recommended form revisions implement Assembly Bill 2781 (Stats. 2026, ch. 98), which was enacted on July 16, 2026. AB 2781 amends statutes governing filing fees in civil cases effective January 1, 2027. Staff recommend revising the forms without circulation for comment because the revisions are minor substantive changes that are unlikely to create controversy and the forms will be inaccurate on January 1 unless revised.

Information for JC staff (Complete the following for proposals recommending forms.)

- **Form Translations** (check all that apply)
  Proposal includes forms that: ☐ staff requests be translated, ☐ are required by statute to be translated.
  Provide citations to code that mandates translation:
- **Website Content** (check all that apply)
  ☐ New or revised form descriptions are needed for the California Courts website. (If checked, form descriptions should be approved by a supervisor after council approval.)
  ☐ Changes or additions to self-help guide website are needed.

Judicial Council of California

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 26-174

For business meeting on December 11, 2026

Civil Practice and Procedure: Form Revisions to Implement AB 2781 (DRAFT)

Judicial Council Report Details

Rules, Forms, Standards, or Statutes Affected
Revise forms ADR-103, ADR-104, ADR-106, CIV-170, PLD-C-001, and PLD-PI-001

Recommended by
Judicial Council staff
Michael Etchepare, General Counsel
Legal Services

Report Type
Action Required

Effective Date
January 1, 2027

Date of Report
November 2, 2026

Contact
Jenny Grantz, 415-865-4394
jenny.grantz@jud.ca.gov

Executive Summary

Judicial Council staff recommend revising six forms to implement Assembly Bill 2781 (Stats. 2026, ch. 98). Government Code section 70613 requires the first page of the first paper filed in a civil case to state whether the amount demanded exceeds the dollar amount specified in the statute. AB 2781 amends section 70613 to increase that dollar amount.

Recommendation

Judicial Council staff recommend that the Judicial Council, effective January 1, 2027, revise the following six forms to reflect amendments made by Assembly Bill 2781 to the dollar amount in Government Code section 70613:

1. *Petition to Confirm, Correct, or Vacate Attorney-Client Fee Arbitration Award* (form ADR-103);

2. *Rejection of Award and Request for Trial After Attorney-Client Fee Arbitration* (form ADR-104);

3. *Petition to Confirm, Correct, or Vacate Contractual Arbitration Award* (form ADR-106);

4. *Petition and Declaration Regarding Unresolved Claims and Deposit of Undistributed Surplus Proceeds of Trustee's Sale* (form CIV-170);

5. *Complaint—Contract* (form PLD-C-001); and

6. *Complaint—Personal Injury, Property Damage, Wrongful Death* (form PLD-PI-001).

The proposed revised forms are attached at pages 4–19.

Relevant Previous Council Action

The Judicial Council last revised the forms in this proposal effective January 1, 2024, to implement Senate Bill 71 (Stats. 2023, ch. 861), which increased the jurisdictional limit for small claims and limited civil cases.[1]

Analysis/Rationale

Government Code section 70613 sets the uniform filing fee for the first paper in limited civil cases. The amount of the fee depends on whether the amount demanded exceeds a specific dollar amount. Currently, section 70613(b) requires the first page of the first paper filed in a civil case to "state whether the amount demanded exceeds or does not exceed $10,000."

Effective January 1, 2027, Assembly Bill 2781 (Stats. 2026, ch. 98) increases this dollar amount from $10,000 to $12,500. (See Link A.) Judicial Council staff therefore recommend revising the relevant checkboxes in the first-page header on the forms in this proposal to state that the amount demanded either "does not exceed $12,500" or "exceeds $12,500."[2]

Policy implications

The recommended form revisions implement statutory amendments regarding mandatory content on the first page of the first paper filed in a civil case. The form revisions are therefore consistent with *The Strategic Plan for California's Judicial Branch*, specifically the goals of Modernization of Management and Administration (Goal III) and Quality of Justice and Service to the Public (Goal IV).

[1] Judicial Council of Cal., Advisory Com. Rep., *Civil Practice and Procedure: Form Revisions to Implement Senate Bill 71* (Dec. 7, 2023).

[2] To increase clarity and usability, on forms ADR-103 and ADR-106 staff also recommend changing the location of several checkboxes used to indicate that additional information is provided on an attachment.

Comments

Public comments were not solicited for this proposal because the Rules Committee determined that the recommendations are within the Judicial Council's purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).)

Alternatives considered

Judicial Council staff did not consider the alternative of taking no action because without the recommended revisions, the six forms in this proposal would not reflect current law as of January 1, 2027.

Fiscal and Operational Impacts

This proposal may require courts to train court staff and judicial officers on the revised forms. Court procedures and case management systems will also need to be updated. Because the revisions reflect changes in statute, these operational impacts cannot be avoided.

Attachments and Links

1. Forms ADR-103, ADR-104, ADR-106, CIV-170, PLC-C-001, and PLD-PI-001, at pages 4–19
2. Link A: Assembly Bill 2781 (Stats. 2026, ch. 98)

ADR-103

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	*FOR COURT USE ONLY*
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
EMAIL ADDRESS:		
ATTORNEY FOR *(name):*		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
PETITIONER:		
RESPONDENT:		
PETITION TO ☐ CONFIRM ☐ CORRECT ☐ VACATE ATTORNEY-CLIENT FEE ARBITRATION AWARD		
Jurisdiction *(check all that apply):*		CASE NUMBER:
☐ Action is a **limited civil case** (does not exceed $35,000) Amount demanded ☐ does not exceed $12,500 ☐ exceeds $12,500		
☐ Action is an **unlimited civil case** (exceeds $35,000)		

Notice: Please read Alternative Dispute Resolution form ADR-105, *Information Regarding Rights After Attorney-Client Fee Arbitration*, promptly and before completing this form. There are short deadlines for requesting court relief after an attorney-client fee arbitration award. Do not use this form to reject a nonbinding attorney-client fee arbitration award and request a trial; use form ADR-104 instead.

1. **Petitioner and respondent.** Petitioner *(name each):*

   alleges and requests relief against respondent *(name each):*

2. **Attorney-client fee dispute arbitration.** This petition is being filed after an attorney-client fee arbitration conducted under Business and Professions Code sections 6200–6206. Petitioner was
   a. ☐ the attorney involved in the fee dispute.
   b. ☐ the client involved in the fee dispute.
3. **Pending or new action.**
   a. ☐ A court case is already pending, and this is a petition filed in that action. *(If so, proceed to item 4.)*
   b. ☐ This petition commences a new action. *(If so, complete items 3b(1) through 3b(4).)*
      (1) **Petitioner's capacity.** Each petitioner named in item 1 is an individual,
         ☐ except petitioner *(state name and complete one or more of the following):*
         (a) ☐ is a corporation qualified to do business in California.
         (b) ☐ is an unincorporated entity (*specify):*
         (c) ☐ is a representative *(specify):*
         (d) ☐ is *(specify other capacity):*
      (2) **Respondent's capacity.** Each respondent named in item 1 is an individual,
         ☐ except respondent *(state name and complete one or more of the following):*
         (a) ☐ is a business organization, form unknown.
         (b) ☐ is a corporation.
         (c) ☐ is an unincorporated entity *(specify):*
         (d) ☐ is a representative *(specify):*
         (e) ☐ is *(specify other capacity):*

PETITIONER: RESPONDENT:	CASE NUMBER:

3. b. (3) **Amount or property in dispute.** This petition involves a dispute over *(check and complete all that apply):*
   (a) ☐ the following amount of money *(specify amount):* $
   (b) ☐ property *(if the dispute involves property, complete both of the following)*
      (i) consisting of *(identify property in dispute):*
      (ii) having a value of *(specify value of property in dispute):* $
   (4) **Venue.** This court is the proper court because *(complete (a) or (b)):*
      (a) ☐ this is the court in the county in which the arbitration was held.
      (b) ☐ the arbitration was not held exclusively in any county of California, **and**
         (i) ☐ this is the court in the county where the agreement was made.
         (ii) ☐ this is the court in the county where the agreement is to be performed.
         (iii) ☐ the agreement does not specify a county where it is to be performed and was not made in any county in California, and the following party resides or has a place of business in this county *(name of party):*
         (iv) ☐ the agreement does not specify a county where it is to be performed and was not made in any county in California, and no party to this action resides or has a place of business in California.

4. **Arbitrator.** The following person was duly selected or appointed as arbitrator *(name of each arbitrator):*

5. **Arbitration hearing.** The arbitration hearing was conducted as follows *(complete both of the following):*
   a. **Date** *(each date of arbitration):*
   b. **Location** *(city and state where arbitration was conducted):*

6. **Arbitration award.**
   a. **Date of award.** The arbitration award was made on *(date):*
   b. **Terms of award.** The arbitration award *(complete one or more of the following):*
      (1) ☐ requires ☐ the attorney ☐ the client to pay the other party this amount: $
      (2) ☐ requires neither the attorney nor the client to pay the other anything.
      (3) ☐ provides *(specify other terms or check item 6(c) and attach a copy of the award):*

   c. ☐ **Attachment of Award.** A copy of the award is submitted as Attachment 6(c).

7. **Notice of award.** The notice of the arbitration award indicates that it was mailed to petitioner on *(date):*

8. **Binding award.** The arbitration award is binding because *(check all that apply):*
   a. ☐ after the fee dispute arose, the parties agreed in writing that the arbitration award would be binding.
   b. ☐ more than 30 days have passed since notice of the award was mailed, and no party has filed a rejection of the award and request for trial.

9. ☐ **Willful nonappearance.** Thirty days have not passed since notice of the award was mailed; however, respondent willfully failed to appear at the arbitration hearing. The award ☐ does ☐ does not refer to respondent's nonappearance.

10. **Petitioner requests that the court** *(check all that apply):*
   a. ☐ **confirm the award and enter judgment according to it.**
   b. ☐ **correct the award and enter judgment according to the corrected award, as follows:**
      (1) The award should be corrected because *(check all that apply):*
         (a) ☐ the amount of the award was not calculated correctly, or a person, thing, or property was not described correctly.
         (b) ☐ the arbitrator exceeded his or her authority.
         (c) ☐ the award is imperfect as a matter of form.

PETITIONER: RESPONDENT:	CASE NUMBER:

10. b. (2) The facts supporting the grounds for correcting the award alleged in item 10b(1) are as follows:

☐ *Check here if additional space is required and submit facts on an attachment labeled 10b(2).*

(3) The award should be corrected as follows:

☐ *Check here if additional space is required and describe the requested correction on an attachment labeled 10b(3).*

c. ☐ **Vacate (cancel) the award.**

(1) The award should be vacated because *(check all that apply):*

(a) ☐ the award was obtained by corruption, fraud, or other unfair means.

(b) ☐ an arbitrator was corrupt.

(c) ☐ the misconduct of a neutral arbitrator substantially prejudiced petitioner's rights.

(d) ☐ the arbitrator exceeded his or her authority, and the award cannot be fairly corrected.

(e) ☐ the arbitrator unfairly refused to postpone the hearing or to hear evidence useful to settle the dispute.

(f) ☐ an arbitrator failed to disclose within the time for disclosure a ground for disqualification of which the arbitrator was then aware.

(g) ☐ an arbitrator should have disqualified himself or herself after petitioner made a demand to do so.

(2) The facts supporting the grounds for vacating the award alleged in item 10c(1) are as follows:

☐ *Check here if additional space is required and submit facts on an attachment labeled 10c(2).*

(3) Petitioner ☐ does ☐ does not request a new arbitration hearing.

d. ☐ **Award petitioner interest** from *(date):*

(1) ☐ at the statutory rate.

(2) ☐ at the rate of _____% per year.

e. ☐ **Award petitioner costs of suit**

(1) ☐ in the amount of: $

(2) ☐ according to proof.

f. ☐ **Award petitioner attorney fees incurred in this action** *(attorney fees incurred in preparation for or in the course of the fee arbitration proceeding are not recoverable)*

(1) ☐ in the amount of: $

(2) ☐ according to proof.

g. ☐ **Award petitioner the following other relief** *(describe relief requested):*

☐ *Check here if additional space is required and describe relief on an attachment labeled 10g.*

11. **Pages and attachments.** Number of pages attached: _____

Date: _____

_____ ▶ _____

Type or Print Name | Signature of Petitioner or Attorney

ADR-104

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR *(name):*	***FOR COURT USE ONLY***
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT:	
REJECTION OF AWARD AND REQUEST FOR TRIAL AFTER ATTORNEY-CLIENT FEE ARBITRATION	
Jurisdiction *(check all that apply):* ☐ Action is a **limited civil case** (does not exceed $35,000) Amount demanded ☐ does not exceed $12,500 ☐ exceeds $12,500 ☐ Action is an **unlimited civil case** (exceeds $35,000)	CASE NUMBER:

Notice: Please read Alternative Dispute Resolution form ADR-105, *Information Regarding Rights After Attorney-Client Fee Arbitration*, promptly and before completing this form. There are short deadlines for requesting court relief after an attorney-client fee arbitration award. Do not use this form to confirm, correct, or vacate an attorney-client fee arbitration award; use form ADR-103 instead.

1. **Petitioner and respondent.** Petitioner *(name each):*

   alleges and requests relief against respondent *(name each):*

2. **Attorney-client fee dispute arbitration.** This *Rejection of Award and Request for Trial* concerns an arbitration to determine disputed attorney fees that was conducted under Business and Professions Code sections 6200–6206. Petitioner was
   a. ☐ the attorney involved in the fee dispute.
   b. ☐ the client involved in the fee dispute.

3. Pending or new action.
   a. ☐ **Pending action.** A court case concerning the attorney-client fee dispute involved in the arbitration is already pending, and this *Rejection of Award and Request for Trial* is being filed in that action.
   b. ☐ **New action.** This *Rejection of Award and Request for Trial* is being filed with a complaint commencing a new action. *(A request for trial must be filed in a pending case or with a complaint commencing a new action.)*

PETITIONER: RESPONDENT:	CASE NUMBER:

4. **Arbitration hearing.** The arbitration hearing was conducted as follows *(complete each of the following):*
   a. **Date** *(each date of arbitration):*
   b. **Location** *(city and state where arbitration was conducted):*
   c. **Appearances at the arbitration.** The arbitration hearing was conducted as follows *(check one of the following):*
      (1) ☐ Petitioner appeared at the arbitration hearing in person or by counsel.
      (2) ☐ Petitioner did not appear at the arbitration hearing. Petitioner's failure to appear was not willful because *(explain reasons for not appearing):*

5. **Arbitration award.**
   a. **Date of award.** The arbitration award was made on *(date):*
   b. **Amount of award.** The arbitration award *(complete one of the following):*
      (1) ☐ requires ☐ the attorney ☐ the client to pay the other party this amount: $
      (2) ☐ requires neither the attorney nor the client to pay the other anything.
   c. ☐ F**ailure to appear.** The arbitrator found that the following party willfully failed to appear at the arbitration hearing:
      (1) ☐ Petitioner *(name each)*:
      (2) ☐ Respondent *(name each)*:
   d. ☐ **Other provisions of award.** The award also provides *(specify other terms or complete item 5e and attach a copy of the award):*
   e. ☐ **Attachment of award.** A copy of the arbitration award is submitted as Attachment 5(e).

6. **Notice of award.** This *Rejection of Award and Request for Trial* is being filed within 30 days after notice of the award was mailed to petitioner. *(A trial after arbitration is available only if it is requested within 30 days after the notice of award was mailed to the party requesting the trial.)*
   a. The notice of the award indicates that it was mailed to petitioner on *(date):*
   b. ☐ Petitioner alleges that the award was actually mailed on *(date):*

7. **Nonbinding arbitration.** The parties did not agree in writing, at any time after the dispute over attorney fees or costs arose, to be bound by the arbitration award. *(A trial after arbitration is not available if the parties agreed in writing after the dispute arose that the award would be binding.)*

8. **Rejection of award and request for trial.** Petitioner rejects the arbitration award and requests a trial ("hearing de novo") in court to resolve the dispute over attorney fees and costs.

9. Amount in dispute. The amount of attorney fees and costs in dispute is (amount): $

10. **Pages and attachments.** Number of pages attached: _____

Date:

_____ ▶ _____
Type or Print Name | Signature of Petitioner or Attorney

ADR-106

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	*FOR COURT USE ONLY*
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
EMAIL ADDRESS:		
ATTORNEY FOR *(name):*		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
PETITIONER:		
RESPONDENT:		
PETITION TO ☐ CONFIRM ☐ CORRECT ☐ VACATE CONTRACTUAL ARBITRATION AWARD		
Jurisdiction *(check all that apply):*		CASE NUMBER:
☐ **Action is a limited civil case** (does not exceed $35,000)		
Amount demanded ☐ does not exceed $12,500		
☐ exceeds $12,500		
☐ **Action is an unlimited civil case** (exceeds $35,000)		

Notice: You may use this form to request that the court confirm, correct, or vacate an award in an arbitration conducted pursuant to an agreement between the parties that is subject to Code of Civil Procedure section 1285 et seq. and that does not involve an attorney-client fee dispute. If you are requesting court action after an attorney-client fee arbitration award, please read form ADR-105 (*Information Regarding Rights After Attorney-Client Fee Arbitration*).

1. **Petitioner and respondent.** Petitioner *(name each):*

   alleges and requests relief against respondent *(name each):*

2. **Contractual arbitration.** This petition requests the court to confirm, correct, or vacate an award in an arbitration conducted according to an agreement between the parties that is subject to Code of Civil Procedure section 1285 et seq.

3. Pending or new action.
   a. ☐ A court case is already pending, and this is a petition filed in that action. *(If so, proceed to item 4.)*
   b. ☐ This petition commences a new action. *(If so, complete items 3b(1) through 3b(4).)*
      (1) **Petitioner's capacity.** Each petitioner named in item 1 is an individual,
         ☐ except petitioner *(state name and complete one or more of the following):*
         (a) ☐ is a corporation qualified to do business in California.
         (b) ☐ is an unincorporated entity *(specify):*
         (c) ☐ is a representative *(specify):*
         (d) ☐ is *(specify other capacity):*
      (2) **Respondent's capacity.** Each respondent named in item 1 is an individual,
         ☐ except respondent *(state name and complete one or more of the following):*
         (a) ☐ is a business organization, form unknown.
         (b) ☐ is a corporation.
         (c) ☐ is an unincorporated entity *(specify):*
         (d) ☐ is a representative *(specify):*
         (e) ☐ is *(specify other capacity):*

PETITIONER: RESPONDENT:	CASE NUMBER:

3. b. (3) **Amount or property in dispute.** This petition involves a dispute over *(check and complete all that apply):*
   (a) ☐ the following amount of money *(specify amount):* $
   (b) ☐ property *(if the dispute involves property, complete both of the following)*
   (i) consisting of *(identify property in dispute):*
   (ii) having a value of *(specify value of property in dispute):* $
   (4) ☐ **Venue.** This court is the proper court because *(check (a) or (b)):*
   (a) ☐ this is the court in the county in which the arbitration was held.
   (b) ☐ the arbitration was not held exclusively in any county of California, or was held outside of California, **and** *(check one or more of the following)*:
   (i) ☐ this is the court in the county where the agreement was made.
   (ii) ☐ this is the court in the county where the agreement is to be performed.
   (iii) ☐ the agreement does not specify a county where it is to be performed and was not made in any county in California, and the following party resides or has a place of business in this county *(name of party):*
   (iv) ☐ the agreement does not specify a county where it is to be performed and was not made in any county in California, and no party to this action resides or has a place of business in California.

4. **Agreement to arbitrate.**
   a. **Date**. Petitioner and respondent entered into a written agreement on or about *(date):*
   b. ☐ **Attachment.** A copy of the agreement is submitted as Attachment 4(b) and incorporated herein by this reference.
   c. **Arbitration provision.** Paragraph _____ of the agreement provides for arbitration of disputes arising out of the agreement as follows *(either copy the arbitration provision in full or summarize the provision):*

5. **Dispute subject to arbitration.** A dispute arose between petitioner and respondent concerning the following matter covered by the agreement to arbitrate *(summarize the dispute):*

6. **Arbitrator.** The following person was duly selected or appointed as arbitrator *(name of each arbitrator):*

7. **Arbitration hearing.** The arbitration hearing was conducted as follows *(complete both of the following)*:
   a. **Date** *(each date of arbitration):*
   b. **Location** *(city and state where arbitration was conducted)*:

8. **Arbitration award.**
   a. **Date of award.** The arbitration award was made on *(date):*
   b. **Terms of award.** The arbitration award *(check one or more of the following):*
   (1) ☐ requires ☐ petitioner ☐ respondent to pay the other party this amount: $
   (2) ☐ requires neither party to pay the other anything.
   (3) ☐ is different as to different petitioners and respondents.
   (4) ☐ provides *(specify other terms or check item 8(c) and attach a copy of the award):*
   c. ☐ **Attachment of Award.** A copy of the award is submitted as Attachment 8(c).

9. **Service of award.**
   a. The signed award or an accompanying document indicates that the award was served on petitioner on *(date):*
   b. ☐ Petitioner alleges that a signed copy of the award was actually served on *(date)*:

PETITIONER: RESPONDENT:	CASE NUMBER:

10. **Petitioner requests that the court** *(check all that apply):*

a. ☐ **confirm the award, and enter judgment according to it.**

b. ☐ **correct the award and enter judgment according to the corrected award, as follows:**

(1) The award should be corrected because *(check all that apply):*

(a) ☐ the amount of the award was not calculated correctly, or a person, thing, or property was not described correctly.

(b) the arbitrator exceeded his or her authority.

(c) the award is imperfect as a matter of form.

(2) The facts supporting the grounds for correcting the award alleged in item 10b(1) are as follows:

☐ *Check here if additional space is required and submit facts on an attachment labeled 10b(2).*

(3) The award should be corrected as follows:

☐ *Check here if additional space is required and describe requested correction on an attachment labeled 10b(3).*

c. ☐ **Vacate (cancel) the award.**

(1) The award should be vacated because *(check all that apply):*

(a) ☐ the award was obtained by corruption, fraud, or other unfair means.

(b) ☐ an arbitrator was corrupt.

(c) ☐ the misconduct of a neutral arbitrator substantially prejudiced petitioner's rights.

(d) ☐ the arbitrator exceeded his or her authority, and the award cannot be fairly corrected.

(e) ☐ the arbitrator unfairly refused to postpone the hearing or to hear evidence useful to settle the dispute.

(f) ☐ an arbitrator failed to disclose within the time for disclosure a ground for disqualification of which the arbitrator was then aware.

(g) ☐ an arbitrator should have disqualified himself or herself after petitioner made a demand to do so.

(2) The facts supporting the grounds for vacating the award alleged in item 10c(1) are as follows:

☐ *Check here if additional space is required and submit facts on an attachment labeled 10c(2).*

(3) Petitioner ☐ does ☐ does not request a new arbitration hearing.

d. ☐ **Award petitioner interest** from *(date)*:

(1) ☐ at the statutory rate.

(2) ☐ at rate of _____% per year.

e. ☐ **Award petitioner costs of suit**

(1) ☐ in the amount of: $

(2) ☐ according to proof.

f. ☐ **Award petitioner attorney fees incurred in this action** *(check only if attorney fees are recoverable in this action according to statute or the parties' agreement)*

(1) ☐ in the amount of: $

(2) ☐ according to proof.

g. ☐ **Award petitioner the following other relief** *(describe relief requested):*

☐ *Check here if additional space is required and describe relief on an attachment labeled 10g.*

11. **Pages and attachments.** *Number of pages attached:* _____

Date:

_____ ▶ _____

Type or Print Name | Signature of Petitioner or Attorney

CIV-170

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	*FOR COURT USE ONLY*
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
EMAIL ADDRESS:		
ATTORNEY FOR (*name*):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
IN RE *(ADDRESS OF REAL PROPERTY):*		
PETITION AND DECLARATION REGARDING UNRESOLVED CLAIMS AND DEPOSIT OF UNDISTRIBUTED SURPLUS PROCEEDS OF TRUSTEE'S SALE		
Jurisdiction *(check all that apply):* ☐ Action is a **limited civil case** (does not exceed $35,000) Amount deposited ☐ does not exceed $12,500 ☐ exceeds $12,500 ☐ Action is an **unlimited civil case** (exceeds $35,000)		CASE NUMBER:

1. Petitioner *(name):* is the trustee under the Deed of Trust described in items 2 and 3 below.

The Deed of Trust

2. The Deed of Trust encumbered the real property commonly known as *(describe):*

(the "property") and legally described ☐ in Attachment 2 ☐ as follows:

3. The Deed of Trust was
   a. executed by *(name):* as trustor.
   b. executed on *(date):*
   c. recorded as follows:
      (1) date:
      (2) county:
      (3) instrument number:

IN RE:	CASE NUMBER:

The Trustee's Sale, Surplus Proceeds, and Notice to Potential Claimants

4. The property was the subject of a trustee's sale that was held on *(date):*
5. A trustee's sale guarantee was prepared for the trustee's sale. *(A copy of the trustee's sale guarantee must be attached as Attachment 5.)*
6. The total sale price of the property was: $
7. After payment of the amounts required by Civil Code section 2924k(a)(1)–(2), there were surplus proceeds from the trustee's sale available to potential claimants in the total amount of: $
8. Within 30 days after the trustee's sale, the trustee sent written notice under Civil Code section 2924j(a) to all persons with a recorded interest in the real property as of the date immediately prior to the trustee's sale who would be entitled to notice. The names and addresses of all persons sent notice under Civil Code section 2924j(a) are as follows:

☐ Continued on Attachment 8.

The Claims

9. The trustee has received a total of *(specify number):* written claims from potential claimants.
10. The trustee has exercised due diligence to determine the priority of the written claims received by the trustee to the trustee's sale surplus proceeds from the persons identified in item 8 to whom notice was sent.
11. The trustee submits this declaration under Civil Code section 2924j(c) for the following reason:
    a. ☐ After due diligence, the trustee is unable to determine the priority of the written claims received by the trustee to the trustee's sale surplus proceeds. *(If this reason applies, describe the problem of determining priorities in Attachment 11a.)*
    b. ☐ The trustee has determined that there is a conflict between potential claimants to the surplus proceeds. *(If this reason applies, identify the claimants and describe the conflict in Attachment 11b.)*
12. The trustee provides the following additional information relevant to the identity, location, priority of potential claimants, and the conflict of claims:

☐ Continued on Attachment 12.

Notice of Intent to Deposit Funds and Proof of Service

13. The trustee has provided written notice to all persons with a recorded interest in the property who would be entitled to notice under Civil Code section 2924b(b)–(c). The notice includes the following information:
    a. The trustee intends to deposit funds from the trustee's sale with the clerk of the court.
    b. A claim for funds must be filed with the court within 30 days from the date of notice.
    c. The address of the court in which the funds are to be deposited and a telephone number for obtaining further information.

    *(Proof of Service of the notice on **all** persons entitled to notice under Civil Code section 2924j(d) must be attached to this declaration as Attachment 13.)*

IN RE:	CASE NUMBER:

Deposit

14. **Distributions**

The trustee has distributed the total amount of: $ to the following claimants based on their written claims:

Name of claimant:	Amount:
	$
	$
	$
	$
	$
	$
	$
	$

☐ Continued on Attachment 14.

15. **Trustee's Fees and Expenses**

The trustee has incurred reasonable fees and expenses totaling: $. These fees and expenses are recoverable under Civil Code section 2924k(a)(1) and (b) and are described ☐ in Attachment 15 ☐ as follows *(specify):*

16. **Deposit**

The amount to be deposited is calculated as follows:

a.	Trustee's sale proceeds	$
b.	Debt to foreclosing creditor	$
c.	Available surplus proceeds *(a minus b)*	$
d.	Claims paid by trustee *(from item 14)*	$
e.	Trustee's fees and expenses *(from item 15)*	$
f.	Remaining surplus proceeds *(c minus (d plus e))*	$
g.	Filing fee	$
h.	Deposit *(f minus g)*	$

(*If the trustee is represented by an attorney, the attorney's signature follows*):

Date:

Type or Print Name of Attorney

▶ Signature of Attorney

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 Trustee

▶ Signature of Trustee

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR *(name):*	***FOR COURT USE ONLY***
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF: DEFENDANT: ☐ DOES 1 TO _____	
CONTRACT ☐ **COMPLAINT** ☐ **AMENDED COMPLAINT *(Number):*** ☐ **CROSS-COMPLAINT** ☐ **AMENDED CROSS-COMPLAINT *(Number):***	
Jurisdiction *(check all that apply):* ☐ Action is a **limited civil case** (does not exceed $35,000) Amount demanded ☐ does not exceed $12,500 ☐ exceeds $12,500 ☐ Action is an **unlimited civil case** (exceeds $35,000) ☐ Action is **reclassified** by this amended complaint or cross-complaint ☐ from limited to unlimited ☐ from unlimited to limited	CASE NUMBER:

1. **Plaintiff*** *(name or names):*

   alleges causes of action against **defendant*** *(name or names):*

2. This pleading, including attachments and exhibits, consists of the following number of pages:
3. a. Each plaintiff named above is a competent adult
   ☐ **except** plaintiff *(name):*
   (1) ☐ a corporation qualified to do business in California.
   (2) ☐ an unincorporated entity *(describe):*
   (3) ☐ other *(specify):*
   b. ☐ Plaintiff *(name):*
   (1) ☐ has complied with the fictitious business name laws and is doing business under the fictitious name *(specify):*
   (2) ☐ has complied with all licensing requirements as a licensed *(specify):*
   c. ☐ Information about additional plaintiffs who are not competent adults is shown in Attachment 3c.
4. a. Each defendant named above is a natural person

☐ **except** defendant *(name):* (1) ☐ a business organization, form unknown. (2) ☐ a corporation. (3) ☐ an unincorporated entity *(describe):* (4) ☐ a public entity *(describe):* (5) ☐ other *(specify):*	☐ **except** defendant *(name):* (1) ☐ a business organization, form unknown. (2) ☐ a corporation. (3) ☐ an unincorporated entity *(describe):* (4) ☐ a public entity *(describe):* (5) ☐ other *(specify):*

* If this form is used as a cross-complaint, plaintiff means cross-complainant and defendant means cross-defendant.

SHORT TITLE:	CASE NUMBER:

4. b. The true names of defendants sued as Does are unknown to plaintiff.
   (1) ☐ Doe defendants *(specify Doe numbers):* were the agents or employees of the named defendants and acted within the scope of that agency or employment.
   (2) ☐ Doe defendants *(specify Doe numbers):* are persons whose capacities are unknown to plaintiff.
   c. ☐ Information about additional defendants who are not natural persons is contained in Attachment 4c.
   d. ☐ Defendants who are joined under Code of Civil Procedure section 382 are *(names):*

5. ☐ Plaintiff is required to comply with a claims statute, **and**
   a. ☐ has complied with applicable claims statutes, *or*
   b. ☐ is excused from complying because *(specify):*

6. ☐ This action is subject to ☐ Civil Code section 1812.10 ☐ Civil Code section 2984.4.
7. This court is the proper court because
   a. ☐ a defendant entered into the contract here.
   b. ☐ a defendant lived here when the contract was entered into.
   c. ☐ a defendant lives here now.
   d. ☐ the contract was to be performed here.
   e. ☐ a defendant is a corporation or unincorporated association and its principal place of business is here.
   f. ☐ real property that is the subject of this action is located here.
   g. ☐ other *(specify):*

8. The following causes of action are attached and the statements above apply to each *(each complaint must have one or more causes of action attached):*
   ☐ Breach of Contract
   ☐ Common Counts
   ☐ Other *(specify):*

9. ☐ Other allegations:

10. **Plaintiff prays** for judgment for costs of suit; for such relief as is fair, just, and equitable; and for
    a. ☐ damages of: $
    b. ☐ interest on the damages
       (1) ☐ according to proof
       (2) ☐ at the rate of *(specify):* percent per year from *(date):*
    c. ☐ attorney's fees
       (1) ☐ of: $
       (2) ☐ according to proof.
    d. ☐ other *(specify):*

11. ☐ The paragraphs of this pleading alleged on information and belief are as follows *(specify paragraph numbers):*

Date:

Type or Print Name

Signature of Plaintiff or Attorney

(If you wish to verify this pleading, affix a verification.)

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR *(name):*	***FOR COURT USE ONLY***
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF: DEFENDANT: ☐ DOES 1 TO _____	
COMPLAINT—Personal Injury, Property Damage, Wrongful Death ☐ **AMENDED *(Number):*** **Type *(check all that apply):*** ☐ **MOTOR VEHICLE** ☐ **OTHER *(specify):*** ☐ **Property Damage** ☐ **Wrongful Death** ☐ **Personal Injury** ☐ **Other Damages *(specify):***	CASE NUMBER:
Jurisdiction *(check all that apply):* ☐ Action is a **limited civil case** (does not exceed $35,000) Amount demanded ☐ does not exceed $12,500 ☐ exceeds $12,500 ☐ Action is an **unlimited civil case** (exceeds $35,000) ☐ Action is **reclassified** by this amended complaint or cross-complaint ☐ from limited to unlimited ☐ from unlimited to limited	

1. **Plaintiff** *(name or names):*
   alleges causes of action against **defendant** *(name or names):*

2. This pleading, including attachments and exhibits, consists of the following number of pages:
3. Each plaintiff named above is a competent adult
   a. ☐ **except** plaintiff *(name):*
      (1) ☐ a corporation qualified to do business in California.
      (2) ☐ an unincorporated entity *(describe):*
      (3) ☐ a public entity *(describe):*
      (4) ☐ a minor ☐ an adult
         (a) ☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed.
         (b) ☐ other *(specify):*
      (5) ☐ other *(specify):*
   b. ☐ **except** plaintiff *(name):*
      (1) ☐ a corporation qualified to do business in California.
      (2) ☐ an unincorporated entity *(describe):*
      (3) ☐ a public entity *(describe):*
      (4) ☐ a minor ☐ an adult
         (a) ☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed.
         (b) ☐ other *(specify):*
      (5) ☐ other *(specify):*

   ☐ Information about additional plaintiffs who are not competent adults is shown in Attachment 3.

SHORT TITLE:	CASE NUMBER:

4. ☐ Plaintiff *(name):*
   is doing business under the fictitious name *(specify):*

   and has complied with the fictitious business name laws.
5. Each defendant named above is a natural person
   a. ☐ **except** defendant *(name):*
      (1) ☐ a business organization, form unknown.
      (2) ☐ a corporation.
      (3) ☐ an unincorporated entity *(describe):*
      (4) ☐ a public entity *(describe):*
      (5) ☐ other *(specify):*
   b. ☐ **except** defendant *(name):*
      (1) ☐ a business organization, form unknown.
      (2) ☐ a corporation.
      (3) ☐ an unincorporated entity *(describe):*
      (4) ☐ a public entity *(describe):*
      (5) ☐ other *(specify):*
   c. ☐ **except** defendant *(name):*
      (1) ☐ a business organization, form unknown.
      (2) ☐ a corporation.
      (3) ☐ an unincorporated entity *(describe):*
      (4) ☐ a public entity *(describe):*
      (5) ☐ other *(specify):*
   d. ☐ **except** defendant *(name):*
      (1) ☐ a business organization, form unknown.
      (2) ☐ a corporation.
      (3) ☐ an unincorporated entity *(describe):*
      (4) ☐ a public entity *(describe):*
      (5) ☐ other *(specify):*

   ☐ Information about additional defendants who are not natural persons is contained in Attachment 5.
6. The true names of defendants sued as Does are unknown to plaintiff.
   a. ☐ Doe defendants *(specify Doe numbers):* were the agents or employees of other named defendants and acted within the scope of that agency or employment.
   b. ☐ Doe defendants *(specify Doe numbers):* are persons whose capacities are unknown to plaintiff.
7. ☐ Defendants who are joined under Code of Civil Procedure section 382 are *(names):*

8. This court is the proper court because
   a. ☐ at least one defendant now resides in its jurisdictional area.
   b. ☐ the principal place of business of a defendant corporation or unincorporated association is in its jurisdictional area.
   c. ☐ injury to person or damage to personal property occurred in its jurisdictional area.
   d. ☐ other *(specify):*

9. ☐ Plaintiff is required to comply with a claims statute, **and**
   a. ☐ has complied with applicable claims statutes, **or**
   b. ☐ is excused from complying because *(specify):*

SHORT TITLE:	CASE NUMBER:

10. The following causes of action are attached and the statements above apply to each *(each complaint must have one or more causes of action attached):*
    a. ☐ Motor Vehicle
    b. ☐ General Negligence
    c. ☐ Intentional Tort
    d. ☐ Products Liability
    e. ☐ Premises Liability
    f. ☐ Other *(specify):*

11. Plaintiff has suffered *(check all that apply):*
    a. ☐ wage loss.
    b. ☐ loss of use of property.
    c. ☐ hospital and medical expenses.
    d. ☐ general damage.
    e. ☐ property damage.
    f. ☐ loss of earning capacity.
    g. ☐ other damage *(specify):*

12. ☐ The damages claimed for wrongful death and the relationships of plaintiff to the deceased are
    a. ☐ listed in Attachment 12.
    b. ☐ as follows:

13. The relief sought in this complaint is within the jurisdiction of this court.

14. **Plaintiff prays** for judgment for costs of suit; for such relief as is fair, just, and equitable; and for
    a. (1) ☐ compensatory damages.
       (2) ☐ punitive damages.
    b. The amount of damages is *(in cases for personal injury or wrongful death, you must check (1)):*
       (1) ☐ according to proof.
       (2) ☐ in the amount of: $

15. ☐ The paragraphs of this complaint alleged on information and belief are as follows *(specify paragraph numbers):*

Date:

Type or Print Name

Signature of Plaintiff or Attorney

Rules Committee Action Request Form

Item number: 06

Rules Committee Meeting Date: November 10, 2026

Action requested: Recommend JC approval (has circulated for comment)

Title of proposal: Rules and Forms: Amendment of Rule 2.900

Proposed rules, forms, standards, or jury instructions (include amend/revise/adopt/approve/etc.)**:**
Amend Cal. Rules of Court, rule 2.900

Advisory committee or other entity submitting the proposal:
Civil and Small Claims Advisory Committee

Staff contact (name, phone, and email)**:**
Jenny Grantz, 415-865-4394, jenny.grantz@jud.ca.gov

Annual agenda approved by Rules Committee on: October 16, 2025; amended July 8, 2026
Project description from annual agenda: 10. Statements of Decision: Implementation of AB 515. Develop rule and form recommendations as appropriate. This is a joint project with the Family and Juvenile Law Advisory Committee. AB 515 (Stats. 2025, ch. 559) changes the procedures for requesting a written statement of decision after the trial of a question of fact by the court. AB 515 requires the Judicial Council to adopt a form and information sheet for requesting a statement of decision. AB 515 may also require rule amendments. The committee will also consider whether to amend or simplify rule 3.1590, which governs the announcement of tentative decisions, statements of decisions, and judgments.

Implementation Date and Circulation Notes: (If requesting an effective date other than January 1 or a special invitation-to-comment cycle, please explain.) After its proposal to implement AB 515 had circulated for comment during the regular spring cycle, the committee determined that rule 2.900 should also be amended to implement AB 515. Because AB 515 takes effect on January 1, 2027, this proposal was circulated on a special cycle and is recommended with a January 1 effective date.

Additional Information for Rules Committee: (To facilitate Rules Committee's review of your proposal, please include any other relevant information.)

Information for JC staff (Complete the following for proposals recommending forms.)

- **Form Translations** (check all that apply)
  Proposal includes forms that: ☐ staff requests be translated, ☐ are required by statute to be translated.
  Provide citations to code that mandates translation:
- **Website Content** (check all that apply)
  ☐ New or revised form descriptions are needed for the California Courts website. (If checked, form descriptions should be approved by a supervisor after council approval.)
  ☐ Changes or additions to self-help guide website are needed.

(Revised 2026)

Judicial Council of California

455 Golden Gate Avenue · San Francisco, California 94102-3688
courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

Item No.: 26-175

For business meeting on December 11, 2026

Rules and Forms: Amendment of Rule 2.900 [DRAFT]

Judicial Council Report Details

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 2.900

Recommended by
Civil and Small Claims Advisory Committee
Hon. Samantha P. Jessner, Chair

Report Type
Action Required

Effective Date
January 1, 2027

Date of Report
November 2, 2026

Contact
Jenny Grantz, 415-865-4394
jenny.grantz@jud.ca.gov

Executive Summary

Assembly Bill 515 (Stats. 2025, ch. 559) amends the statute governing statements of decision. The Judicial Council recently approved a recommendation from the Civil and Small Claims Advisory Committee and the Family and Juvenile Law Advisory Committee to amend California Rules of Court, rule 3.1590 to implement AB 515, including by deleting the requirement to announce a tentative decision. To implement AB 515 and conform with the amendments to rule 3.1590, the Civil and Small Claims Advisory Committee recommends amending rule 2.900 by replacing references to tentative decisions with references to statements of decision.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2027, amend California Rules of Court, rule 2.900, to refer to statements of decision rather than tentative decisions. The proposed amended rule is attached at page 6.

Relevant Previous Council Action

The Judicial Council adopted rule 2.900 effective January 1, 1989, and has not substantively amended it since then.

At its meeting on October 16, 2026, the Judicial Council approved a recommendation from the Civil and Small Claims Advisory Committee and the Family and Juvenile Law Advisory Committee to amend California Rules of Court, rule 3.1590, effective January 1, 2027, to implement Assembly Bill 515 (Link A).[1] AB 515 amended Code of Civil Procedure section 632 to streamline the process for issuing a statement of decision in a civil case, including by eliminating all references in section 632 to tentative decisions. The approved amendments to rule 3.1590 therefore deleted the subdivision requiring a court that tries a question of fact to announce a tentative decision.

Analysis/Rationale

The Civil and Small Claims Advisory Committee recommends amending rule 2.900 to replace references to tentative decisions with references to statements of decision.

Rule 2.900 defines when a cause is deemed submitted and when a submitted cause is "pending and undetermined" for purposes of applying section 19 of article VI of the California Constitution, which prohibits judges from receiving a salary "while any cause before the judge remains pending and undetermined for 90 days after it has been submitted for decision." Currently, under rule 2.900(c), a submitted cause remains pending and undetermined unless either (1) the court has announced its tentative decision, or (2) the cause is terminated. The rule also states that the time required to finalize a tentative decision is not time in which the cause is pending and undetermined.

As a result of AB 515, tentative decisions have been eliminated from the process for issuing a statement of decision under Code of Civil Procedure section 632 and rule 3.1590. This change effectively eliminates one of the two events identified in rule 2.900(c) that resolves a pending and undetermined cause. To address this issue, the committee recommends amending rule 2.900(c) to replace "has announced its tentative decision" with "issues a statement of decision under Code of Civil Procedure section 632(a) or (c)."

Similarly, the committee recommends replacing "The time required to finalize a tentative decision is not time in which the cause is pending and undetermined" with "For purposes of (c)(1), a submitted cause has been determined, and is no longer pending, once the court issues a statement of decision under Code of Civil Procedure section 632(a) or (c), even if the court must then take additional steps, such as hearing objections under section 632(e), before the statement of decision becomes final under section 632(e)."

[1] Judicial Council of Cal., Advisory Com. Rep., *Civil Practice and Procedure: Statement of Decision Rules and Forms to Implement Assembly Bill 515* (Sept. 28, 2026).

Policy implications

The recommended amendments will ensure that rule 2.900 correctly reflects the law and conforms with recently approved amendments to rule 3.1590. The recommendations are therefore consistent with the *Strategic Plan for California's Judicial Branch*, specifically the goals of Modernization of Management and Administration (Goal III) and Quality of Justice and Service to the Public (Goal IV).

Comments

The proposed amendments to rule 2.900 circulated for public comment from August 24 to September 23, 2026, as part of a special cycle. The proposal received nine comments: five from superior courts (including two comments from separate divisions of the Superior Court of Orange County), one from the California Judges Association, one from the Orange County Bar Association, and two from individuals. Three commenters agreed with the proposal, two agreed if modified, and four did not indicate a position. No commenters disagreed with the proposal.

A chart with the full text of the comments received and the committee's responses is attached at pages 7–24.

The substantive comments concerned two issues related to subdivision (c) of the rule: responses to the committee's question about whether subdivision (c) should include tentative rulings, and a suggestion to limit the applicability of the first sentence of subdivision (c).

Tentative rulings

In the invitation to comment, the committee noted that it is unclear whether the term "tentative decision" in the operative version of rule 2.900 is limited to tentative decisions issued under rule 3.1590 or includes all tentative rulings. The committee was concerned that deleting "tentative decision" might therefore unintentionally remove tentative rulings from the list of events that resolve a pending and undetermined cause. The committee requested specific comments on whether rule 2.900(c) should be amended to include tentative rulings, to read as follows: "A submitted cause is pending and undetermined unless the court has announced its tentative ruling, issued a statement of decision under Code of Civil Procedure section 632(a), or the cause is terminated."

In response to this request for specific comments, four commenters (the California Judges Association (CJA); the Superior Court of Los Angeles County; the Superior Court of Orange County, Family Law Division; and the Superior Court of San Diego County) took the position either that tentative rulings should not be added to subdivision (c), or that "tentative decision" in the operative version of rule 2.900 refers only to tentative decisions under rule 3.1590, or both. The CJA elaborated, explaining that in their view, the constitutional provision and related Government Code section "create a clear rule that the court must issue [a] final ruling within 90 days of the hearing, [when then] final paper is required to be filed, or whenever the court orders the matter submitted." The CJA is therefore opposed to allowing tentative rulings to stop the 90-day clock because they are not final rulings.

Four commenters (Veronica Bueno; the Orange County Bar Association; the Superior Court of Orange County, Civil/Small Claims Division; and the Superior Court of San Bernardino County) did not take a position on whether tentative rulings should be included in subdivision (c) other than to ask the committee to ensure subdivision (c) is clearly drafted to ensure the process for submitting and determining a cause is accessible and clear for courts and court users.[2]

Considering these comments, the committee determined that subdivision (c) should not include tentative rulings.

Applicability of subdivision (c)

The California Judges Association proposed amending the first sentence of what is now subdivision (c)(1) to read as follows: "For purposes of statements of decision issued under Code of Civil Procedure section 632, a submitted cause is pending and undetermined until the court has issued a statement of decision or the cause is terminated." The CJA suggested this amendment because it is concerned that if the language proposed in the invitation to comment were adopted, "all submitted causes would be pending and undetermined until a statement of decision was issued. Clearly, subdivision (c) is only meant to apply to situations in which such a statement of decision is timely requested, whether upon a bench trial or other statutory authority. Thus, we propose clarifying that the subdivision is indeed limited to such situations."

The committee does not recommend adopting this suggestion because the first sentence of the operative version of subdivision (c) ("A submitted cause is pending and undetermined unless the court has announced its tentative decision or the cause is terminated") applies in all situations, with termination of the cause serving as the only possible event to stop the 90-day clock in any situation where a tentative decision is not required. The CJA's proposed amendment would therefore limit the scope of the first sentence of subdivision (c) more than the committee intended.

However, the committee agrees with the CJA and several other commenters that the language proposed in the invitation to comment should be clarified. The committee therefore recommends the following clarifications: (1) amending subdivision (c) to place each sentence in a numbered list, (2) replacing "a submitted cause is pending and undetermined unless . . ." with "a submitted cause is pending and undetermined unless until either of the following occurs," and (3) clarifying the subdivision now numbered (c)(2) to more clearly explain that a submitted cause has been determined as soon as the court issues a statement of decision, even if the court must then take additional steps to finalize the statement of decision.

Alternatives considered

The committee did not consider the alternative of taking no action because rule amendments are needed to conform with AB 515 and the recent amendments to rule 3.1590.

[2] One additional commenter was in favor of adding tentative rulings to subdivision (c), but this position was based on a misunderstanding about the content of the proposed amendments.

When developing the proposed amendments, the committee noted that a statement of decision is not fully equivalent to a tentative decision because unlike tentative decisions, statements of decision are not mandatory and are required only if requested by a party. The committee therefore considered amending subdivision (c) to include an additional event to rule 2.900(c) but ultimately determined that termination of the cause should be sufficient as a trigger to stop the 90-day clock for any cause for which a statement of decision is not issued.

When developing the invitation to comment, the committee considered amending the rule to clarify the meaning of "cause" in subdivision (a) and "terminated" in subdivision (c). For example, the committee considered proposing an advisory committee comment stating that for purposes of the rule, "cause" is synonymous with both "matter" and "case." However, the committee ultimately decided not to propose amendments defining these terms because it was concerned that the amendments could be misinterpreted as substantive changes to the rule's scope, rather than as purely explanatory material.

Fiscal and Operational Impacts

Government Code section 68210 requires judges to execute an affidavit regarding their compliance with section 19 of article VI of the California Constitution before they can receive their salary. Because rule 2.900 is used to determine compliance with the 90-day deadline in section 19, the proposed rule amendments may require training for judicial officers and court staff and may also require changes to court processes and procedures.

The invitation to comment asked courts whether they could implement the proposed rule amendments within one month. Three of the four courts that responded said they could, as did the Superior Court of Orange County's Civil and Small Claims Division. The Superior Court of Orange County's Family Law Division, however, requested a two-month implementation period.

The committee acknowledges that the short implementation timeline may create difficulties for courts but does not recommend delaying implementation. The portion of rule 2.900 referring to tentative decisions will no longer function as of January 1, 2027, due to AB 515 and the amendments to rule 3.1590. Delaying implementation could create confusion and procedural difficulties for courts and litigants.

Attachments and Links

1. California Rules of Court, rule 2.900, at page 6
2. Chart of comments, at pages 7–24
3. Link A: Assem. Bill 515

Rule 2.900 of the California Rules of Court is amended, effective January 1, 2027, to read:

Rule 2.900. Submission of a cause in a trial court

(a)–(b) * **

(c) Pendency of a submitted cause

(1) A submitted cause is pending and undetermined ~~unless~~ until either of the following occurs:

(A) The court ~~has announced its tentative decision~~ issues a statement of decision under Code of Civil Procedure section 632(a) or (c); or

(B) The cause is terminated.

(2) ~~The time required to finalize a tentative decision is not time in which the cause is pending and undetermined.~~ For purposes of (c)(1), a submitted cause has been determined, and is no longer pending, once the court issues a statement of decision under Code of Civil Procedure section 632(a) or (c), even if the court must then take additional steps, such as hearing objections under section 632(e), before the statement of decision becomes final under section 632(e).

(3) For purposes of this rule only, a motion that has the effect of vacating, reconsidering, or rehearing the cause will be considered a separate and new cause and will be deemed submitted as provided in (a).

SP26-06 Chart of Comments

Rules and Forms: Amendment of Rule 2.900 (amend Cal. Rules of Court, rule 2.900)

All comments are verbatim unless indicated.

Commenter	Comment	Committee Response
Veronica Bueno Fairfield	Position: Agree if modified I support the proposed amendments to rule 2.900 if modified to clarify the role of tentative rulings as events that determine when a cause is no longer "pending and undetermined." This clarification is essential to prevent procedural gaps created by the removal of "tentative decisions" under AB 515. I am submitting this comment as an individual with a learning disability who has had to navigate complex multi-agency court procedures. My disability does not affect my intelligence, but it affects how I process language and legal structure. Because of this, I rely heavily on clear rules, written explanations, and predictable procedural steps. When courts do not follow required procedures—or when rules are unclear—the process becomes inaccessible and harmful. In my own case, the lack of clarity around submission, determination, and written Statements of Decision resulted in a series of stacked procedural errors. A prior order was reversed without proper procedure. A Statement of Decision was formally requested but never issued. The transcript was produced with the wrong case number, making the record unusable. These errors compounded each other, and because termination of parental rights was the next step, the consequences were severe. My experience demonstrates why clarity in rule 2.900 is not just a technical matter. It directly affects due-process rights, judicial accountability, and accessibility for people with disabilities. When a Statement of Decision is requested, it is not a formality—it is a necessary tool for comprehension and for preserving appellate rights.	The committee notes the commenter's agreement with the proposal if modified. Please see the committee's responses to the commenter's specific suggestions below.

Commenter	Comment	Committee Response
Veronica Bueno (continued)	For these reasons, I respectfully recommend that the Judicial Council modify the proposal to: • explicitly include tentative rulings in rule 2.900(c), or • otherwise clarify what event determines when a cause is no longer pending. This modification would ensure consistency with AB 515, prevent unintended consequences, and protect litigants—especially those who rely on written decisions for accessibility. Thank you for the opportunity to provide this comment. I hope my experience helps inform your work and supports the goal of improving fairness, clarity, and accessibility in California's judicial procedures.	In light of the comments received, the committee has determined that tentative rulings should not be included in subdivision (c). However, the committee agrees that the language proposed for subdivision (c) in the invitation to comment should be clarified and has recommended several amendments to reduce ambiguity. To the extent the commenter suggests defining "terminated" or other terms in the rule, the committee does not recommend doing so. As discussed in the invitation to comment, the committee considered amending the rule to define terms such as "cause" and "terminated" but ultimately decided not to do so because it was concerned that the amendments could be interpreted as substantive changes to the rule's scope, rather than as purely explanatory material.
California Judges Association, Civil Law and Procedure Committee by Hon. Teresa A. Beaudet, Chair	Position: Agree if modified Thank you for the opportunity to comment on proposed amendments to California Rules of Court, rule 2.900. We are the members of the Civil Law and Procedure Committee of the California Judges Association. Our Committee reviews legislation that may affect the judiciary. We also propose legislation. Assembly Bill 515 (AB 515) originated with our members, and we helped shepherd the bill through the legislature. **I. Executive Summary** The Committee has requested input on the following questions: 1. Does the proposal appropriately address the stated purpose? Short answer: Yes, with one minor modification.	Please see the committee's responses to the commenter's specific suggestions below.

Commenter	Comment	Committee Response
	2. Is "tentative decision" in rule 2.900 limited to tentative decisions issued under [former] rule 3.1590 or does it include all tentative rulings? If the latter, should rule 2.900(c) be amended to include tentative rulings, reading as follows: "A submitted cause is pending and undetermined unless the court has announced its tentative ruling, issued a statement of decision under Code of Civil Procedure section 632(a), or the cause is terminated." Short answer: We express no opinion on the first part of this question, but we disagree with the proposed alternate amendment.	
California Judges Association (continued)	**Our Proposed Language** Overall, we support the principal proposed amendments to rule 2.900, with one minor modification. We propose that at the very beginning of 2.900, subd. (c)(1), the following sentence be substituted for the current sentence: "For purposes of statements of decision issued under Code of Civil Procedure section 632, a submitted cause is pending and undetermined until the court has issued a statement of decision or the cause is terminated."	The committee does not recommend adopting this suggestion because the first sentence of the operative version of subdivision (c) ("A submitted cause is pending and undetermined unless the court has announced its tentative decision or the cause is terminated") applies in all situations, with termination of the cause serving as the only possible event to stop the 90-day clock in any situation where a tentative decision is not required. The proposed amendment would therefore limit the scope of the first sentence of subdivision (c) more than the committee intends. However, the committee has recommended other changes to subdivision (c) to reduce ambiguity.
California Judges Association (continued)	**II. Reasoning** The basis for our proposal is as follows. As the Committee notes at page 3 of the Invitation to Comment, the term "cause" is ambiguous. We share the Committee's concern that modifying the rule to clarify the meaning of "cause" might create more problems of interpretation.	Please see the previous response.

Commenter	Comment	Committee Response
	However, we note that both Government Code section 68210 and Article VI, Section 19 of the California Constitution provide as follows: "A judge of a court of record may not receive the salary for the judicial office held by the judge while any *cause* before the judge remains pending and undetermined for 90 days after it has been submitted for decision." (Emphasis added.) It is commonly understood from judicial practice that the word "cause" as used in that sentence applies both to trials and to motions. Yet if the first sentence of the proposed rule 2.900, subdivision (c)(1) were to be adopted, all submitted causes would be pending and undetermined until a statement of decision was issued. Clearly, subdivision (c)(1) is only meant to apply to situations in which such a statement of decision is timely requested, whether upon a bench trial or other statutory authority. Thus, we propose clarifying that the subdivision is indeed limited to such situations. We reviewed the rest of the proposed language to see if there would be any lingering ambiguity as to the pendency of any other kind of "cause" (i.e., a motion not subject to Code of Civil Procedure section 632) but could not see how it would be ambiguous.	
California Judges Association (continued)	Second, as mentioned, we oppose the alternative proposed language mentioned on pages 3-4 regarding tentative rulings. The term "tentative decision" language has been removed from section 632 pursuant to A.B. 515 and, presumably, rule 3.1590 (although we have not seen the final language yet.) The most likely remaining scenario for when a tentative ruling will be issued after these revisions is when a court provides a tentative ruling on a motion, followed by a final ruling either adopting the tentative or modifying it. In this situation, Rule 2.900 subdivision (a), combined with the language from the	In light of the comments received, the committee has determined that tentative rulings should not be included in subdivision (c). The committee also agrees with the commenters that the language proposed for subdivision (c) in the invitation to comment should be clarified and has recommended several amendments to reduce ambiguity.

Commenter	Comment	Committee Response
	Government Code and Constitution, create a clear rule that the court must issue that final ruling within 90 days of the hearing, final paper is required to be filed, or whenever the court orders the matter submitted. If the proposed alternative language were adopted, the rule would no longer be so clear. Instead, issuance of a standard tentative ruling would stop the time for when the cause remains pending: "A submitted cause is pending and undetermined *unless the court has announced its tentative ruling*, issued a statement of decision under CCP section 632(a), or the cause is terminated." (Emphasis added.) We do not believe it is the intent of the committee to stop the time when a final ruling is due on a motion at the time of the issuance of a tentative ruling. Thus, we do not support the alternate proposed language.	
California Judges Association (continued)	**III. Conclusion** We thank the Committee for their time and attention to detail as they drafted these proposed rules and forms, and we are available should there be any questions regarding the content of these comments.	The committee appreciates the response.
Orange County Bar Association by Shirin Forootan, President	Position: Agree The stated proposal does address the stated purpose.	The committee notes the commenter's agreement with the proposal.
Orange County Bar Association (continued)	As to whether "tentative decision" in Rule 2.900(c) is limited to tentative decisions under Rule 3.1590 the question is unclear since 2.900(c) does not use the words "tentative decision". However, if all tentative rulings are included then the rule should be amended to add the quoted language.	In light of the comments received, the committee has determined that tentative rulings should not be included in subdivision (c). The committee also agrees with the commenters that the language proposed for subdivision (c) in the invitation to comment should be clarified and has recommended several amendments to reduce ambiguity.

Commenter	Comment	Committee Response
Steven Quinn Singleton	Position: Not indicated I write to comment on SP26-06, the proposed amendment to California Rules of Court, rule 2.900, as an independent policy researcher, not on behalf of any court, agency, or vendor. This comment addresses the text of the proposed rule itself and one item of supplemental information tied to a related proposal whose own comment window has closed. Both concern the same underlying question: what precisely stops the 90-day clock that Government Code section 68210 and article VI, section 19 of the California Constitution place on judicial salary.	Please see the committee's responses to the commenter's specific suggestions below.
Steven Quinn Singleton (continued)	1. SUMMARY OF OBJECTIVES Rule 2.900 has done one job, largely unchanged, since 1989: it defines when a cause is "pending and undetermined" for purposes of Government Code section 68210, which bars a judge from receiving salary while a cause has remained pending and undetermined for 90 days after submission. That definition is not academic. In re Inquiry Concerning Freedman (2007) 49 Cal.4th CJP Supp. 223, a Commission on Judicial Performance disciplinary proceeding, applies rule 2.900's submission definition directly to a judge's conduct, citing Mardikian v. Commission on Judicial Performance (1985) 40 Cal.3d 473 for the underlying constitutional rule. Rule 2.900 carries real consequences in real proceedings. Assembly Bill 515 removes the tentative decision from the statement-of-decision process that rule 2.900(c) currently uses to mark the end of a cause's pending status. The proposal replaces that marker with the issuance and finality of a statement of decision under new Code of Civil Procedure section 632. Getting the replacement precisely right matters exactly because of what rule 2.900 is used for.	No response required.

Commenter	Comment	Committee Response
Steven Quinn Singleton (continued)	2. FINDING ONE: A POSSIBLE DRAFTING ARTIFACT IN PROPOSED RULE 2.900(c) The proposed rule text reads, in relevant part: "A submitted cause is pending and undetermined unless the court has announced its tentative decision issued a statement of decision under Code of Civil Procedure section 632(a) or (c), or the cause is terminated. The time required to finalize a tentative decision is not time in which the cause is pending and undetermined. The time required to finalize a statement of decision, which begins when the court first issues a statement of decision under section 632(a) or (c) and ends when the statement of decision becomes final under section 632(e), is not time in which the cause is pending and undetermined." The executive summary describes this as "revising the second sentence" of current rule 2.900(c), singular, which points toward replacement rather than addition. As the text is presented, both sentences survive: a full sentence about finalizing a tentative decision, immediately followed by the new sentence about finalizing a statement of decision. If tentative decisions no longer exist anywhere in the statement-of-decision process after January 1, 2027, a surviving reference to "the time required to finalize a tentative decision" would be vestigial at best. I can point to a relevant data point from a separate proposal: SPR26-14, the companion proposal implementing AB 515 in rules 3.1590 and 3.1591, deletes its own tentative-decision content cleanly, with nothing comparable left behind in its proposed text. That is the pattern the same drafting environment uses elsewhere for this exact kind of edit, which makes a surviving sentence here worth confirming rather than assuming.	As shown in the draft rule attached to the invitation to comment and described in the body of the invitation to the comment, the committee has proposed deleting "tentative decision" from subdivision (c) of rule 2.900.

Commenter	Comment	Committee Response
	I want to be precise about my own confidence here. I am working from the ITC's extracted text, not a marked-up copy showing strikeout formatting, and strikeout formatting is exactly the kind of thing that can silently fail to survive text extraction without anything being wrong in the actual document under consideration by the committee. I raise this as a question the committee can answer in five seconds by checking its own working document, not as an assertion that the rule as drafted contains an error. Recommendation: confirm whether the operative text deletes the sentence "The time required to finalize a tentative decision is not time in which the cause is pending and undetermined," consistent with the executive summary's description of a single-sentence revision and with the clean-deletion approach used in SPR26-14.	
Steven Quinn Singleton (continued)	3. FINDING TWO: THE TENTATIVE DECISION/TENTATIVE RULING QUESTION, AND A GAP IN THE COMMITTEE'S OWN ALTERNATIVE TEXT The committee itself raises an important interpretive question: whether "tentative decision" in current rule 2.900(c) is limited to tentative decisions issued under rule 3.1590, or reaches tentative rulings more broadly, including tentative rulings issued outside the bench-trial statement-of-decision process, for example under local rules governing law and motion matters. I researched this directly. I found no California case, including in Commission on Judicial Performance proceedings, construing this question. In re Inquiry Concerning Freedman cites rule 2.900, but only for the subdivision (a) submission definition, not this one. The committee's own statement that it is unaware of authority on this point is accurate, as far as I can determine, and nothing exists to resolve it except the rule text the committee adopts.	In light of the comments received, the committee has determined that tentative rulings should not be included in subdivision (c). The committee also agrees with the commenters that the language proposed for subdivision (c) in the invitation to comment should be clarified and has recommended several amendments to reduce ambiguity.

Commenter	Comment	Committee Response
	I would go further than simply confirming the gap and offer a view on how to close it. A "cause," as rule 2.900 uses the term, is not limited to matters tried before the court in a full bench trial; it can include a dispositive motion resolved by a tentative ruling under local practice. If "tentative decision" in the amended rule is read narrowly, to mean only a tentative decision issued under the now-eliminated rule 3.1590 process, a cause resolved by an ordinary law-and-motion tentative ruling that never converts to a formal written order could remain, on paper, "pending and undetermined" past 90 days, exposing a judge to exactly the disciplinary consequence Freedman illustrates, over a matter that was, in substance, decided. Given that stakes and the confirmed absence of any authority to resolve the ambiguity otherwise, I think the committee's alternative text, adding "tentative ruling" as a qualifying event, is the safer choice, not merely an acceptable one. That said, the committee's own alternative text, as written, introduces a second problem. The main proposed rule text reads "issued a statement of decision under Code of Civil Procedure section 632(a) or (c)," capturing both a statement of decision issued on party request under section 632(a) and one issued by the court on its own motion under new section 632(c). The committee's alternative text, offered for comment as a full substitute sentence, reads: "A submitted cause is pending and undetermined unless the court has announced its tentative ruling, issued a statement of decision under Code of Civil Procedure section 632(a), or the cause is terminated." This drops the reference to section 632(c). If adopted as written, a statement of decision the court issues sua sponte, without any party having requested one, a scenario AB 515 newly authorizes and the main proposed text expressly covers, would not qualify as an event under the alternative language. That reopens, inside the very language meant to close a gap, the coverage question AB 515's sua sponte authority was drafted to resolve.	

Commenter	Comment	Committee Response
	Recommendation: if the committee adopts language adding "tentative ruling" to rule 2.900(c), it should carry forward the "section 632(a) or (c)" reference from the main proposed text rather than the narrower "section 632(a)" reference in the alternative text as currently drafted.	
Steven Quinn Singleton (continued)	4. FINDING THREE: SEQUENCING WITH SPR26-14 SP26-06 depends on SPR26-14, the companion proposal amending rules 3.1590 and 3.1591 to implement the same statute. SPR26-14's own comment period closed May 18, 2026, well before this proposal's. As of this comment, SPR26-14's final committee report to the Judicial Council has not yet been submitted; SP26-06's own citation describes that report as "(pending)," and I found no Judicial Council rule adoption current through mid-2026 reflecting action on rules 3.1590 or 3.1591. SPR26-14's own committees are separately considering, and specifically inviting comment on, whether to repeal rules 3.1590 and 3.1591 outright rather than amend them. I raise this only as a process question, not as a criticism of either timeline. If rules 3.1590 and 3.1591 are ultimately repealed rather than amended, does rule 2.900(c)'s cross-reference to the statement-of decision process still function as intended? And more generally, will SP26-06 and SPR26-14 reach the Judicial Council at the same meeting, so the two conforming amendments take effect together on January 1, 2027 as both currently propose? Recommendation: none beyond the question itself. This is worth a direct answer from the committee rather than an inference from the public record.	The committee's proposal to amend rules 3.1590 and 3.1591 to implement AB 515 (SPR26-14) was approved at the Judicial Council's meeting on October 16, 2026. The committee did not recommend a repeal of either rule 3.1590 or 3.1591, and the proposed amendments to rule 2.900 are consistent with the committee's recommendations regarding rules 3.1590 and 3.1591. The committee is recommending that the amendments to rule 2.900 take effect on January 1, 2027, which is the effective date for the approved amendments to rules 3.1590 and 3.1591.

Commenter	Comment	Committee Response
Steven Quinn Singleton (continued)	5. OPEN QUESTIONS FOR THE COMMITTEE 1. Does the operative text of proposed rule 2.900(c) delete the sentence referring to finalizing a tentative decision, or does it survive alongside the new sentence on finalizing a statement of decision? 2. If the committee adopts language adding "tentative ruling" to rule 2.900(c), will that language retain the "section 632(a) or (c)" reference from the main proposal rather than the narrower reference in the committee's own alternative text? 3. Does the possible repeal of rules 3.1590 and 3.1591 under SPR26-14 affect the operation of rule 2.900(c)'s cross-reference to the statement-of-decision process, and are the two proposals expected to reach the Judicial Council together?	Please see the previous responses.
Steven Quinn Singleton (continued)	6. CONCLUSION Rule 2.900(c) is a short provision doing precise work: it marks the exact point at which a judge's constitutional and statutory salary obligations attach. Assembly Bill 515 requires that marker to move from a tentative decision to a statement of decision, and the committee's proposed text does that competently. The two items above are narrower than that: a possible leftover sentence from the prior text, and a scope question the committee itself has already identified, where I would add only that the stakes of leaving it unresolved are higher than a purely interpretive question usually carries, and that the committee's own proposed fix needs one cross-reference restored to work as intended. I appreciate the committee's work and the opportunity to comment.	No response required.
Superior Court of Los Angeles County by Stephanie Kuo	Position: Agree	The committee notes the commenter's agreement with the proposal.

Commenter	Comment	Committee Response
	In response to the Judicial Council of California's Invitation to Comment (ITC), "ITC SP26-06 Rules and Forms: Amendment of Rule 2.900 (DRAFT)," the Court agrees that the proposal appropriately addresses the stated purpose.	
Superior Court of Los Angeles County (continued)	The proposal presented concerns whether the term "tentative decision" in rule 2.900(c) refers exclusively to tentative decisions issued under rule 3.1590 or whether it was intended to encompass all tentative rulings. If the latter interpretation were correct, an additional amendment to rule 2.900(c) might be necessary to expressly include tentative rulings. However, the proposed amendments clarify that "tentative decision" is only in the context of rule 3.1590, and the revisions appropriately replace that terminology with references to statements of decision under Code of Civil Procedure section 632.	In light of the comments received, the committee has determined that tentative rulings should not be included in subdivision (c). The committee also agrees with the commenters that the language proposed for subdivision (c) in the invitation to comment should be clarified and has recommended several amendments to reduce ambiguity.
Superior Court of Los Angeles County (continued)	The proposal would not provide cost savings. To implement the proposal, the Court would need to conduct one or two hours of training for judicial officers. Additionally, the Court may need to update its Judicial Assistant Training Manuals. One month from Judicial Council approval is sufficient time for implementation. The proposal should work for courts of different sizes.	The committee appreciates the response.
Superior Court of Orange County, Civil/Small Claims Division by Christine Nguyen, Operations Analyst	Position: Not indicated 1. Does the proposal appropriately address the stated purpose? Response: Yes, the proposal appropriately addresses the stated purpose.	The committee appreciates the response.

Commenter	Comment	Committee Response
Superior Court of Orange County, Civil/Small Claims Division (continued)	2. Is "tentative decision" in rule 2.900(c) limited to tentative decisions issued under rule 3.1590, or does it include all tentative rulings? Response: No comment.	In light of the comments received, the committee has determined that tentative rulings should not be included in subdivision (c). The committee also agrees with the commenters that the language proposed for subdivision (c) in the invitation to comment should be clarified and has recommended several amendments to reduce ambiguity.
Superior Court of Orange County, Civil/Small Claims Division (continued)	3. Would the proposal provide cost savings? If so, please quantify. Response: The proposal appears neutral in providing cost savings and may incur additional costs to courts for process and procedural updates and training for implementation.	The committee appreciates the response.
Superior Court of Orange County, Civil/Small Claims Division (continued)	4. 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? Response: Implementation would require review and, as necessary, updates to the procedures and systems used to monitor submitted matters. Courtroom staff, judicial officers, and staff responsible for submitted matter monitoring would require brief training or written guidance regarding the revised rule.	The committee appreciates the response.
Superior Court of Orange County, Civil/Small Claims Division (continued)	5. Would one month from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Response: One month may be sufficient if implementation is limited primarily to procedure revisions, staff communication, and training. Coordinated release of the final AB 515 related rules would assist courts in implementing the changes consistently and timely.	The committee appreciates the response. The committee notes that, if approved by the Judicial Council, the proposal to amend rules to implement AB 515 will become effective on the same date as this proposal, which should allow courts to coordinate their implementation of both proposals.

Commenter	Comment	Committee Response
Superior Court of Orange County, Civil/Small Claims Division (continued)	6. How well would this proposal work in courts of different sizes? Response: The proposal can operate in courts of different sizes.	The committee appreciates the response.
Superior Court of Orange County, Family Law Division by Marina Barragan, Operations Analyst	Position: Not indicated Does the proposal appropriately address the stated purpose? Yes, the proposal appropriately addresses the stated purpose.	The committee appreciates the response.
Superior Court of Orange County, Family Law Division (continued)	*Is "tentative decision" in rule 2.900(c) limited to tentative decisions issued under rule 3.1590, or does it include all tentative rulings? If the latter, should rule 2.900(c) be amended to include tentative rulings, reading as follows: "A submitted cause is pending and undetermined unless the court has announced its tentative ruling, issued a statement of decision under Code of Civil Procedure section 632(a), or the cause is terminated."* Yes, "tentative decision" in rule 2.900(c) is limited to tentative decisions issued under rule 3.1590, as rule 3.1590 is the operative rule addressing tentative decisions. Nonetheless, there is no objection to the added proposed language.	In light of the comments received, the committee has determined that tentative rulings should not be included in subdivision (c). The committee also agrees with the commenters that the language proposed for subdivision (c) in the invitation to comment should be clarified and has recommended several amendments to reduce ambiguity.
Superior Court of Orange County, Family Law Division (continued)	*Would the proposal provide cost savings? If so, please quantify.* The proposal appears neutral in providing cost savings and may incur additional costs to courts for system and procedural updates and staff training for implementation.	The committee appreciates the response.

Commenter	Comment	Committee Response
Superior Court of Orange County, Family Law Division (continued)	*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 will require providing communication to judicial officers and court staff, revising current procedures or procedure creation, and updating the case management system to accommodate four (4) new forms. Anticipated training time not to exceed one hour.	The committee appreciates the response.
Superior Court of Orange County, Family Law Division (continued)	*Would one month from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?* No, one month is not sufficient. Two months would provide sufficient time for implementation in Orange County.	The committee acknowledges that it may be challenging to implement this proposal in only one month, but determined that delaying implementation beyond January 1, 2027, is likely to create confusion and procedural difficulties for courts and litigants because the portion of rule 2.900 referring to tentative decisions will no longer function as of January 1, 2027, due to AB 515 and the amendments to rule 3.1590.
Superior Court of Orange County, Family Law Division (continued)	*How well would this proposal work in courts of different sizes?* Our court is a large court, and this could work for Orange County.	The committee appreciates the response.
Superior Court of San Bernardino County, Staff Committees by Sara Menor, Director of Operations	Position: Not indicated Does the proposal appropriately address the status purpose? Yes.	The committee appreciates the response.

Commenter	Comment	Committee Response
Superior Court of San Bernardino County (continued)	Would the proposal provide cost savings? If so, please quantify No.	The committee appreciates the response.
Superior Court of San Bernardino County (continued)	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 for clerk's office staff, judicial assistants, and judicial officers regarding the changes to Rule 2.900. Updates to the case management system may be needed so that system verbiage is consistent with the amended rule. Procedures may also need to be updated. No significant operational changes are anticipated, and requests are currently accepted in pleading format.	The committee appreciates the response.
Superior Court of San Bernardino County (continued)	Would one month from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.	The committee appreciates the response.
Superior Court of San Bernardino County (continued)	How well would this proposal work in courts of different sizes? The proposal should work effectively in courts of different sizes. Implementation and training requirements may vary depending on the size of the court and the systems and processes currently in place.	The committee appreciates the response.
Superior Court of San Bernardino County (continued)	Is "tentative decision" in rule 2.900(c) limited to tentative decisions issued under rule 3.1590, or does it include all tentative rulings?	In light of the comments received, the committee has determined that tentative rulings should not be included in subdivision (c). The committee also agrees with the commenters that the language

Commenter	Comment	Committee Response
	It does not appear that "tentative decision" is limited to tentative decisions issued under rule 3.1590. The rule would benefit from clarification. Consideration should be given to amending Rule 2.900(c) to include "tentative ruling" to avoid ambiguity and potential unintended impacts on judicial workload reporting and pending-submitted-cause calculations.	proposed for subdivision (c) in the invitation to comment should be clarified and has recommended several amendments to reduce ambiguity.
Superior Court of San Diego by Mike Roddy, Executive Officer	Position: Agree Q: Does the proposal appropriately address the stated purpose? A: Yes.	The committee notes the commenter's agreement with the proposal.
Superior Court of San Diego (continued)	Q: Is "tentative decision" in rule 2.900(c) limited to tentative decisions issued under rule 3.1590, or does it include all tentative rulings? A: As referenced in rule 2.900(c), "tentative decision" refers to those rulings issued per rule 3.1590.	In light of the comments received, the committee has determined that tentative rulings should not be included in subdivision (c). The committee also agrees with the commenters that the language proposed for subdivision (c) in the invitation to comment should be clarified and has recommended several amendments to reduce ambiguity.
Superior Court of San Diego (continued)	Q: Would the proposal provide cost savings? If so, please quantify. A: No.	The committee appreciates the response.
Superior Court of San Diego (continued)	Q: 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? A: Updating internal procedures, training courtroom staff, and adding/updating minute entries.	The committee appreciates the response.

Commenter	Comment	Committee Response
Superior Court of San Diego (continued)	Q: Would one month from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? A: Yes.	The committee appreciates the response.
Superior Court of San Diego (continued)	Q: How well would this proposal work in courts of different sizes? A: It appears that the proposal would work for courts of all sizes.	The committee appreciates the response.

Rules Committee Action Request Form

Item number: 07

Rules Committee Meeting Date: November 10, 2026

Action requested: Recommend JC approval (has circulated for comment)

Title of proposal: Remote Proceedings: Implementation of Senate Bill 174

Proposed rules, forms, standards, or jury instructions (include amend/revise/adopt/approve/etc.)**:**
Amend Cal. Rules of Court, rules 3.670, 3.672, 5.9, 5.324, 5.531, and 5.900; revise form RA-020

Advisory committee or other entity submitting the proposal:
Civil and Small Claims Advisory Committee

Staff contact (name, phone, and email)**:**
Jenny Grantz, 415-865-4394, jenny.grantz@jud.ca.gov

Annual agenda approved by Rules Committee on: October 16, 2025; amended July 8, 2026
Project description from annual agenda: 12. Remote Appearances: Implementation of SB 174. Develop rule and form recommendations as appropriate. SB 174 (Stats. 2026, ch. 29) amends Code of Civil Procedure section 367.75, which governs remote appearances in civil proceedings, to extend the statute's sunset date to January 1, 2032, change one of the conditions under which the court may order an in-person appearance, and require courts, effective January 1, 2027, to provide a reason for requiring an in-person appearance. SB 174 requires the Judicial Council to develop a form courts can use for this purpose. SB 174 will also require amendments to rule 3.672 and to various rules regarding telephonic appearances.

Implementation Date and Circulation Notes: (If requesting an effective date other than January 1 or a special invitation-to-comment cycle, please explain.) The committee requested circulation of this invitation to comment on a special cycle with an effective date of January 1, 2027, because SB 174 was signed by the Governor on June 29, 2026, and took effect immediately as a budget-related bill.

Additional Information for Rules Committee: (To facilitate Rules Committee's review of your proposal, please include any other relevant information.)

Information for JC staff (Complete the following for proposals recommending forms.)

- **Form Translations** (check all that apply)
  Proposal includes forms that: ☒ staff requests be translated, ☐ are required by statute to be translated.
  Provide citations to code that mandates translation:
- **Website Content** (check all that apply)
  ☐ New or revised form descriptions are needed for the California Courts website. (If checked, form descriptions should be approved by a supervisor after council approval.)
  ☐ Changes or additions to self-help guide website are needed.

(Revised 2026)

Judicial Council *of* California

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 26-176

For business meeting on December 11, 2026

Remote Proceedings: Implementation of Senate Bill 174 [DRAFT]

Judicial Council Report Details

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 3.670, 3.672, 5.9, 5.324, 5.531, and 5.900; revise form RA-020

Recommended by
Civil and Small Claims Advisory Committee
Hon. Samantha P. Jessner, Chair

Report Type
Action Required

Effective Date
January 1, 2027

Date of Report
November 2, 2026

Contact
Jenny Grantz, 415-865-4394
jenny.grantz@jud.ca.gov

Executive Summary

Effective June 29, 2026, Senate Bill 174 (Stats. 2026, ch. 29) amends Code of Civil Procedure section 367.75, which governs remote appearances in civil proceedings. Those amendments include extending the statute's sunset date and requiring courts that order an in-person appearance to provide a reason for doing so. To implement SB 174, the Civil and Small Claims Advisory Committee recommends amending six rules of the California Rules of Court and revising one form.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2027, take the following actions to implement Senate Bill 174:

1. Amend California Rules of Court, rules 3.670, 3.672, 5.9, 5.324, 5.531, and 5.900; and

2. Revise *Order Regarding Remote Appearance* (form RA-020).

The proposed amended rules and revised form are attached at pages 7–13.

Relevant Previous Council Action

In September 2021, the Legislature enacted Senate Bill 241 (Stats. 2021, ch. 214) authorizing courts to conduct proceedings in all civil matters using remote technology under Code of Civil Procedure section 367.75. As mandated by that statute, the Judicial Council adopted California Rules of Court, rule 3.672, effective January 1, 2022, to create procedures for remote proceedings in all civil cases, and adopted and approved several forms, including form RA-020, to effectuate rule 3.672.[1]

Code of Civil Procedure section 367.75 does not distinguish between types of remote technology platforms, such as telephonic (audio alone) or videoconference (both audio and video, or either). For that reason, when it adopted rule 3.672, the council suspended existing telephone appearance rules to the extent the provisions in those rules limit remote hearings and provide specific rules regarding notice of such hearings, noting that they have been replaced with the provisions in rule 3.672. The council has extended the suspension of the telephone appearance rules several times to reflect extensions of the sunset date of section 367.75. Most recently, the council extended the suspension date to January 1, 2027.[2]

Analysis/Rationale

Code of Civil Procedure section 367.75 authorizes courts to conduct proceedings in civil matters using remote technology. Subdivision (b) lists the conditions under which courts may require parties and witnesses to appear in person at a proceeding. Section 367.75 was originally set to sunset on July 1, 2023, but the sunset date has been extended several times.

Effective June 29, 2026, Senate Bill 174 (Link A) extends the sunset date of section 367.75 and several related statutes to January 1, 2032; amends subdivision (a)(1) of section 367.75 to clarify that a party's witness may appear remotely if the party provides notice; and amends subdivision (b)(3) to establish a different standard for one condition under which a court is authorized to require in-person appearance. The amendments to subdivision (b)(3) also require courts to provide a reason for requiring an in-person appearance and require the Judicial Council to develop a form for that purpose.

To implement SB 174, the Civil and Small Claims Advisory Committee recommends amending rule 3.672 and revising form RA-020 to reflect the changes to subdivisions (a)(1) and (b)(3) of

[1] Judicial Council of Cal., Advisory Com. Rep., *Civil Practice and Procedure: Remote Appearances* (Dec. 17, 2021).

[2] Judicial Council of Cal., Advisory Com. Rep., *Civil Practice and Procedure: Rules Regarding Telephonic Appearances* (Sept. 18, 2025).

section 367.75. The committee also recommends amending several telephone appearance rules to extend their suspension through January 1, 2032.

Rule 3.672

Subdivision (d) of rule 3.672 implements Code of Civil Procedure section 367.75(b), which sets forth the circumstances in which a court may require an in-person appearance. The committee recommends amending rule 3.672(d)(1) to state that subdivision (d) applies to parties' witnesses and clarify that the circumstances listed in subdivision (d) are taken from Code of Civil Procedure section 367.75(b). The committee recommends the latter amendment because it may not be obvious to courts and litigants that there is a statutory basis for the list of circumstances in subdivision (d)(1) or that the list in the rule paraphrases and combines several of the items listed in the statute.

The committee recommends reorganizing subdivision (d) by renumbering existing subdivisions (d)(1) and (d)(2) as (d)(1)(A) and (d)(1)(B). The committee recommends amending subdivision (d)(1)(A) to reflect the amendments to section 367.75(b)(3), which now allows a court to require in-person attendance only if the court determines that in-person appearance is "necessary" or remote attendance would "materially impair" resolution of the matter. The committee also recommends adding new subdivision (d)(3), which states that if the court requires a party or witness to appear in person, the court must state the reason in or on the record, in a minute order, on form RA-020, or on a local court form.

The committee recommends deleting the existing version of subdivision (d)(3), which allows the court to continue a hearing if it determines under Code of Civil Procedure section 367.75(b) that an in-person appearance is necessary. Existing subdivision (d)(3) is duplicative because it requires a determination that an in-person appearance "is necessary," and such a determination is now covered by subdivision (d)(1)(A). The portion regarding the court's ability to continue the hearing is an unnecessary reiteration of authority the court already possesses, especially because the rule and statute do not otherwise limit the court's ability to schedule hearings.

The committee recommends revising subdivisions (g), (h), and (j), which set deadlines and other requirements regarding notice of intent to appear remotely, to reflect that SB 174 clarified that section 367.75(a) applies to remote appearances of parties' witnesses.

Form RA-020

The committee recommends revising *Order Regarding Remote Appearance* (form RA-020) to add item 2b, in which the court provides the reasons it is requiring an in-person appearance. The options listed in item 2b are identical to those listed in Code of Civil Procedure section 367.75(b). Item 2b(3), which corresponds to section 367.75(b)(3), allows the court to identify any case-specific factors and circumstances that might require an in-person appearance.

Telephone appearance rules

The committee recommends amending rules 3.670, 5.9, 5.324, 5.531, and 5.900, which govern telephone appearances in civil, family law, and juvenile proceedings, to extend their suspension dates to January 1, 2032, to match the new sunset date of section 367.75.

Policy implications

The recommended rule amendments and form revisions will ensure that the rules and forms correctly reflect the law. The recommendations are therefore consistent with the *Strategic Plan for California's Judicial Branch*, specifically the goals of Modernization of Management and Administration (Goal III) and Quality of Justice and Service to the Public (Goal IV).

Comments

The proposal to implement SB 174 circulated for public comment from August 24 to September 23, 2026, as part of a special cycle. The proposal received 12 comments: 5 from superior courts (including 2 comments from separate divisions of the Superior Court of Orange County), 1 from a superior court commissioner, 3 from legal aid organizations (including one comment from a group of 23 organizations), 1 from the California Lawyers Association, 1 from the Orange County Bar Association, and 1 from an individual. Three comments agreed with the proposal, one disagreed, and eight did not indicate a position.

A chart with the full text of the comments received and the committee's responses is attached at pages 14–39.

Use of form RA-020 in domestic violence restraining order proceedings

The Harriet Buhai Center asked how form RA-020, which allows the court to require an in-person appearance, interacts with Family Code section 6308. That section allows remote appearances in domestic violence restraining order proceedings but does not specify if or when a judicial officer may require a party to appear in person. Specifically, section 6308 states: "A party, support person as defined in Section 6303, or witness may appear remotely at the hearing on a petition for a domestic violence restraining order. The superior court of each county shall develop local rules and instructions for remote appearances permitted under this section, which shall be posted on its internet website." Although not mentioned in the comment, this question also applies to civil harassment restraining orders and several other civil protective orders because their implementing statutes have recently been amended to contain essentially the same language as Family Code section 6308.

The Harriet Buhai Center suggested revising form RA-020 either to state that the form does not apply to remote appearances in domestic violence restraining order hearings or to add a notice stating: "Domestic violence restraining order hearings: Your court may require additional forms for a remote appearance. Check your court's local rules and instructions. (Fam. Code § 6308)."

The committee has not recommended revisions to form RA-020 in response to this comment. The suggestion to "check your court's local rules" would not be helpful on form RA-020 because a litigant will not receive the form until after the court has ruled on their request to appear

remotely. The suggestion to limit the use of form RA-020 is beyond the scope of the current proposal because the invitation to comment did not raise the possibility of limiting use of the form to certain proceedings. The suggestion will be considered as time and resources permit.

Appearance of expert witnesses

Under Code of Civil Procedure section 367.75(b)(3), the court may determine "on a hearing-by-hearing basis that an in-person appearance is necessary to the determination of the conference, hearing, or proceeding, or that remote attendance would materially impair the resolution of the conference, hearing, or proceeding." However, section 367.75(c) creates an exception for expert witnesses and states: "Notwithstanding paragraph (3) of subdivision (b), an expert witness may appear remotely absent good cause to compel in-person testimony."

A commenter noted that because the committee has proposed amending rule 3.672 to clarify that its remote appearance provisions apply not only to a party but also to a party's witness, the rule may create confusion if it is not amended to include the expert-witness exception.

To address this issue, the committee recommends adding paragraph (2) to subdivision (d), which states: "Notwithstanding (1)(A), an expert witness may appear remotely absent good cause to compel in-person testimony, as set forth in Code of Civil Procedure section 367.75(c)."

Clarification of rule 3.672(d)(2)

Starting on January 1, 2027, a judicial officer who requires an in-person appearance must state their reason "on the record, in a minute order, or on a form filed in the court's file." To implement this change in law, the committee proposed amending rule 3.672 to add what is now subdivision (d)(3). In the invitation to comment, this subdivision read: "If the court requires a party or witness to appear in person, the court must state the reason on the record, in a minute order, on *Order Regarding Remote Appearance* (form RA-020) or a local court form."

The Superior Court of Orange County's Family Law Division commented that it would be helpful to clarify in the rule "whether a reason stated orally on the record must also be documented in the minute order."

To address this issue, the committee recommends that subdivision (d)(3) explain that the court must state its reason "using one or more of the following methods," followed by a list of methods. Subdivision (d)(3)(A) uses the phrase "in or on the record" because the committee determined that the statutory language allowing the court to state the reason "on the record" includes written statements in the record, such as written orders.

Alternatives considered

The committee did not consider the alternative of taking no action because the rules in this proposal will not correctly reflect the law unless amended, and because SB 174 requires the Judicial Council to create a form judicial officers can use to state their reason for requiring an in-person appearance.

When developing the recommended revisions to form RA-020, the committee noted that SB 174 added the statutory requirement for the court to "provide a reason for requiring an in-person appearance" to Code of Civil Procedure section 367.75(b)(3), which permits the court to determine that "an in-person appearance is necessary" to the proceeding or that "remote attendance would materially impair the resolution" of the proceeding. The statutory language could therefore be read to require the court to state its reasoning only if it requires in-person attendance under subdivision (b)(3), rather than if it requires in-person attendance under any paragraph of subdivision (b). The committee therefore considered drafting new item 2b on form RA-020 to address orders made under subdivision (b)(3) only. The committee ultimately determined that because form RA-020 may be used to order an in-person appearance under any paragraph of subdivision (b), it would be beneficial to courts and court users for the form to include all the circumstances listed in that subdivision. The committee's recommended language for item 2b will reduce confusion about when the court may order an in-person appearance and will make it easier for court users to understand why they were ordered to appear in person.

Fiscal and Operational Impacts

The proposal is expected to result in one-time implementation costs to the courts, including the costs of reprogramming case management systems and training staff to process the revised form. Judicial officers and court staff will require training on the changes in law made by SB 174.

The invitation to comment asked courts whether one month is sufficient time to implement the proposal. Of the four separate courts that commented, one commented that one month would not be sufficient and that they would prefer to have two months for implementation.

The committee acknowledges that the short implementation timeline may create difficulties for courts but does not recommend delaying implementation. If the proposal's effective date is delayed, the rules and forms in the proposal will not correctly reflect the law on January 1 because the bill creates new procedures that courts must implement beginning on January 1.

Attachments and Links

1. California Rules of Court, rules 3.670, 3.672, 5.9, 5.324, 5.531, and 5.900, at pages 7–11
2. Form RA-020, at pages 12–13
3. Chart of comments, at pages 14–39
4. Link A: Senate Bill 174

Rules 3.670, 3.672, 5.9, 5.324, 5.531, and 5.900 of the California Rules of Court are amended, effective January 1, 2027, to read:

Title 3. Civil Rules

Rule 3.670. Telephone appearance

(a) * * *

(b) Application

Subdivisions (c) through (i) of this rule are suspended from January 1, 2022, to January 1, ~~2027~~ 2032, during which time the provisions in rule 3.672 apply in their place. This rule applies to all general civil cases as defined in rule 1.6 and to unlawful detainer and probate proceedings.

(c)–(o) * * *

Rule 3.672. Remote proceedings

(a)–(c) * * *

(d) Court discretion to require in-person appearance

(1) Notwithstanding the other provisions of this rule and except as otherwise required by law, the court may require a party or witness to appear in person at a proceeding subject to this rule in any of the ~~following~~ circumstances listed in Code of Civil Procedure section 367.75(b), which include:

~~(1)~~ (A) If the court determines on a hearing-by-hearing basis that an in-person appearance ~~would materially assist in~~ is necessary to the determination of the proceeding or ~~in the effective management or resolution of the case~~ that remote attendance would materially impair the resolution of the proceeding.

~~(2)~~ (B) If the court does not have the technology to conduct the proceeding remotely, or if the quality of the technology prevents the effective management or resolution of the proceeding.

(2) Notwithstanding (1)(A), an expert witness may appear remotely absent good cause to compel in-person testimony, as set forth in Code of Civil Procedure section 367.75(c).

(3) If the court requires a party or witness to appear in person, the court must state the reason using one or more of the following methods:

(A) A statement in or on the record;

(B) A minute order;

(C) *Order Regarding Remote Appearance* (form RA-020); or

(D) A local court form.

~~(3) If, at any time during a remote proceeding, the court determines that an in-person appearance is necessary, the court may continue the matter and require such an appearance. Such determination may be based on the factors listed in Code of Civil Procedure section 367.75(b).~~

(e)–(f) * * *

(g) Remote proceedings other than an evidentiary hearing or trial

(1) * * *

(2) *Required notice*

(A) *Hearing with at least three court days' notice*

(i) *Notice to appear remotely*

~~A party choosing~~ If a party or its witness intends to appear remotely in a proceeding under this subdivision for which a party gives or receives notice of the proceeding at least three court days before the hearing date, the party must provide notice of the party's or witness's intent to appear remotely at least two court days before the proceeding.

(ii) * * *

(B) *Hearing with less than three court days' notice*

(i) *Notice by moving party*

a. *Notice to appear remotely*

If a moving party or applicant or the witness of a moving party or applicant ~~choosing~~ intends to appear remotely in a proceeding under this subdivision for which a party gives or

receives notice of less than three court days, the moving party or applicant must provide notice of the party's or witness's intent to appear remotely at the same time as providing notice of the application or other moving papers.

b. * * *

(ii) *Notice by other parties*

a. *Notice to appear remotely*

~~Any party choosing~~ If a party is not the applicant or moving party and the party or its witness intends to appear remotely at a hearing governed by (B), ~~other than an applicant or moving party,~~ the party must provide notice of ~~their~~ the party's or witness's intent to appear remotely to the court and all other parties that have appeared in the action, no later than 2:00 p.m. on the court day before the proceeding.

b. * * *

(C)–(D) * * *

(h) Remote proceedings for an evidentiary hearing or trial

(1) * * *

(2) *Party notice of remote proceeding*

(A)–(B) * * *

(C) *Hearings or trials with at least 15 court days' notice and small claims trials*

(i) *Time of notice*

~~A party choosing~~ If a party or its witness intends to appear remotely at a small claims trial or an evidentiary hearing or trial for which a party gives or receives notice of the proceeding at least 15 court days before the hearing or trial date, the party must provide notice of the party's or witness's intent to appear remotely at least 10 court days before the hearing or trial.

(ii) * * *

(D) *Hearings or trials held on less than 15 court days' notice*

~~A party choosing~~ If a party or its witness intends to appear remotely in an evidentiary hearing or trial for which a party gives or receives notice of the proceeding less than 15 court days before the hearing or trial date, including hearings on restraining orders or protective orders, the party must provide notice of the party's or witness's intent to appear remotely in one of the following ways:

(i) As provided in (g)(2)(B); or

(ii) By filing a *Notice of Remote Appearance* (form RA-010) and providing notice to the other parties in writing, electronically, or orally in a way reasonably calculated to ensure notice is received at least five court days before the proceeding.

(3) * * *

(i) * * *

(j) Other rules regarding notice

(1) Any party or witness, including a party ~~that~~ or witness for whom the party has given notice ~~that it intends~~ of intent to appear remotely under (f)–(h) or a person authorized to appear remotely under (i), may choose to appear in person.

(2) Notwithstanding the other provisions of this rule, a party may ask the court for leave to appear remotely, or for its witness to appear remotely, without the notice provided for under (f)–(h). The court may permit the party or its witness to appear remotely upon a finding of good cause, unforeseen circumstances, or that the remote appearance would promote access to justice.

(k)–(m) * * *

Title 5. Family and Juvenile Rules

Rule 5.9. Appearance by telephone

(a) Application

Subdivisions (b) through (d) of this rule are suspended from January 1, 2022, to January 1, ~~2027~~ 2032. During that time, the provisions in rule 3.672 apply in their place. This rule applies to all family law cases, except for actions for child support

involving a local child support agency and cases governed by the Indian Child Welfare Act. Rule 5.324 governs telephone appearances in governmental child support cases. Welfare and Institutions Code section 224.2(k) governs telephone appearances in cases under the Indian Child Welfare Act.

(b)–(d) * * *

Rule 5.324. Telephone appearance in title IV-D hearings and conferences

(a) Purpose

This rule is suspended from January 1, 2022, to January 1, ~~2027~~ 2032. During that time, the provisions in rule 3.672 apply in its place.

(b)–(k) * * *

Rule 5.531. Appearance by telephone (§ 388; Pen. Code § 2625)

(a) Application

Subdivisions (b) and (c) of this rule are suspended from January 1, 2022, to January 1, ~~2027~~ 2032. During that time, the applicable provisions in rule 3.672 or Welfare and Institutions Code sections 224.2(k) or 679.5, and any rules implementing those statutes, govern remote appearances and proceedings in juvenile court. The standards in (b) apply to any appearance or participation in court by telephone, videoconference, or other digital or electronic means authorized by law.

(b)–(c) * * *

Rule 5.900. Nonminor dependent—preliminary provisions (§§ 224.1(b), 295, 303, 366, 366.3, 388, 391, 607(a))

(a)–(d) * * *

(e) Telephone appearance

Paragraph (1) below is suspended from January 1, 2022, to January 1, ~~2027~~ 2032. During that period, the juvenile dependency provisions in rule 3.672 apply in its place.

(1)–(3) * * *

(f) * * *

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR *(name):*	***FOR COURT USE ONLY***
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF: DEFENDANT: OTHER CASE NAME:	
ORDER REGARDING REMOTE APPEARANCE	CASE NUMBER:

The court makes the following orders regarding remote appearances:

1. This order applies to the proceeding described below, including on any later dates if the proceeding is continued:

   Type of proceeding:

   Set on *(date):* at *(time):* in *(department):*

2. ☐ **Participant to appear in person.**

   a. The following persons are required to appear or testify in person:

Name	Role in case

   b. The participants listed in item 2a must appear in person because *(check all that apply):*

   (1) ☐ the court does not have the technology necessary to conduct the proceeding remotely.

   (2) ☐ the quality of the technology or audibility would

   (a) ☐ prevent the effective management or resolution of the proceeding.

   (b) ☐ inhibit the court reporter's ability to accurately prepare a transcript of the proceeding.

   (c) ☐ prevent an attorney from being able to provide effective representation to their client.

   (d) ☐ inhibit a court interpreter's ability to provide language access to a court user or authorized individual.

   (3) ☐ an in-person appearance is necessary to the determination of the proceeding, or remote attendance would materially impair the resolution of the proceeding, for the following reasons *(specify):*

   ☐ Additional reasons for the court's order are given on Attachment 2b(3).

PLAINTIFF: DEFENDANT:	CASE NUMBER:

3. ☐ **Participant may appear through remote technology.**

   a. The following persons may appear or testify through remote technology, subject to any requirement in b:

Name	Role in case

   b. If the following technology is not used, an in-person appearance is required. *(See the court's website for specific information about the platforms used and how to appear remotely.)*

      i. ☐ videoconference only

      ii. ☐ audio only (including telephone)

      iii. ☐ videoconference or audio

4. ☐ **Other orders**

Date: _____

_____
Judicial Officer

SP26-07 Chart of Comments

Remote Proceedings: Implementation of Senate Bill 174 (amend Cal. Rules of Court, rules 3.670, 3.672, 5.9, 5.324, 5.531, and 5.900; revise form RA-020)

All comments are verbatim unless indicated.

Commenter	Comment	Committee Response
Asian Americans Advancing Justice Southern California (AJSOCAL), Asian Law Caucus, Asian Resources, Inc. (ARI), California Rural Legal Assistance, Inc. (CRLA), Center for the Pacific Asian Family (CPAF), Centro Binacional Para el Desarrollo Indigena Oaxaqueño (CBDIO), Chinese for Affirmative Action (CAA), Comunidades Indígenas en Liderazgo (CIELO), Council on American-Islamic Relations (CAIR-CA), Disability Rights California, Inland Coalition for Immigrant Justice, Legal Aid Association of California (LAAC), Legal Aid Foundation of Los Angeles (LAFLA), Legal Services of Northern California, Little Tokyo Service Center (LTSC), Long Beach Forward, Mixteco/Indigena Community Organizing Project (MICOP), Pacific Asian Counseling Services (PACS), Pesticide Action and Agroecology Network, Southeast Asia Resource Action Center (SEARAC), Thai Community Development Center (Thai CDC), Western Center on Law and Poverty, Legal Services of Northern California by Joann Lee, Special Counsel, Legal Aid Foundation of Los Angeles and Alena Uliaz, Language Justice	Position: Not indicated We write to comment on Invitation to Comment SP26-07, which proposes amending California Rule of Court 3.672 and Form RA-020 to implement Senate Bill 174's changes to Code of Civil Procedure section 367.75. As the most multilingual state in the nation, it is imperative that California ensures access to justice for the 6.5 million Californians with limited English proficiency (LEP)[1] and over one million who are Deaf or Hard of Hearing. Accessibility improvements are essential because the communities most in need of remote court options are those most likely to face obstacles to accessing them, including barriers related to language, disability, and technology. We support the proposal's recognition, in amended rule 3.672(d)(1)(B) and revised Form RA-020 item 2b(2)(d), that a court may require an in-person appearance where remote technology would inhibit a court interpreter's ability to provide language access. However, requiring an in-person appearance due to language access concerns removes the benefits of remote access for marginalized populations that frequently have legitimate reasons to request to appear remotely, such as difficulty with missing work, serving as caregivers, living in rural areas with limited transportation options, and the fear of federal immigration enforcement actions taking place near state courthouses. Requiring in-person appearances if interpreting cannot be adequately provided remotely is a partial fix that fails to address the underlying technical and procedural gaps that impede effective language access in remote proceedings. We urge the Judicial Council to pair this rule change with standards and guidance to ensure that remote court access is effective, linguistically accessible, and technically functional for all court users, especially people with LEP and those who are Deaf and Hard of Hearing.	Please see the committee's response to the commenter's specific suggestions below.

Commenter	Comment	Committee Response
Initiative Manager, California Rural Legal Assistance, Inc.	[1] Language justice advocates disfavor the term "limited English proficient" or LEP for reinforcing a deficit view of those who do not use English as their primary language. Alternatives to LEP are terms such as "non-dominant language users" and "linguistically marginalized communities." LEP is still used widely and relevant, particularly with respect to legal mandates, so these terms will be used interchangeably throughout this letter.	
AJSOCAL et al. (continued)	**Why Remote Court Access Improvements Are Needed** The Judicial Council's Strategic Plan for Language Access in the California Courts (LAP)[2] Goal 2, subsection titled "Use of Technology for Providing Access in Courtroom Proceedings" (Recommendations 12–18), takes a cautious, quality-first approach, emphasizing that technology is a supplement to—not a replacement for—qualified in-person interpreters. Similar to subsequently codified statutes,[3] LAP Recommendations 12–18 reflect the core principle that in-person certified and registered court interpreters are the preferred method of providing court interpreting services. Technology-based options, particularly remote interpreting, may only be used where they allow court users with LEP to "fully and meaningfully participate" in the proceedings and must never compromise the quality or accuracy of interpretation. Throughout, the LAP emphasizes that any use of technology must be accompanied by comprehensive training for judicial officers, interpreter coordinators, and court staff on both the capabilities and the limitations of remote tools—including the earlier onset of interpreter fatigue,[4] potential loss of visual and nonverbal cues, and the risk of disconnection—so that problems can be anticipated and resolved quickly or remote interpretation terminated when necessary. Despite LAP guidelines, state courts have significantly expanded the use of remote and hybrid appearances since 2020, initially in response to the COVID-19 pandemic. Court users who use non-dominant spoken and sign languages face pervasive barriers to accessing court hearings remotely due to language and tech barriers.	The committee appreciates the information.

Commenter	Comment	Committee Response
	We consistently hear feedback from court users and interpreters that remote/hybrid hearings have poor quality audio that leads to missed information, confusion, and delays. We have also heard reports that poor video quality from onsite cameras are a problem for both interpreters and court users, as well as the failure to consistently follow essential protocols for hybrid meetings with interpreting, such as onsite participants always speaking into a dedicated handheld or delegate microphone. Furthermore, the courts' frequent use of a complicated dual device set-up for remote proceedings is a barrier to access. Court users are often unable to navigate audio and video formats simultaneously in order to meaningfully participate in proceedings. The use of dual devices makes consecutive interpreting the most appropriate mode to ensure meaningful access; however, judicial officers often express frustration with the additional time required for consecutive interpreting and instead direct interpreters to interpret simultaneously, even when the technology is not well suited to that mode. Despite being disfavored by interpreters and court users alike, the Judicial Council encourages the use of dual devices, funding cell phones for interpreters for this purpose and creating confusing instructional materials on the practice.[5] Remote interpreting also negatively impacts court interpreters. For interpreters, remote interpreting is associated with increased cognitive load, faster onset of fatigue[6], and an elevated risk of hearing-related injuries.[7] Court interpreters report frequently being required to interpret via cell phones to provide simultaneous interpreting to court users appearing remotely. The audio limitations of standard cell phones present a serious barrier to comprehension for both court users and interpreters due to the way that cell phone audio compresses and narrows sound frequency range, causing profound listening fatigue and often requiring users to dangerously increase volume to understand speech. In the precision-demanding environment of a courtroom, these technical limitations pose a direct risk to both comprehension and auditory health.	

Commenter	Comment	Committee Response
	Court users further report that these phone-based interpreter connections are frequently dropped, and they are unable to interrupt proceedings to notify the court that interpretation has ceased. These failures are not merely procedural — they have real and concrete consequences for court users. Challenges related to technology and remote court hearings disproportionately impact court users who use non-dominant languages. Californians with LEP frequently have limited tech access and fluency, with census data showing they lack access to computers at rates nearly 2.5 times of those proficient in English and lack complete access to the internet at rates more than twice of those proficient in English. As a result, court users with LEP often have no access to the limited multilingual information available on the Judicial Council website and cannot navigate the court's tech requirements for accessing remote court proceedings. This disproportionate impact must be taken into account in any use of technology by courts that affects public participation. [2] Judicial Council of California, *Strategic Plan for Language Access in the California Courts* (Jan. 22, 2015), https://courts.ca.gov/system/files/2024-08/CLASP_report_060514.pdf. [3] *See* Welfare & Institutions Code § 679.5(n), Code of Civil Procedure § 367.76(o), Penal Code § 977(j). [4] Braun, S. (2013). Keep your distance? Remote interpreting in legal proceedings: A critical assessment of a growing practice. *Interpreting* 15 (2), 200-228. [5] Judicial Council of California, How to Connect to a Remote Court Proceeding With Interpretation—Two Devices, https://selfhelp.courts.ca.gov/sites/default/files/2022-10/VRI_G_Interpretation_Two%20Devices-2022-EN.pdf (accessed August 18, 2026). [6] Moser-Mercer, B. (2003) Remote interpreting: assessment of human factors and performance parameters. Communicate! Summer 2003. [7] Andrew Warner, Canadian Interpreter's Workplace Injury Highlights On-the-Job Health Risks, MultiLingual (Nov. 14, 2022), https://multilingual.com/interpreter-health-risks/ (accessed August 18, 2026).	

Commenter	Comment	Committee Response
AJSOCAL et al. (continued)	**Recommendations** We respectfully urge the Judicial Council to pair the proposed rule change with the following recommended actions to improve language access for remote proceedings: 1. **Improve Minimum Tech Standards and Reporting on Remote Proceedings and Make the Standards Enforceable:** Minimum Technology Standards for Remote Proceedings[8] referenced in statutes[9] must be improved and made enforceable. These statutes, along with LAP Goal 2, in the section titled "Use of Technology for Providing Access in Courtroom Proceedings" (Recommendations 12–18), already require appropriate tech to ensure that interpreters and court users can see and hear everyone and fully and meaningfully participate in the proceedings. The current standards, however, lack specificity and do not reflect best practices to ensure effective compliance. Our recommendations to improve the standards are below. a. **Strengthen the protections in the Minimum Technology Standards for Remote Proceedings:** i. During remote and hybrid proceedings, in order for all parties to effectively hear each other and to protect interpreter auditory safety, all onsite participants must always speak into a microphone, such as a handheld or delegate mic, and no ambient microphone systems should be used. ii. No interpreters or court users should be required to use dual devices. If dual devices have to be used or if other safety and tech requirements are not met, interpreting for the entire proceeding must be in the consecutive mode. There are effective options for integrated simultaneous interpreting for hybrid environments that are much more effective than the dual device approach, but they require trained and dedicated staff managing the audiovisual equipment and other technological components onsite and the provision of tech support to all parties.	These suggestions are beyond the scope of the current proposal, but the committee has referred them to the Information Technology Advisory Committee, which developed the Minimum Technology Standards for Remote Proceedings, for their consideration as time and resources permit.

Commenter	Comment	Committee Response
	iii. Allocated funding for technology improvements and court staff training must prioritize interpreting equipment, interpreter health and safety, and effective remote participation by court users with LEP or who are Deaf or Hard of Hearing. To ensure funds are used effectively, court interpreters should be meaningfully consulted in decisions regarding technology upgrades and the development of training for court staff on managing remote proceedings. b. **Expand & Enforce Reporting on Remote Court Proceedings with Interpreters:** There must be proper implementation of the existing reporting requirements and provisions. So far, the Judicial Council annual reports have not addressed any aspects of remote proceedings conducted with interpreters.[10] Reporting about remote court hearings should include the number of appearances with interpreting, languages provided, whether the interpreters were remote or in-person, effectiveness of interpreter equipment, and other aspects of whether court interpreters "can appropriately see and hear remote participants, as well as to ensure that remote participants can appropriately see and hear the judicial officer and other courtroom participants" (as required by applicable statutes). 2. **Designate Judicial Council Statewide Technical Assistance Coordinator & Staff** to ensure equitable court access for individuals with LEP and those who are Deaf or Hard of Hearing: The coordinator would work with courts to identify needs, coordinate resources, and streamline the implementation of language access best practices. The coordinator would also provide training and technical assistance for interpreters and court staff and would provide oversight to ensure accountability with the standards and protocols required for equitable court access. Research shows that it is a best practice for state agencies to centralize language access services.[11] [8] Judicial Council of California, *Minimum Technology Standards for Remote Proceedings*, https://courts.ca.gov/system/files/file/minimum-technology-standards-20240401.pdf (accessed August 18, 2026).	

Commenter	Comment	Committee Response
	[9] See Welfare & Institutions Code section 679.5(n), Code of Civil Procedure section 367.76(o), and Penal Code section 977(j). [10] Judicial Council of California, *Report to the Legislature: Use of Remote Technology in Civil and Criminal Actions by the Trial Courts*, https://jcc.legistar.com/View.ashx?M=F&ID=15260726&GUID=8C1557EB-57E1-4519-BA20-11E4AFBFF0E2 (accessed August 18, 2026). [11] See Jacob Hofstetter, *New Frameworks for Language Access: Tracking the Expansion & Features of State & Local Laws & Policies*, MIGRATION POLICY INSTITUTE, January 2026, https://www.migrationpolicy.org/research/language-access-state-local-expansion (accessed August 18, 2026).	
AJSOCAL et al. (continued)	**Conclusion** We appreciate the Civil and Small Claims Advisory Committee's recognition that language access is a legitimate basis for requiring in-person appearances. However, the rule change would not close the access gaps impacting Californians with LEP and those who are Deaf and Hard of Hearing who often rely on remote appearances to participate in the justice system. We respectfully urge the Committee to adopt the recommendations above as part of this rulemaking or a companion effort, so that court rules reflect not only when in-person appearances may be required, but also the standards courts should meet to make remote appearances accessible in the first place.	Please see previous response.
California Lawyers Association, Litigation Section, Committee on Appellate Courts by Julia C. Shear Kushner, Chair	Position: Not indicated The Committee on Appellate Courts (CAC) of the California Lawyers Association's Litigation Section submits this response to the Invitation to Comment SPR26-05. The California Lawyers Association is a nonprofit, voluntary organization with approximately 44,000 members statewide. It is dedicated to the professional advancement of attorneys practicing in the State of California. The CAC consists of over twenty experienced appellate practitioners and court staff, drawn from a wide range of practice areas.	The committee appreciates the response.

Commenter	Comment	Committee Response
	In this proposal, the Civil and Small Claims Advisory Committee proposed amending six rules and revising one form for the purpose of implementing Senate Bill 174 (Stats. 2026, ch. 29). After review and careful consideration, the CAC finds that the proposed revisions are reasonable and will expand access to superior courts, and will ensure compliance with the requirements of SB 174. Accordingly, the CAC supports the adoption of each of the proposed revisions to the California Rules of Court and form RA-020. We appreciate your consideration of our comments.	
California Partnership to End Domestic Violence by Chris Negri, Associate Director of Public Policy Strategies	Position: Not indicated The California Partnership to End Domestic Violence (the Partnership) greatly appreciates the opportunity to comment on the above listed findings and recommendations. The Partnership is California's recognized domestic violence coalition, representing over 1,000 advocates, organizations and allied groups. With offices in Sacramento, the Partnership's diverse membership spans the entire state. Through our public policy, communications and capacity-building efforts, we align prevention and intervention strategies to advance social change. The Partnership believes that by sharing expertise, advocates and policy-makers can end domestic violence. Working at the state and national levels for nearly 40 years, the Partnership has a long track record of successfully passing over 200 pieces of legislation addressing domestic violence. The Partnership and its members contributed to the passage of SB 174. Our members have an interest in ensuring that remote court appearances and hybrid court rooms function smoothly, given these options allow those who face barriers including fears of immigration enforcement transportation, dependent care, poverty, and full time work to more easily participate in the court system.	The committee appreciates the response.

Commenter	Comment	Committee Response
	This is also particularly critical for domestic violence survivors, who often face the added barrier of a justified fear of harm at the hands of the people who have abused them, whom they may later have to face in court. Thank you for taking on modifying the relevant forms to account for the changes SB 174 made to the process by which courts consider requests to appear remotely in civil court proceedings. We believe the proposed changes to the form reflect the text of the bill and the intention of it. We offer no suggested changes.	
Commissioner Christine Copeland, Superior Court of Santa Clara County	Position: Disagree I object to a presumption that small claims litigants can appear remotely unless the Court has a reason to deny same. There are many problematic issues, and potential delays caused by self-represented litigants not submitting evidence in advance if appearing remotely. Also, the court staff time needed to scan evidence in time for the hearing (if evidence is even submitted) is another issue as small claims often has a large caseload but not necessarily a large enough staff devoted to that case type. The need to avoid continuances is great in small claims, as the caseload is large and it is ideal to hear cases as soon as they are ready, instead of continuing because a remote litigant submitted no evidence the first time around.	The committee is not recommending changes in response to this comment. Code of Civil Procedure section 367.75 establishes the presumption in favor of remote appearances and rule 3.672 reflects the statutory language.
Harriett Buhai Center for Family Law by Rebecca L. Fisher, Managing Director of Legal Programs	Position: Not indicated Thank you for your request for comments on the proposed changes to the Judicial Council Forms. The Harriett Buhai Center for Family Law is a non-profit family law legal services organization that serves low-income litigants in Los Angeles County. Our mission is to ensure meaningful access to justice and stability through the family law system.	Please see the committee's responses to the commenter's specific suggestions below.

Commenter	Comment	Committee Response
	We provide free legal services, education, and advocacy. In addition to the free case management, pleading preparation, and in-court representation we provide for hundreds of clients each year in family law cases, we also provide free legal advice to hundreds more litigants each year in individual consultations designed to help them resolve their family law issues. Our clients are unable to afford an attorney. Many clients seek services at the Buhai Center after attempting to proceed in their matters as self-represented litigants. In addition to our direct legal services, we provide education to the self-represented client community, service providers, and to law students and attorneys to help them better access the family law system. We have extensive experience practicing family law, supporting self-represented litigants, and in training the community on family law and the family court system, including court forms. We have participated in the Judicial Council Invitations to Comment process for decades. We hope our perspective, both as direct service providers as well as community educators will be useful in this review process.	
Harriett Buhai Center (continued)	**Specific Comments** The Harriett Buhai Center for Family Law supports the proposal with the minor revision below. <u>Clarify whether form RA-020 applies to proceedings under DVPA (Fam. Code, § 6308)</u> Family Code § 6308 permits a party, support person, or witness to appear remotely at a hearing on a petition for a domestic violence restraining order and mandates that each superior court develop local rules and instructions. The added text would make clear that the general form does not replace those procedures.	Please see the committee's response below.

Commenter	Comment	Committee Response
Harriett Buhai Center (continued)	If the Committee determines that RA-020 applies to proceedings brought under the Domestic Violence Prevention Act (DVPA), we recommend adding the following language after item 1 to notify litigants in DVPA actions that other forms or rules may apply per Family Code Section 6308: **Domestic violence restraining order hearings:** Your court may require additional forms for a remote appearance. Check your court's local rules and instructions. (Fam. Code § 6308)	The committee is not recommending changes in response to this suggestion because a litigant would not receive form RA-020 until after the court has ruled on their request to appear remotely.
Harriett Buhai Center (continued)	If the Committee determines that RA-020 does not apply to proceedings under Family Code section 6308, add instead: **Domestic violence restraining order hearings:** This form does not apply to remote appearances in domestic violence restraining order hearings. (Fam. Code § 6308)	The committee is not recommending changes in response to this suggestion because the question of whether to restrict use of form RA-020 in domestic violence restraining order proceedings is beyond the scope of the proposal, but the committee will consider it as time and resources permit.
Harriett Buhai Center (continued)	**Future revisions to form RA-010** In a future forms cycle, the Buhai Center recommends revising Notice of Remote Appearance (form RA-010) to identify requests made under Family Code § 6308 and direct parties to the applicable local rules and instructions. The instructions should also state plainly that a party must give notice when the party's witness intends to appear remotely and should list the applicable deadlines.	This suggestion is beyond the scope of the proposal, but the committee will consider it as time and resources permit.
Orange County Bar Association by Shirin Forootan, President	Position: Agree The proposal does appropriately address the stated purpose.	The committee notes the commenter's agreement with the proposal.

Commenter	Comment	Committee Response
Steven Quinn Singleton	Position: Not indicated I write to comment on SP26-07, the proposed amendments to California Rules of Court, rule 3.672 and related rules, as an independent policy researcher, not on behalf of any court, agency, or vendor. This comment addresses three items: language the proposal deletes that a published Court of Appeal opinion relies on directly, a gap in how the amended rule treats witnesses that runs through both the rule and the statute it implements, and a substantive standard left unupdated in rules the proposal keeps dormant rather than repeals.	Please see the committee's responses to the commenter's specific suggestions below.
Steven Quinn Singleton (continued)	1. SUMMARY OF OBJECTIVES Senate Bill 174 changes the substantive standard governing when a court may compel an in-person appearance under Code of Civil Procedure section 367.75(b)(3), from whether an in-person appearance "would materially assist" resolution to whether it is "necessary" or whether remote attendance "would materially impair" resolution. The proposal carries that change into rule 3.672(d), along with a new requirement that a court state its reasons for an in-person order, implemented through revised form RA-020. That standard governs a real, competing set of interests: a party's or witness's access to remote appearance against a court's authority to ensure a proceeding is conducted effectively. Getting the surrounding rule text right matters because courts and litigants read the rule, not just the statute, to understand how that authority actually operates, and because at least one part of the current rule has already been relied on by a published appellate opinion for more than what its text alone might suggest. Underneath both the current and the amended standard sits a structural condition neither one states outright: the determination must be made hearing by hearing, not imposed as a categorical policy across a class of proceedings, a distinction *Rycz v. Superior Court* has already treated as central to how the statute and rule operate together.	Please see the committee's responses to the commenter's specific suggestions below.

Commenter	Comment	Committee Response
Steven Quinn Singleton (continued)	2. FINDING ONE: DELETING SUBDIVISION (d)(3) REMOVES LANGUAGE A PUBLISHED OPINION RELIES ON a. What the proposal does The proposal deletes current rule 3.672(d)(3) in its entirety. The executive summary explains that deletion as follows: "Subdivision (d)(3) is duplicative because it requires a determination that an in-person appearance 'is necessary,' and such a determination is now covered by subdivision (d)(1)(A). The remainder of subdivision (d)(3), regarding the court's ability to continue the hearing, is an unnecessary reiteration of authority the court already possesses, especially because the rule and statute do not otherwise limit the court's ability to schedule hearings." b. What subdivision (d)(3) has actually been used for Current subdivision (d)(3) authorizes a court to continue a trial and require an in-person appearance if it determines such an appearance is necessary "at any time during a remote proceeding." In *Rycz v. Superior Court* (2022) 81 Cal.App.5th 824, a published, First District opinion, the Court of Appeal relied on that specific language for a proposition beyond simple continuance authority. Addressing an argument that a court's early ruling on remote testimony should be treated as final and unreviewable, the court explained that "both section 367.75 and rule 3.672 contemplate that a court will exercise its discretion to determine whether an 'in-person appearance would materially assist in the ... effective management or resolution of' the case," and went on: "rule 3.672(d)(3) authorizes a court to continue a trial and require an in-person appearance if it determines such an appearance is necessary 'at any time during a remote proceeding.'" The court used that language to conclude that "there is no basis to conclude the adoption of section 367.75 and rule 3.672(d)(3) reflects a legislative determination that remote testimony is always an adequate substitute for in-person testimony at trial."	The committee is not recommending changes in response to this suggestion. The issue in *Rycz* was whether it was appropriate for the superior court to conclude that "the enactment of [Code of Civil Procedure] section 367.75 reflects a legislative direction that courts should assume all testimony will be taken remotely when adjudicating motions to transfer" under Code of Civil Procedure section 397(c). Although the court briefly discussed subdivision (d)(3) of rule 3.672 in its analysis of that question, that subdivision was not dispositive in the court's analysis and the court largely relied on section 367.75 and the relevant legislative history. Deleting the existing text of subdivision (d)(3) would have no meaningful effect on the holding in *Rycz*. Furthermore, *Rycz* does not pertain to the committee's rationale for proposing deletion of subdivision (d)(3), which is that, regardless of whether rule 3.672 explicitly states that they may do so, courts possess the authority to continue a hearing if necessary to effectuate a determination that in-person testimony is necessary,

Commenter	Comment	Committee Response
	Subdivision (d)(3), in other words, has already done interpretive work distinct from subdivision (d)(1)(A). Subdivision (d)(1)(A) supports a hearing-by-hearing determination made at the outset. Subdivision (d)(3)'s "at any time during a remote proceeding" language is what a published court read as establishing that the determination is ongoing, not a single gate a party clears once and never revisits. That is a different proposition, and it is the one Rycz actually used to decide the case in front of it. c. Why this matters for the proposal The committee's reasoning that (d)(3) merely "reiterat[es] authority the court already possesses" may be correct as a statement of the court's inherent scheduling power. It does not address the interpretive function the specific "at any time during a remote proceeding" phrase has already served in published case law: evidence that the rule's determination is continuing rather than one-time. If that phrase disappears from the rule and nothing replaces it, a court or litigant relying on *Rycz*'s reasoning in a future case would find the textual anchor for that reasoning gone, even though subdivision (d)(1)(A) alone, phrased as a hearing-by-hearing determination, does not as clearly convey that the inquiry may be revisited mid-proceeding based on how the proceeding is actually going. d. Recommendation Preserve the substance of the "at any time during a remote proceeding" language, either by retaining a version of subdivision (d)(3) or by adding equivalent language to subdivision (d)(1)(A) making explicit that the determination may be made or revisited at any point during a proceeding, not only at its outset. If the committee's judgment is that this authority is sufficiently inherent that the rule need not state it, an advisory committee comment noting that the deletion is not intended to disturb the reasoning in *Rycz v. Superior Court* would preserve the interpretive continuity that decision established.	

Commenter	Comment	Committee Response
Steven Quinn Singleton (continued)	3. FINDING TWO: WITNESS STATUS LEFT UNDEFINED ALONGSIDE AN UNMENTIONED STATUTORY PROTECTION a. What the proposal does The proposal amends rule 3.672 throughout to add "or its witness" and similar language to provisions previously limited to parties, consistent with Senate Bill 174's amendment of section 367.75(a)(1) to clarify that a party's witness may appear remotely on notice. This runs through the notice provisions in subdivisions (g), (h), and (j). b. What the rule does not do Rule 3.672(c) defines eight terms: "civil case," "evidentiary hearing or trial," "oral testimony," "party," "proceeding," "remote appearance" or "appear remotely," "remote proceeding," and "remote technology." It does not define "witness," and the proposal does not add one. "Witness" now carries independent procedural weight equal to "party" throughout the notice provisions, triggering its own deadlines and its own eligibility for an in-person order under (d)(1)(A), without the rule ever stating who qualifies. That gap has a history worth noting. Current rule 3.672(d)'s opening clause authorizes the court to require only "a party" to appear in person; it has never referred to witnesses at all, even though section 367.75(b), the statute it implements, has authorized courts to require "a party or witness" to appear in person since the rule's adoption. The proposal's addition of "or witness" to subdivision (d)(1) quietly closes that gap between rule and statute, a fix the ITC does not identify as such. "Witness" is not merely undefined; it has been absent from the rule's own compel-in-person authority up to this point, which makes defining the term now, as it takes on that authority directly, more rather than less important.	The committee is not recommending changes in response to this comment. The committee determined that because Code of Civil Procedure section 367.75 does not define "witness," it is appropriate to leave the term undefined in the rule.

Commenter	Comment	Committee Response
Steven Quinn Singleton (continued)	A second, distinct gap sits alongside the first. Code of Civil Procedure section 367.75(c) currently provides: "Notwithstanding paragraph (3) of subdivision (b), an expert witness may appear remotely absent good cause to compel in-person testimony." This is a specific, statutory carve-out for expert witnesses, keyed by cross-reference directly to the same paragraph, section 367.75(b)(3), that the proposal amends and that rule 3.672(d)(1)(A) implements. Neither SP26-07's executive summary nor its proposed rule text mentions this subdivision or expert witnesses at any point. c. Why this matters Rule 3.672(d)(1)(A), as proposed, states a single general standard for requiring any party or witness to appear in person: whether an in-person appearance is necessary or whether remote attendance would materially impair resolution. Nothing in the proposed rule text signals that an expert witness is subject to a different, and by its "notwithstanding" phrasing, more protective statutory standard, one keyed to good cause rather than to necessity or impairment. A court or litigant working from the rule alone, without independently checking section 367.75(c), could reasonably apply the general standard to an expert witness without realizing a different one controls. Because subdivision (c) uses "notwithstanding" language, it would continue to govern regardless of what the rule says. The rule's silence does not create a legal conflict; it creates a practical one, where the document courts and litigants actually consult does not disclose a distinction that already exists in the statute it implements. d. Recommendation Add a definition of "witness" to rule 3.672(c), consistent with how the term is now used throughout the rule's notice provisions. Separately, add either a cross-reference in subdivision (d) or an advisory committee comment noting that section 367.75(c)'s expert-witness standard applies notwithstanding the general standard in (d)(1)(A), so that a reader of the rule is not left to discover that distinction only by independently reading the statute.	The committee has recommended adding paragraph (2) to subdivision (d), which states: "Notwithstanding (1)(A), an expert witness may appear remotely absent good cause to compel in-person testimony, as set forth in Code of Civil Procedure section 367.75(c)."

Commenter	Comment	Committee Response
Steven Quinn Singleton (continued)	4. FINDING THREE: THE SUSPENDED TELEPHONE-APPEARANCE RULES STILL CARRY THE OLD STANDARD a. What the proposal does The proposal amends rules 3.670, 5.9, 5.324, 5.531, and 5.900 only to extend their suspension dates, from January 1, 2027 to January 1, 2032, so they continue to track section 367.75's sunset. This is the third such extension; the suspension originally ran from January 1, 2022 to July 1, 2023, was extended to January 1, 2026, and extended again to January 1, 2027. The proposal does not otherwise amend the text of these rules. b. What that text still says Rule 5.9(c)(1), suspended but not repealed, currently reads: "At its discretion, the court may require a party to appear in person at a hearing, conference, or proceeding if the court determines that a personal appearance would materially assist in the determination of the proceedings or in the effective management or resolution of the particular case." Rule 5.324(d)(2) states the same standard for title IV-D proceedings: a personal appearance may be required where "the court, in its discretion on a case-by-case basis, decides that a personal appearance would materially assist in a determination of the proceeding or in resolution of the case." This is the standard Senate Bill 174 replaces in section 367.75(b)(3) and that this proposal replaces in rule 3.672(d)(1)(A). The suspended rules were never updated to match either the current rule 3.672 standard or the one this proposal now adopts. c. Why this matters A rule that is suspended rather than repealed remains on the books, available to spring back into force the moment its suspension period is not renewed, whether by a missed rulemaking cycle, a change in the underlying statute, or simple oversight. Each time this suspension has been extended, the text underneath it has gone another interval without being reconciled to the standard actually governing remote and in-person appearances.	The committee is not recommending changes in response to this suggestion. So long as Code of Civil Procedure section 367.75 contains a sunset date, repealing rules 3.670, 5.9, 5.324, 5.531, and 5.900 would be premature. If the Legislature decides in the future to allow section 367.75 to sunset, telephone appearance rules will once again be needed. The authorization standards in rules 3.670, 5.9, 5.324, 5.531, and 5.900 differ from those in rule 3.672 because the former were authorized by different statutes than the latter.

Commenter	Comment	Committee Response
	This proposal extends that interval a third time, to 2032, while adopting a materially different standard in the rule that currently substitutes for these suspended provisions. If the suspension were ever to lapse without a further extension in hand, rules 5.9 and 5.324 would resume operation carrying a standard the Legislature has since replaced, in family law and title IVD proceedings specifically. d. Recommendation Either update the suspended text of rules 5.9(c)(1) and 5.324(d)(2) to match the standard adopted in rule 3.672(d)(1)(A), so the two are not left to diverge further, or repeal the suspended provisions outright rather than extend their suspension a third time. Extension preserves an inconsistency that repeal would eliminate.	
Steven Quinn Singleton (continued)	5. OPEN QUESTIONS FOR THE COMMITTEE 1. Did Senate Bill 174 amend Code of Civil Procedure section 367.75(c), the expert-witness carve-out, or does it remain as currently written? I was unable to confirm this from the sources available to me, and the answer affects how subdivision (d)(1)(A) should be drafted to avoid the gap described above. 2. Does the committee intend the deletion of subdivision (d)(3) to disturb the reasoning in Rycz v. Superior Court regarding the ongoing, revisitable nature of the in-person determination, or is the intent that subdivision (d)(1)(A) already captures that principle without the phrase “at any time during a remote proceeding”? 3. Given that “witness” now carries independent procedural standing throughout rule 3.672’s notice provisions, should the term be defined in subdivision (c) rather than left to ordinary usage?	Please see the committee’s previous responses to this commenter.

Commenter	Comment	Committee Response
	4. Rules 5.9(c)(1) and 5.324(d)(2) have now gone through three suspension periods without their underlying text being reconciled to the standard currently governing remote appearances. Is there a reason to continue suspending these provisions rather than repealing them, given that rule 3.672 has served as their substantive replacement since 2022 and this proposal extends that arrangement six more years?	
Steven Quinn Singleton (continued)	6. CONCLUSION All three items concern variations on the same drafting move: retiring or setting aside detailed, court tested, or previously operative language on the premise that something else already covers it, without fully checking what that language was doing. A published opinion has already shown that subdivision (d)(3) did more interpretive work than a duplication label suggests. A term the rule now depends on throughout its notice provisions is left undefined, next to a statutory protection for a specific class of witness the proposal does not address. And a standard the Legislature and this very proposal are moving away from remains preserved, dormant, in rules extended rather than reconciled or repealed, for the third time. None of this alleges that a change is needed in the committee's underlying judgment about how remote appearances should work. Each is a place where the text has not yet caught up to that judgment. Whatever the committee decides on each point, the rule should continue to make unmistakable that the standard it states is one a court applies case by case, not one it may adopt once and impose on an entire category of proceedings; preserving that distinction in the rule's text, rather than leaving it to be reconstructed from case law after the fact, is what would keep this reform from being undone by exactly the kind of categorical shortcut Rycz v. Superior Court already had to correct. I appreciate the committee's work and the opportunity to exercise speech into the Invitations to Comment process.	No response required.

Commenter	Comment	Committee Response
Superior Court of Los Angeles County by Stephanie Kuo	Position: Agree The following comments are representative of the Superior Court of California, County of Los Angeles (Court), and do not represent or promote the viewpoint of any particular judicial officer or court employee. In response to the Judicial Council of California's Invitation to Comment (ITC), "SP26-07 Remote Proceedings: Implementation of Senate Bill 174 (DRAFT)," the Court agrees that the proposal appropriately addresses the stated purpose. The proposal will not result in cost savings for the Court. However, potential cost savings may be realized by the witness. Implementation of the proposal would be simple and minimal. The Court does not anticipate the need to train court staff or judicial officers. One month from Judicial Council approval of the proposal is sufficient time for implementation. The proposal will work for courts of different sizes.	The committee notes the commenter's agreement with the proposal and appreciates the information provided.
Superior Court of Orange County, Civil/Small Claims Division by Christine Nguyen, Operations Analyst	Position: Not indicated 1. Does the proposal appropriately address the stated purpose? Response: Yes, the proposal appropriately addresses the stated purpose.	The committee appreciates the response.
Superior Court of Orange County, Civil/Small Claims Division (continued)	2. Would the proposal provide cost savings? If so, please quantify. Response: The proposal appears neutral in providing cost savings and may incur additional costs to courts for process and procedural updates and training for implementation.	The committee appreciates the response.

Commenter	Comment	Committee Response
Superior Court of Orange County, Civil/Small Claims Division (continued)	3. 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? Response: Implementation would require review and revision of existing remote appearance procedures and local rules, and creation of new procedures as necessary, to address remote appearances by parties and their witnesses and the requirement that the court state the reason when requiring a party or witness to appear in person. Courtroom staff and judicial officers would require brief training or written guidance regarding the revised rule and form RA-020.	The committee appreciates the response.
Superior Court of Orange County, Civil/Small Claims Division (continued)	4. Would one month from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Response: No. One month would not provide sufficient time if amendments to the court's local remote appearance rules are necessary. Implementation would require review and revision of procedures and local rules, coordination through the court's Rules & Forms process, and training or written guidance for courtroom staff and judicial officers. Additional time would allow courts to complete the necessary review and implementation.	The committee acknowledges that it may be difficult for courts to implement this proposal in one month. However, the committee continues to recommend a January 1, 2027, effective date because the bill creates new procedures that courts must implement beginning on January 1.
Superior Court of Orange County, Civil/Small Claims Division (continued)	5. How well would this proposal work in courts of different sizes? Response: The proposal can be implemented in courts of different sizes, although the operational impact will vary. Larger courts may have more departments, local procedures, automated remote appearance systems, and public facing materials requiring coordinated updates. Smaller courts may have fewer systems to modify but fewer dedicated staff resources for implementation.	The committee appreciates the response.

Commenter	Comment	Committee Response
Superior Court of Orange County, Family Law Division by Marina Barragan, Operations Analyst	Position: Not indicated Regarding proposed rule 3.672(d)(2), clarification would be helpful as to whether a reason stated orally on the record must also be documented in the minute order. This clarification would promote consistent courtroom practices and assist courts in developing procedures and minute order language.	The committee agrees and has recommended amending rule 3.672(d)(3) to explain that the court must state its reason "using one or more of the following methods," followed by a numbered list of methods.
Superior Court of Orange County, Family Law Division (continued)	Does the proposal appropriately address the stated purpose? Yes, the proposal appropriately addresses the stated purpose.	The committee appreciates the response.
Superior Court of Orange County, Family Law Division (continued)	Would the proposal provide cost savings? If so, please quantify. The proposal appears neutral in providing cost savings and may incur additional costs to courts for system and procedural updates and staff training for implementation.	The committee appreciates the response.
Superior Court of Orange County, Family Law Division (continued)	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 will require providing communication to judicial officers and court staff, revising current procedures, and updating the case management system and minute order language.	The committee appreciates the response.
Superior Court of Orange County, Family Law Division (continued)	Would one month from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? No, one month is not sufficient. Two months would provide sufficient time for implementation in Orange County.	The committee acknowledges that it may be difficult for courts to implement this proposal in one month. However, the committee continues to recommend a January 1 effective date because the bill creates new procedures that courts must implement beginning on January 1.

Commenter	Comment	Committee Response
Superior Court of Orange County, Family Law Division (continued)	How well would this proposal work in courts of different sizes? Our court is a large court, and this could work for Orange County.	The committee appreciates the response.
Superior Court of San Bernardino County, Superior Court Staff Committees by Sara Menor, Director of Operations	Position: Not indicated Does the proposal appropriately address the stated purpose? Yes.	The committee appreciates the response.
Superior Court of San Bernardino County (continued)	Would the proposal provide cost savings? If so, please quantify. No.	The committee appreciates the response.
Superior Court of San Bernardino County (continued)	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? Updates to the case management system, forms, and procedures, as well as training for judicial officers and staff. Website and Self-Help materials may also need to be updated, with appropriate Self-Help training. Because remote appearances are already highly utilized by the Probate Court, no significant changes to existing remote appearance practices are anticipated.	The committee appreciates the response.
Superior Court of San Bernardino County (continued)	Would one month from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.	The committee appreciates the response.
Superior Court of San Bernardino County (continued)	How well would this proposal work in courts of different sizes?	The committee appreciates the response.

Commenter	Comment	Committee Response
	The proposal should work effectively in courts of different sizes. It builds upon existing procedures, although implementation and training requirements may vary depending on the size of the court and the systems and processes currently in place.	
Superior Court of San Bernardino County (continued)	The San Bernardino Superior Court, Juvenile Division does not agree with imposing the same requirements as are currently in place for Civil proceedings and removal of exceptions under subsection (i) of CRC, rule 367.75 as proposed by ITC 26-07 (Remote Proceedings: Implementation of Senate Bill 174). The Court supports maintaining flexibility for same-day remote appearance requests when circumstances warrant, while preserving judicial discretion to balance access to justice with the confidentiality and integrity of juvenile proceedings. The Juvenile Court supports the ability of attorneys to continue to appear remotely as it promotes judicial economy by reducing wait times for attorneys to physically travel between courthouses and court users are served more efficiently as it is respectful of their time. The Court is concerned that eliminating the current Juvenile Dependency exceptions and requiring advance notice for remote appearances could create barriers to access for parties in Juvenile cases, cause delays, and potentially exclude authorized participants who are unable to provide advance notice. The Court routinely accommodates same-day remote appearance requests for parties due to illness, transportation issues, work obligations, or other unforeseen circumstances, and also permits remote participation for certain out-of-state parents. The San Bernardino Superior Court Juvenile Presiding Judge's preferred approach is for in-person appearances to remain the default, with remote appearances, including same-day remote appearances, available upon request and subject to judicial discretion. This approach better protects the confidentiality interests of youth, which cannot be waived by a parent.	The committee notes that it has not proposed amendments to subdivision (i) of rule 3.672. The "* * *" notation used in the draft rules attached to the invitation to comment is intended to indicate that content has been omitted from the document because amendments are not proposed in the omitted section. This notation does not mean that the committee has proposed repealing the marked sections. To the extent the commenter suggests amending subdivision (i), those suggestions are beyond the scope of this proposal, but will be considered as time and resources permit.

Commenter	Comment	Committee Response
	The Court has concerns regarding the increased risk of unauthorized disclosure of confidential information, recording of proceedings, or participation by individuals not authorized to be present when hearings are conducted remotely. If remote appearances continue to be permitted, the Court recommends requiring an advisement and acknowledgment, either in writing or on the record, regarding confidentiality requirements, prohibitions against recording proceedings, and assurances that no unauthorized individuals are observing or participating. Welfare and Institutions Code section 827(a)(4) lacks power of enforceability as it has no corresponding penalty provision for the improper dissemination of juvenile case information. (cf. Welf. & Inst. Code, § 827(b)(2)(C).)	
Superior Court of San Bernardino County (continued)	The proposal generally addresses its stated purpose; however, the Juvenile Court does not anticipate any cost savings resulting from this change in practice. Implementation would require staff training and revisions to existing check-in procedures. Currently, parties in juvenile proceedings may appear remotely by providing notice up to the time of the hearing under existing exceptions. If those exceptions are removed, court staff will need training on the new requirements and processes for advance notice of remote appearances.	The committee appreciates the response.
Superior Court of San Bernardino County (continued)	A one-month implementation period following Judicial Council approval would not provide sufficient time. Additional time would be necessary to provide public information so that parties understand that advance notice for remote appearances will be required in future hearings, including in ongoing cases where such notice may not have previously been required.	The committee acknowledges that it may be difficult for courts to implement this proposal in one month. However, the committee continues to recommend a January 1, 2027, effective date because the bill creates new procedures that courts must implement beginning on January 1.
Superior Court of San Diego County by Mike Roddy, Executive Officer	Position: Agree	The committee notes the commenter's agreement with the proposal.

Commenter	Comment	Committee Response
	Q: Does the proposal appropriately address the stated purpose? A: Yes.	
Superior Court of San Diego County (continued)	Q: Would the proposal provide cost savings? If so, please quantify. A: No.	The committee appreciates the response.
Superior Court of San Diego County (continued)	Q: 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? A: Updating internal procedures and notifying courtroom staff.	The committee appreciates the response.
Superior Court of San Diego County (continued)	Q: Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? A: Yes.	The committee appreciates the response.
Superior Court of San Diego County (continued)	Q: How well would this proposal work in courts of different sizes? A: It appears that the proposal would work for courts of all sizes.	The committee appreciates the response.