Item number:01

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee action requested [Choose from drop down menu below]**:**
Submit to JC (without circulating for comment)

Rules Committee Meeting Date: April 14, 2021

Title of proposal: Judicial Council: ROC 10.50 for Center for Judicial Education and Research Advisory Committee

Proposed rules, forms, or standards *(include amend/revise/adopt/approve):*
Amend ROC 10.50 Center for Judicial Education and Research Advisory Committee

Committee or other entity submitting the proposal:
Judicial Council Executive and Planning Committee

Staff contact (name, phone and e-mail): Amber Barnett, 916-263-1398, amber.barnett@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by Rules Committee date: N/A
Project description from annual agenda: N/A

If requesting July 1 or out of cycle, explain:
Requesting approval to be included on the May Judicial Council meeting agenda to accommodate the May 21, 2021, effective date.

Additional Information: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 21-095
For business meeting on: May 20–21, 2021

Title
Rules and Forms: Rule of Court for the Center for Judicial Education and Research Advisory Committee

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 10.50

Recommended by
Executive and Planning Committee
Hon. Marsha G. Slough, Chair

Agenda Item Type
Action Required

Effective Date
May 21, 2021

Date of Report
March 26, 2021

Contact
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Executive Summary

The Executive and Planning Committee recommends amending rule 10.50 of the California Rules of Court to conform to a recent change in procedures for filling vacancies on education curriculum committees, which shifted responsibility for making appointments from the Center for Judicial Education and Research (CJER) Advisory Committee to the Chief Justice under the procedures in rule 10.32.

Recommendation

The Executive and Planning Committee recommends that the Judicial Council, effective May 21, 2021:

1. Amend rule 10.50(c)(6) of the California Rules of Court to change the additional duties of the committee from “appoint” to “recommend appointment of” education curriculum committees; and

2. Amend rule 10.50(e) to add vacancies for the education curriculum committees to the advisory bodies that are appointed under the procedures provided in rule 10.32.

The amended rule is attached at page 3.

Relevant Previous Council Action

In January 1, 2019, rule 10.50 was amended to change the name of the Governing Committee of the Center for Judicial Education and Research to the CJER Advisory Committee to align the name with the names of the other Judicial Council standing advisory committees.

Analysis/Rationale

The Executive and Planning Committee recommends that rule 10.50 be amended to conform to the recent change to fill vacancies on the education curriculum committees under the procedures in rule 10.32. This change makes the procedures for filling vacancies on the education curriculum committees consistent with the way vacancies on other advisory bodies are filled.

Policy implications

None.

Comments

This proposal was not circulated for comment. It presents a minor substantive change that is unlikely to create controversy, which, under rule 10.22(d)(2), the Rules Committee may recommend that the council adopt without circulation. The proposal merely conforms the rule to a change in procedures that elicited no objection when it was introduced. There would therefore be no benefit to circulating the proposed amendment for comment.

Alternatives considered

None.

Fiscal and Operational Impacts

There are no fiscal or operational impacts resulting from this proposal.

Attachments and Links

1. Cal. Rules of Court, rule 10.50, at page 3

Rule 10.50 of the California Rules of Court is amended, effective May 21, 2021, to read:

Rule 10.50. Center for Judicial Education and Research Advisory Committee

(a)–(b) * * *

(c) Additional duties

In addition to the duties described in rule 10.34, the committee must:

(1)–(5) * * *

(6) Identify the need for and recommend the appointment of education curriculum committees to implement the priorities, long-range plan, and programs and products of judicial branch education; create and adopt procedures for their operation; and review and approve their projects and products;

(7)–(9) * * *

(d) * * *

(e) Nominations

Nominations for vacant positions on the CJER Advisory Committee and its education curriculum committees will be solicited under the procedures described in rule 10.32. The president of the California Judges Association may submit nominations to the Executive and Planning Committee.

(f) * * *

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee action requested [Choose from drop down menu below]**:**
Circulate for comment (January 1 cycle)

Rules Committee Meeting Date: April 14, 2021

Title of proposal: Appellate Procedure: Electronic Signatures

Proposed rules, forms, or standards *(include amend/revise/adopt/approve):*
Amend Cal. Rules of Court, rules 8.70 and 8.75

Committee or other entity submitting the proposal:
Appellate Advisory Committee

Staff contact (name, phone and e-mail): Christy Simons, 415-865-7694, christy.simons@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by Rules Committee date: November 2, 2020
Project description from annual agenda: Amend rule 8.75 to allow electronic signatures on documents requiring signatures of multiple parties. Rule 8.75(c) currently requires the filer to obtain opposing counsel's original signature on a printed form of the document or in the form of a copy of the signed signature page, maintain the original signed document or copies of signed signature pages, and make them available for inspection and copying upon request. Trial court rule 2.257 was recently amended to permit electronic signatures in certain situations; this may provide a starting point for amending the appellate rule. This is a priority 1 rules modernization project because it will increase access to justice, promote efficiency among stipulating parties, further consistency in the rules, and reduce unnecessary transmission of paper documents during the pandemic. Origin: appellate attorney in private practice

Also amend rule 8.70 (application, construction, and definitions) to correct non-substantive issues and noncontroversial substantive issues including redundancy, a typographical error, and non-parallel sentence structure. Although this is a priority 2 item on the committee's current annual agenda, it would promote efficiency and reduce amendment processing costs to amend this electronic filing rule at the same time as rule 8.75.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR21-__

Title
Appellate Procedure: Electronic Signatures

Proposed Rules, Forms, Standards, or Statutes
Amend Cal. Rules of Court, rules 8.70 and 8.75

Proposed by
Appellate Advisory Committee
Hon. Louis R. Mauro, Chair

Action Requested
Review and submit comments by May 27, 2021

Proposed Effective Date
January 1, 2022

Contact
Christy Simons, 415-865-7694
christy.simons@jud.ca.gov

Executive Summary and Origin

The Appellate Advisory Committee proposes amending two rules of court governing electronic filing in the appellate courts to permit the use of electronic signatures and make other updates. The trial court electronic filing rules have been amended several times recently, including to allow electronic signatures. Several similar amendments for the parallel appellate rules are now being proposed to foster modern e-business practices, promote consistency in the rules and efficiency among stipulating parties, and reduce unnecessary transmission of paper documents. The proposed amendments to rule 8.70 would add a definition for electronic signature and update several other definitions. The amendments to rule 8.75 would authorize the use of electronic signatures on electronic documents filed with the court and reorganize parts of the rule to improve clarity and eliminate redundancies. This proposal originated from the suggestion of an attorney in private practice.

Background

Rule 8.70(c)[1] sets forth definitions of terms used in the electronic filing rules. Rule 8.75 governs the requirements for signatures on documents to be filed electronically. Under rule 8.75(a), electronic filers of a document signed under penalty of perjury must use and retain a printed form of the document with the original signature.[2] Rule 8.75(c) requires electronic filers of documents

[1] All rule references are to the California Rules of Court.

[2] In this invitation to comment, "original" signature means the wet ink signature on a paper form of the document. See JC Report Appellate Procedure: Signatures on Filed Documents, Aug. 2, 2013, at pp. [discussing amendments to predecessor rule 8.77; original signatures as contrasted with copies of the signed signature page]; JC Report Court Technology: Electronic Filing Pilot Program in the Court of Appeal, Second Appellate District, Apr. 5, 2010, at pp.

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee. It is circulated for comment purposes only.

with multiple signatures such as stipulations to either use and retain a printed copy with the original signature or copies of the signed signature page of the document.

Effective January 1, 2019, the Judicial Council amended rule 2.257, the parallel trial court rule governing requirements for signatures on documents, to add a definition of "electronic signature" and authorize the use of electronic signatures on documents signed under penalty of perjury.

One year later, effective January 1, 2020, rule 2.257 was amended again to authorize using an electronic signature for a document signed under penalty of perjury when the declarant is not the filer. The option to use electronic signatures was also added for documents not signed under penalty of perjury, including stipulations and other documents requiring multiple signatures.

Many private law firms and government agencies now use secure electronic signature internet services as frequently as possible to sign contracts and agreements. These services avoid the inefficiency of printing, physically signing, and then either scanning or mailing a document back to the originator.

The appellate rule governing signatures on documents has not been updated and does not provide an electronic signature option. Thus, for example, an opposing counsel's stipulation in an appellate court still requires that the filer obtain "an original signature on a printed form of the document or in the form of a copy of the signed signature page of the document," "maintain the original signed document and any copies of signed signature pages and . . . make them available for inspection and copying" upon request. (Rule 8.75(c).)

The Proposal

This proposal would add the option of using electronic signatures on documents filed electronically in the appellate courts, including documents requiring multiple signatures, by including a definition of "electronic signature" in rule 8.70 and including procedures for electronic signatures in rule 8.75. It would also update several other definitions in rule 8.70 for additional clarity and consistency with the trial court rules.

Rule 8.70

The proposal would add a new definition of electronic signature and amend several other definitions in rule 8.70(c). The new definition is identical to that used in the trial court rules. Unlike the trial court rules, which include the definition of electronic signature in the rule on requirements for signatures on documents (rule 2.257(a)), this proposal would place the definition in rule 8.70(c) with other definitions of terms used in the electronic filing rules.

The other proposed amendments largely mirror the parallel trial court rule providing definitions of electronic filing terms, rule 2.250(c). The proposal would:

1–4 [adopting predecessor rule 8.77; requiring the party electronically filing a document with multiple signatures to retain the "original signed document" for inspection and copying].)

- Amend and reorganize the definition of "document" to avoid using the word "document" in the definition, maintain internal consistency by referring to "any writing" rather than "any filing,"[3] and maintain parallel structure with the rest of the subdivision.

- Amend the definition of "electronic filing" to clarify that it refers to the action of filing by the filer and does not include the steps taken by the court upon receipt of the document.

- Amend definitions for "electronic service," "electronic filer," and "electronic filing service provider" to add provisions related to electronic filing and service by or on a nonparty. Specifically, in addition to "a party," the definitions would also include "or other person" to account for others who may be involved in a case but are not parties.

- Amend several definitions to improve clarity and accuracy.

Rule 8.75

The proposal would amend this rule to mirror trial court rule 2.257(b) and (c), both in its organization and its substance. The proposal would:

- Add the option of using electronic signatures.

- Require that the electronic signature must be (1) unique to the declarant, (2) capable of verification, (3) under the sole control of the declarant, and (4) linked to data such that, if the data are changed, the electronic signature is invalid. These requirements are designed to ensure that the application of the signatures is the act of the person signing, can be proven as such, and is invalidated if the document appears to have been altered after being electronically signed.

- Strike the subdivision (c) heading, "Documents requiring signatures of opposing parties," and instead incorporate the requirements from subdivision (c) into subdivision (b), which governs documents not signed under penalty of perjury. Subdivision (c) is no longer necessary for signatures of opposing parties under penalty of perjury as those requirements are captured in subdivision (a). Therefore, the only remaining requirements would be for signatures not under penalty of perjury.

- Include "other persons" in addition to parties within the scope of the rule to account for others who may be involved in a case but are not parties.

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[3] The change from "any *filing* submitted to the reviewing court" to "any *writing* . . ." is also intended to reflect that the definition includes documents that are submitted to the reviewing court but not filed, such as documents that are lodged.

- Add an advisory committee comment to clarify that the rule’s electronic signature requirements do not alter the courts’ authority to resolve disputes about the validity of a signature.
- Add an advisory committee comment regarding the distinction between an electronic signature and a digital signature.

Because electronic signatures do not require the physical presence of the signer or an exchange of mailed paper documents, the option to use them may provide litigants a potentially faster and more convenient way to obtain needed signatures. These issues are even more important and relevant during the coronavirus pandemic, as social distancing measures lead more litigants and attorneys to work from home and to communicate digitally to avoid transmission of the virus on paper documents.

Alternatives Considered

The committee considered taking no action but concluded that updating the rules to permit electronic signatures would assist litigants with obtaining signatures, simplify procedures, and reduce the use of paper and exchange of documents by mail.

The committee also considered adding provisions regarding electronic signatures without making other changes to the rules, but rejected this alternative. The parallel trial court rules have been updated several times in the last three years. Delaying the other updates for the appellate rules would be inefficient and would preserve inconsistencies, redundancies, and outdated terminology and procedures.

The committee also considered placing the definition of “electronic signature” in rule 8.75 as new subdivision (a), to mirror trial court rule 2.257(a), rather than in rule 8.70(c), which defines terms used in the electronic filing rules. For internal consistency, the committee decided to include the new definition in the rule with other definitions. The committee requests comments on this issue.

Fiscal and Operational Impacts

Because electronic signatures do not require the physical presence of the signer or an exchange of mailed paper documents, the option to use them should offer litigants a potentially faster and more convenient way to obtain needed signatures. The committee expects that the proposed amendments will provide greater clarity in the rules for parties, attorneys, courts, and other court users, and improved consistency between the appellate rules and the trial court rules. The proposal is not expected to result in any costs for the courts.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Should the definition of "electronic signature" be added to rule 8.70(c) as presented, or to rule 8.75 as new subdivision (a)?
- Does the procedure in rule 8.75(b)(2)(A) for documents with multiple signatures reflect current practice for validating those signatures and preserving evidence of them? If not, should alternative procedures be provided? If yes, please describe.

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- 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?
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Rules of Court, rules 8.70 and 8.75, at pages 6–10

Rules 8.70 and 8.75 of the California Rules of Court would be amended, effective January 1, 2022, to read:

Rule 8.70. Application, construction, and definitions

(a) Application

Notwithstanding any other rules to the contrary, the rules in this article govern filing and service by electronic means in the Supreme Court and the Courts of Appeal.

(b) Construction

The rules in this article must be construed to authorize and permit filing and service by electronic means to the extent feasible.

(c) Definitions

As used in this article, unless the context otherwise requires:

(1) "The court" means the Supreme Court or a Court of Appeal.

(2) A "document" is~~:~~

~~(A)~~ any ~~filing~~ writing submitted to the reviewing court by a party or other person, including a brief, a petition, an appendix, or a motion~~;~~.

~~(B)~~ ~~Any~~ A document is also any writing transmitted by a trial court to the reviewing court, including a notice or a clerk's or reporter's transcript~~;~~, and

~~(C)~~ any writing prepared by the reviewing court, including an opinion, an order, or a notice.

~~(D)~~ A document may be in paper or electronic form.

(3) "Electronic service" is service of a document on a party or other person by either electronic transmission or electronic notification. Electronic service may be performed directly by a party or other person, by an agent of a party or other person including the party~~'s~~ or other person's attorney, through an electronic filing service provider, or by a court.

(4) "Electronic transmission" means the ~~transmission~~ sending of a document by electronic means to the electronic service address at or through which a party or other person has authorized electronic service.

Rules 8.70 and 8.75 of the California Rules of Court would be amended, effective January 1, 2022, to read:

(5) "Electronic notification" means the notification of a party or other person that a document is served by sending an electronic message to the electronic service address at or through which the party or other person has authorized electronic service, specifying the exact name of the document served and providing a hyperlink at which the served document can be viewed and downloaded.

(6) "Electronic service address" ~~of a party~~ means the electronic address at or through which ~~the~~a party or other person has authorized electronic service.

(7) An "electronic filer" is a ~~party~~ person filing a document in electronic form directly with the court, by an agent, or through an electronic filing service provider.

(8) "Electronic filing" is the electronic transmission to a court of a document in electronic form for filing. Electronic filing refers to the activity of filing by the electronic filer and does not include the court's actions upon receipt of the document for filing, including processing and review of the document and its entry into the court's records.

(9) An "electronic filing service provider" is a person or entity that receives an electronic ~~filing~~ document from a party or other person for retransmission to the court or for electronic service on other parties, or both. In ~~submission of~~ submitting electronic filings, the electronic filing service provider does so on behalf of the electronic filer and not as an agent of the court.

(10) An "electronic signature" is an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign a document or record created, generated, sent, communicated, received, or stored by electronic means.

Advisory Committee Comment

The definition of "electronic service" has been amended to provide that a party may effectuate service not only by the electronic transmission of a document, but also by providing electronic notification of where a document served electronically may be located and downloaded. This amendment is intended to ~~modify the rules on electronic service to~~ expressly authorize electronic notification as ~~a legally effective~~ an alternative means of service ~~to electronic transmission~~. This ~~rules~~ amendment is consistent with the amendment of Code of Civil Procedure section 1010.6, effective January 1, 2011, to authorize service by electronic notification. (See Stats. 2010, ch. 156 (Sen. Bill 1274).) The amendments change the law on electronic service as understood by the

appellate court in *Insyst, Ltd. v. Applied Materials, Inc*. (2009) 170 Cal.App.4th 1129, which interpreted the rules as authorizing only electronic transmission as ~~the only~~ an effective means of electronic service.

Rule 8.75. Requirements for signatures on documents

(a) Documents signed under penalty of perjury

~~If~~ When a document to be filed electronically must be signed under penalty of perjury, the ~~following procedure applies~~ document is deemed to have been signed by the declarant if filed electronically, provided that either of the following conditions is satisfied:

(1) ~~The document is deemed signed by the declarant if, before filing, the declarant has signed a printed form of the document.~~ The declarant has signed the document using an electronic signature and declares under penalty of perjury under the laws of the State of California that the information submitted is true and correct. If the declarant is not the electronic filer, the electronic signature must be unique to the declarant, capable of verification, under the sole control of the declarant, and linked to data such that, if the data are changed, the electronic signature is invalidated; or

(2) The declarant, before filing, has physically signed a printed form of the document. By electronically filing the document, the electronic filer certifies that ~~(1) has been complied with and that~~ the original signed document is available for inspection and copying at the request of the court or any other party. In the event this second method of submitting documents electronically under penalty of perjury is used, the following conditions apply:

~~(3)~~(A) At any time after the electronic version of the document is filed, any other party may serve a demand for production of the original signed document. The demand must be served on all other parties but need not be filed with the court.

~~(4)~~(B) Within five days of service of the demand under ~~(3)~~(A), the party or other person on whom the demand is made must make the original signed document available for inspection and copying by all other parties.

~~(5)~~(C) At any time after the electronic version of the document is filed, the court may order the ~~filing party~~ electronic filer to produce the original signed document ~~in court~~ for inspection and copying by the

court. The order must specify the date, time, and place for the production and must be served on all parties.

(b) Documents not signed under penalty of perjury

(1) If a document does not require a signature under penalty of perjury, the document is deemed signed by the ~~party if the document is filed electronically~~ electronic filer.

~~**(c) Documents requiring signatures of multiple parties**~~

(2) When a document to be filed electronically, such as a stipulation, requires the signatures of multiple ~~parties~~ persons, ~~the following procedure applies~~ the document is deemed to have been signed by those persons if filed electronically, provided that either of the following procedures is satisfied:

~~(1)~~(A) The ~~party filing the document~~ electronic filer ~~must obtain~~ has obtained all the signatures ~~of all parties~~ either in the form of an original signature on a printed form of the document or in the form of a copy of the signed signature page of the document. The electronic filer must maintain the original signed document and any copies of signed signature pages and must make them available for inspection and copying as provided in (a)(2)(B). The court and any ~~other~~ party may demand production of the original signed document and any copies of signed signature pages as provided in (a)(2)(A)–(C). By electronically filing the document, the electronic filer indicates that all ~~parties~~ persons whose signatures appear on it have signed the document and that the filer has possession of the signatures of all ~~parties~~ those persons in a form permitted by this rule ~~in his or her possession.~~; or

~~(2)~~(B) ~~The party filing the document must maintain the original signed document and any copies of signed signature pages and must make them available for inspection and copying as provided in (a)(2). The court and any other party may demand production of the original signed document and any copies of signed signature pages in the manner provided in (a)(3)–(5).~~ The party or other person has signed the document using an electronic signature and that electronic signature is unique to the person using it, capable of verification, under the sole control of the person using it, and linked to data such that, if the data are changed, the electronic signature is invalidated.

Rules 8.70 and 8.75 of the California Rules of Court would be amended, effective January 1, 2022, to read:

~~(d)~~(c) Digital signatures

A party or other person is not required to use a digital signature on an electronically filed document.

~~(e)~~(d) Judicial signatures

If a document requires a signature by a court or a judicial officer, the document may be electronically signed in any manner permitted by law.

Advisory Committee Comment

The requirements for electronic signatures that are compliant with the rule do not impair the power of the courts to resolve disputes about the validity of a signature.

Subdivision (c). Rule 8.70 defines "electronic signature" but not "digital signature." A digital signature is a type of electronic signature as defined in Government Code section 16.5(d). (Civ. Code, § 1633.2(h).)

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee action requested [Choose from drop down menu below]**:**
Circulate for comment (January 1 cycle)

Rules Committee Meeting Date: April 14, 2021

Title of proposal: Appellate Procedure: Appeal After Plea of Guilty or Nolo Contendere or Admission of Probation Violation

Proposed rules, forms, or standards *(include amend/revise/adopt/approve):*
Amend Cal. Rules of Court, rule 8.304

Committee or other entity submitting the proposal:
Appellate Advisory Committee

Staff contact (name, phone and e-mail): Christy Simons, 415-865-7694, christy.simons@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by Rules Committee date: November 2, 2020
Project description from annual agenda: Amend rule 8.304(b)(3) to improve the procedure for filing a notice of appeal after guilty plea that is not accompanied by a certificate of probable cause. Currently, if a defendant does not file a statement for issuance of a certificate of probable cause, rule 8.304(b)(3) requires the clerk to mark the notice of appeal "inoperative." This result is not correct in a significant number of cases, so clerks must analyze and make legal decisions regarding whether to file these notices of appeal. This requires more time and work for court clerks, and incorrect decisions result in further delay. Under the proposed amended rule, if a notice of appeal after a guilty plea is not accompanied by a certificate of probable cause, whether such certificate was denied or not requested, the court would issue an order stating that the appeal is limited to issues that do not require a certificate of probable cause. This is a priority 1 project because the current procedure is inefficient and inappropriately requires clerks to make legal decisions. The improved process will eliminate errors, reduce the workload for trial court clerks, and promote greater fairness and efficiency. Origin: Member of the Criminal Law Advisory Committee, on behalf of the Second District Court of Appeal.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR21-__

Title
Appellate Procedure: Appeal After Plea of Guilty or Nolo Contendere or Admission of Probation Violation

Proposed Rules, Forms, Standards, or Statutes
Amend Cal. Rules of Court, rule 8.304

Proposed by
Appellate Advisory Committee
Hon. Louis R. Mauro, Chair

Action Requested
Review and submit comments by May 27, 2021

Proposed Effective Date
January 1, 2022

Contact
Christy Simons, 415-865-7694
christy.simons@jud.ca.gov

Executive Summary and Origin

The Appellate Advisory Committee proposes amending the rule that governs initiating an appeal in a felony case after a plea of guilty or nolo contendere or after an admission of a probation violation. In these cases, a certificate of probable cause is required if the defendant seeks to appeal an issue that challenges the validity of the plea or admission. Currently, the rule requires the trial court clerk to mark a notice of appeal "Inoperative" if the defendant did not file the statement requesting a certificate of probable cause or the trial court denied a certificate. However, because an appeal can be based on grounds that do not require a certificate, the clerk must review the notice of appeal and decide whether it should be filed notwithstanding the lack of a certificate. The amendments would reorganize the rule, simplify procedures, and eliminate the onus on the clerk to make a legal decision. The proposal is based on a suggestion from a member of another advisory committee.

Background

Rule 8.304 of the California Rules of Court governs filing an appeal in a felony case. Subdivision (b) addresses notices of appeal filed after a plea of guilty or nolo contendere or an admission of a probation violation. The defendant filing the appeal must request a certificate of probable cause for any challenge to the validity of the plea. If the superior court does not issue a certificate, either because the defendant did not request one or the court denied the request, the rule sets forth the procedure for clerks to follow: "If the defendant does not file the statement required [to request a certificate of probable cause] or if the superior court denies a certificate of probable cause, the superior court clerk must mark the notice of appeal 'Inoperative,' notify the

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee. It is circulated for comment purposes only.

defendant, and send a copy of the marked notice of appeal to the district appellate project." (Rule 8.304(b)(3).)

However, in the next paragraph, the rule also provides that a defendant need not request a certificate of probable cause if the notice of appeal states that the appeal is based on the denial of a motion to suppress evidence under Penal Code section 1538.5 or grounds arising after the plea, such as sentencing issues, that do not challenge the validity of the plea. (Rule 8.304(b)(4).)

As a result, a superior court clerk in receipt of a notice of appeal that is not accompanied by a request for a certificate of probable cause or the certificate itself must decide whether to mark it "Inoperative" or file it and allow the appeal to proceed. While the notice of appeal forms often contain check boxes that allow the defendant to specify that the appeal is from denial of a motion to suppress evidence or sentencing only and is not designed to attack the plea, it is not uncommon for both self-represented defendants and attorneys to check the wrong box or boxes, check no boxes, or otherwise submit a notice of appeal that does not alert the clerk that no certificate of probable cause is required. Incorrect decisions to mark a notice of appeal inoperative result in delay and additional work for litigants, appellate projects, and the courts.

The Proposal

This proposal would clarify the rule and eliminate a procedure that inappropriately requires clerks to make legal decisions. It would save time and reduce work for the courts, and avoid delay in felony appeals following a plea or admission of probation violation.

Currently, rule 8.304(b)(1) indicates that, "except as provided in (4)," a notice of appeal must be filed with a certificate of probable cause or the statement requesting a certificate. Under subdivision (b)(2), if a certificate is requested, the court must issue it or deny the request within 20 days. Subdivision (b)(3) requires the clerk to mark a notice of appeal filed without a certificate or a request for a certificate "Inoperative." Subdivision (b)(4) provides that a defendant "need not comply with (1)" if the notice of appeal states grounds that do not require a certificate. Thus, the rule suggests that a notice of appeal filed without a certificate or a request for one is improper and the clerk is expected to reject the filing and take other steps unless exceptions apply. To more accurately reflect the law and clarify that the distinction to be drawn is whether the grounds for the appeal require a certificate, not whether a certificate is requested or attached to the notice of appeal, the proposed amendments would group paragraphs (1) and (2) of subdivision (b) together as provisions addressing appeals that require a certificate of probable cause.

New subdivision (b)(2) would address appeals for which no certificate of probable cause is required, that is, appeals that either challenge the denial of a Penal Code section 1538.5 motion to suppress evidence or are based on grounds such as sentencing or other post-plea matters that do not challenge the validity of the plea.

New subdivision (b)(3) would address appeals for which no certificate of probable cause was requested or granted. Rather than requiring clerks to mark the notice of appeal inoperative, notify

the defendant, and send a copy of the marked notice of appeal to the district appellate project unless the notice of appeal states that the appeal is based on grounds that do not require a certificate of probable cause, the rule would simply provide that if a notice of appeal is filed without the statement requesting a certificate of probable cause or the trial court denies the request, the appeal is limited to issues that do not require a certificate of probable cause.

The proposal also includes a conforming change to subdivision (c) regarding notification of the appeal. Subdivision (c)(1) requires the superior court clerk to promptly send notification of the filing of a notice of appeal to certain individuals including the attorneys of record, any unrepresented defendant, the reviewing court clerk, and each court reporter. The rule further provides that if the defendant also files a statement requesting a certificate of probable cause, the clerk must not send the notification unless the superior court files a certificate. This provision would no longer be necessary because the proposed amendments provide that appeals in which a certificate is requested but denied may proceed but will be limited to issues that do not require a certificate of probable cause.

Finally, the advisory committee comment to subdivision (b) has been rewritten to reflect the changes to the rule and to include references to Supreme Court cases analyzing circumstances in which no certificate of probable cause for the appeal is required.

Alternatives Considered

The committee considered taking no action, but determined that the proposed changes would provide a substantial benefit to litigants and the superior courts by simplifying procedures and avoiding delay caused by the incorrect rejection of notices of appeal presented for filing.

The committee also considered a more limited option of amending only the provision requiring the clerk to mark the notice of appeal inoperative. That option would still have required action by the clerk to indicate that the appeal would be limited to issues that do not require a certificate of probable cause. The committee rejected this option in favor of clarifying the rule and eliminating the need for the clerk to review and evaluate the sufficiency of the notice of appeal and take action based on that evaluation.

Fiscal and Operational Impacts

Implementation requirements include providing training for superior court staff and publicizing the change in procedure to the criminal defense bar and the appellate projects. There should be minimal implementation costs, if any. The operational impacts would include time savings for superior court clerks processing notices of appeal filed in these cases.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Would the proposed changes have an impact on preparation of the record on appeal? If so, please describe.

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- 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?
- Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Rules of Court, rule 8.304, at pages 5–9

Rule 8.304 of the California Rules of Court would be amended, effective January 1, 2022, to read:

Rule 8.304. Filing the appeal; certificate of probable cause

(a) Notice of appeal

(1) To appeal from a judgment or an appealable order of the superior court in a felony case—other than a judgment imposing a sentence of death—the defendant or the People must file a notice of appeal in that superior court. To appeal after a plea of guilty or nolo contendere or after an admission of probation violation, the defendant must also comply with (b).

(2) As used in (1), "felony case" means any criminal action in which a felony is charged, regardless of the outcome. A felony is "charged" when an information or indictment accusing the defendant of a felony is filed or a complaint accusing the defendant of a felony is certified to the superior court under Penal Code section 859a. A felony case includes an action in which the defendant is charged with:

(A) A felony and a misdemeanor or infraction, but is convicted of only the misdemeanor or infraction;

(B) A felony, but is convicted of only a lesser offense; or

(C) An offense filed as a felony but punishable as either a felony or a misdemeanor, and the offense is thereafter deemed a misdemeanor under Penal Code section 17(b).

(3) If the defendant appeals, the defendant or the defendant's attorney must sign the notice of appeal. If the People appeal, the attorney for the People must sign the notice.

(4) The notice of appeal must be liberally construed. Except as provided in (b), the notice is sufficient if it identifies the particular judgment or order being appealed. The notice need not specify the court to which the appeal is taken; the appeal will be treated as taken to the Court of Appeal for the district in which the superior court is located.

(b) Appeal after plea of guilty or nolo contendere or after admission of probation violation

(1) Appeal requiring a certificate of probable cause

Rule 8.304 of the California Rules of Court would be amended, effective January 1, 2022, to read:

~~(1)~~(A) ~~Except as provided in (4),~~ To appeal from a superior court judgment after a plea of guilty or nolo contendere or after an admission of probation violation on grounds that challenge the validity of the plea or admission, the defendant must file in that superior court—with the notice of appeal required by (a)—the written statement required by Penal Code section 1237.5 for issuance of a certificate of probable cause.

~~(2)~~(B) Within 20 days after the defendant files a written statement under ~~(1)~~Penal Code section 1237.5, the superior court must sign and file either a certificate of probable cause or an order denying the certificate.

(2) Appeal not requiring a certificate of probable cause

To appeal from a superior court judgment after a plea of guilty or nolo contendere or after an admission of probation violation on grounds that do not challenge the validity of the plea or admission, the defendant need not file the written statement required by Penal Code section 1237.5 for issuance of a certificate of probable cause. No certificate of probable cause is required for an appeal based on:

(A) The denial of a motion to suppress evidence under Penal Code section 1538.5; or

(B) Grounds that arose after entry of the plea or admission and do not ~~affect the plea's validity~~, as a substantive matter, challenge the validity of the plea or admission.

~~(3) If the defendant does not file the statement required by (1) or if the superior court denies a certificate of probable cause, the superior court clerk must mark the notice of appeal "Inoperative," notify the defendant, and send a copy of the marked notice of appeal to the district appellate project.~~

(3) Appeal without a certificate of probable cause

If the defendant does not file the written statement required by Penal Code section 1237.5 or the superior court denies a certificate of probable cause, the appeal will be limited to issues that do not require a certificate of probable cause.

~~(4) The defendant need not comply with (1) if the notice of appeal states that the appeal is based on:~~

Rule 8.304 of the California Rules of Court would be amended, effective January 1, 2022, to read:

~~(A) The denial of a motion to suppress evidence under Penal Code section 1538.5; or~~

~~(B) Grounds that arose after entry of the plea and do not affect the plea's validity.~~

~~(5) If the defendant's notice of appeal contains a statement under (4), the reviewing court will not consider any issue affecting the validity of the plea unless the defendant also complies with (1).~~

(c) Notification of the appeal

(1) When a notice of appeal is filed, the superior court clerk must promptly send a notification of the filing to the attorney of record for each party, to any unrepresented defendant, to the reviewing court clerk, to each court reporter, and to any primary reporter or reporting supervisor. ~~If the defendant also files a statement under (b)(1), the clerk must not send the notification unless the superior court files a certificate under (b)(2).~~

(2) The notification must show the date it was sent, the number and title of the case, and the dates the notice of appeal and any certificate under ~~(b)(2)~~ (b)(1)(B) were filed. If the information is available, the notification must also include:

(A) The name, address, telephone number, e-mail address, and California State Bar number of each attorney of record in the case;

(B) The name of the party each attorney represented in the superior court; and

(C) The name, address, telephone number and e-mail address of any unrepresented defendant.

(3) The notification to the reviewing court clerk must also include a copy of the notice of appeal, any certificate filed under (b)(1), and the sequential list of reporters made under rule 2.950.

(4) A copy of the notice of appeal is sufficient notification under (1) if the required information is on the copy or is added by the superior court clerk.

Rule 8.304 of the California Rules of Court would be amended, effective January 1, 2022, to read:

(5) The sending of a notification under (1) is a sufficient performance of the clerk's duty despite the discharge, disqualification, suspension, disbarment, or death of the attorney.

(6) Failure to comply with any provision of this subdivision does not affect the validity of the notice of appeal.

Advisory Committee Comment

Subdivision (a). Penal Code section 1235(b) provides that an appeal from a judgment or appealable order in a "felony case" is taken to the Court of Appeal, and Penal Code section 691(f) defines "felony case" to mean "a criminal action in which a felony is charged. ~~. . .~~" Rule 8.304(a)(2) makes it clear that a "felony case" is an action in which a felony is charged *regardless of the outcome of the action*. Thus the question whether to file a notice of appeal under this rule or under the rules governing appeals to the appellate division of the superior court (rule 8.800 et seq.) is answered simply by examining the accusatory pleading: if that document charged the defendant with at least one count of felony (as defined in ~~Penal~~ Pen. Code, ~~section~~ § 17(a)), the Court of Appeal has appellate jurisdiction and the appeal must be taken under this rule *even if the prosecution did not result in a punishment of imprisonment in a state prison*.

It is settled case law that an appeal is taken to the Court of Appeal not only when the defendant is charged with and convicted of a felony, but also when the defendant is charged with both a felony and a misdemeanor (Pen. Code, § 691(f)) but is convicted of only the misdemeanor (e.g., *People v. Brown* (1970) 10 Cal.App.3d 169); when the defendant is charged with a felony but is convicted of only a lesser offense (Pen. Code, § 1159; e.g., *People v. Spreckels* (1954) 125 Cal.App.2d 507); and when the defendant is charged with an offense filed as a felony but punishable as either a felony or a misdemeanor, and the offense is thereafter deemed a misdemeanor under Penal Code section 17(b) (e.g., *People v. Douglas* (1999) 20 Cal.4th 85; *People v. Clark* (1971) 17 Cal.App.3d 890).

Trial court unification did not change this rule: after as before unification, "Appeals in felony cases lie to the [C]ourt of [A]ppeal, regardless of whether the appeal is from the superior court, the municipal court, or the action of a magistrate. *Cf.* Cal. Const. art. VI, § 11(a) [except in death penalty cases, Courts of Appeal have appellate jurisdiction when superior courts have original jurisdiction 'in causes of a type within the appellate jurisdiction of the [C]ourts of [A]ppeal on June 30, 1995~~. . . .~~']." ("~~Recommendation on~~ Trial Court Unification: Revision of Codes" (July 1998) 28 *Cal. Law Revision Com. Rep.* 455–456.)

Subdivision (b). ~~Under (b)(1), the defendant is required to file both a notice of appeal and the statement required by Penal Code section 1237.5(a) for issuance of a certificate of probable cause. Requiring a notice of appeal in all cases simplifies the rule, permits compliance with the signature requirement of rule 8.304(a)(3), ensures that the defendant's intent to appeal will not be~~

~~misunderstood, and makes the provision consistent with the rule in civil appeals and with current practice as exemplified in the Judicial Council form governing criminal appeals.~~

~~Because of the drastic consequences of failure to file the statement required for issuance of a certificate of probable cause in an appeal after a plea of guilty or nolo contendere or after an admission of probation violation, (b)(5) alerts appellants to a relevant rule of case law, i.e., that, although such an appeal may be maintained without a certificate of probable cause if the notice of appeal states the appeal is based on the denial of a motion to suppress evidence or on grounds arising after entry of the plea and not affecting its validity, no *issue* challenging the validity of the plea is cognizable on that appeal without a certificate of probable cause. (*People v. Mendez* (1999) 19 Cal.4th 1084, 1104.)~~ Subdivision (b)(1) reiterates the requirement set forth in Penal Code section 1237.5(a) that to challenge the validity of a plea or the admission of a probation violation on appeal under Penal Code section 1237(a), the defendant must file both a notice of appeal and the written statement required by section 1237.5(a) for the issuance of a certificate of probable cause. (See *People v. Mendez* (1999) 19 Cal.4th 1084, 1098 [probable cause certificate requirement is to be applied strictly].)

Subdivision (b)(2) identifies exceptions to the certificate of probable cause requirement. These include an appeal that challenges the denial of a motion to suppress evidence under Penal Code section 1538.5 (see *People v. Stamps* (2020) 9 Cal.5th 685, 694) and an appeal under Penal Code section 1237(b) that does not challenge the validity of the plea or the admission of a probation violation (see, e.g., *id.* at pp. 694–698 [appeal based on a post-plea change in the law]; *People v. Arriaga* (2014) 58 Cal.4th 950, 958–960 [appeal of the denial of a motion to vacate a conviction based on inadequate advisement of potential immigration consequences under Penal Code section 1016.5]; and *People v. French* (2008) 43 Cal.4th 36, 45–46 [appeal that challenges a post-plea sentencing issue that was not resolved by, and as a part of, the negotiated disposition]).

Subdivision (b)(3) makes clear that if a defendant raises an issue on appeal that requires a certificate of probable cause, but the defendant does not file the written statement required by Penal Code section 1237.5 or the superior court denies a certificate, then the appeal is limited to issues, such as those identified in subdivision (b)(2), that do not require a certificate of probable cause. (See *People v. Mendez* (1999) 19 Cal.4th 1084, 1088–1089.)

Item number: 04

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee action requested [Choose from drop down menu below]**:**
Approve

Rules Committee Meeting Date: April 14, 2021

Title of proposal: Civil Jury Instructions: Instructions with Minor or Nonsubstantive Revisions (Release 39)

Proposed rules, forms, or standards *(include amend/revise/adopt/approve):*
Civil Jury Instructions

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

Staff contact (name, phone and e-mail): Eric Long, Attorney, Legal Services, 415-865-7691 eric.long@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by Rules Committee date: November 2, 2020
Project description from annual agenda: Maintenance—Sources and Authority; Technical Corrections

If requesting July 1 or out of cycle, explain:
California Rules of Court, rules 2.1050(d) and 10.58(a), require the advisory committee to update, amend, and add topics to CACI on a regular basis and to submit its recommendations to the council for approval. The Judicial Council has given the Rules Committee final authority to approve instructions with only changes to the Directions for Use or additions to the Sources and Authority under the provisions of the guidelines adopted on December 19, 2006, titled Jury Instructions Corrections and Technical and Minor Substantive Changes. Pursuant to this delegation of authority, the advisory committee requests that the Rules Committee give final approval to 17 revised CACI instructions for Release 39.

Additional Information: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

Information for JC Staff regarding form translations:

- *List any amended forms in this proposal that have already been translated:*
- *List any new forms that require translation by statute or that you will request to be translated:*

JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date
March 29, 2021

To
Members of the Rules Committee

From
Advisory Committee on Civil Jury Instructions
Hon. Martin J. Tangeman, Chair

Subject
Civil Jury Instructions: Instructions with Minor or Nonsubstantive Revisions (Release 39)

Action Requested
Review and Approve Publication of Instructions

Deadline
April 14, 2021

Contact
Eric Long
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 17 instructions in this release, 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 that are nonsubstantive and unlikely to cause controversy. 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.

Recommendation

The Advisory Committee on Civil Jury Instructions recommends that the Rules Committee approve for publication revisions to 17 civil jury instructions, prepared by the advisory committee, that contain changes that do not require posting for public comment or full Judicial Council approval. These instructions will be published in the 2021 supplement of *CACI* and posted online on the California Courts website, and on Lexis and Westlaw.

The revised instructions are attached at pages 5–68.

Relevant Previous Council Action

In 2003, 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 to the Advisory Committee on Civil Jury Instructions the authority to review and approve nonsubstantive grammatical and typographical corrections to the jury instructions, and authority for the Rules Committee to "review 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 that the Rules Committee (formerly known as the Rules and Projects Committee or RUPRO) adopted on December 19, 2006, titled *Jury Instructions Corrections and Technical and Minor Substantive Changes*, the Rules Committee has final approval authority over the following:

(a) Additions of cases and statutes to the Sources and Authority;
(b) 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]
(c) Additions or changes to the Directions for Use;[4]
(d) Changes to instruction text that are nonsubstantive and unlikely to create controversy. A nonsubstantive change is one that does not affect or alter any fundamental legal basis of the instruction;
(e) 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
(f) Revocation of instructions for which any fundamental legal basis of the instruction is no longer valid because of statutory amendment or case law.

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[1] Cal. Rules of Court, rules 2.1050(d), 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 2014 decision 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] The committee only presents nonsubstantive changes to the Directions for Use for the Rules Committee's final approval. Substantive changes are posted for public comment and presented to the council for approval.

Analysis/Rationale

Overview of revisions

Of the 17 revised instructions in this release (Release 39) that are presented for final approval by the Rules Committee, 14 have revisions under category (a) above (additions of cases and statutes to the Sources and Authority) and 3 have revisions to the Secondary Sources or the Directions for Use (categories (c) and (d) above).

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:

1. *CACI* Sources and Authority are in the nature of a digest. 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.
2. Each legal component of the instruction should be supported by authority—either statutory or case law.
3. Authority addressing the burden of proof should be included.
4. Authority addressing the respective roles of judge and jury (questions of law and questions of fact) should be included.
5. Only one case excerpt should be included for each legal point.
6. California Supreme Court authority should always be included, if available.
7. If no Supreme Court authority is available, the most recent California appellate court authority for a point should be included.
8. A U.S. Supreme Court case should be included on any point for which it is the controlling authority.
9. 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.
10. Other cases may be included if deemed particularly useful to the users.
11. 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.

Sources and Authority format cleanup

CACI format requires that case excerpts in the Sources and Authority be of directly quoted material from the case. In some of the series, this format was not uniformly observed initially, and some excerpts are in the form of a legal statement with a citation rather than a direct quotation. Where found in instructions otherwise being revised or updated, these out-of-format excerpts have been converted to direct quotations.

CACI format also orders statutes, rules, and regulations first; then case excerpts; and then any other authorities, such as a Restatement excerpt. Where found in instructions otherwise being revised or updated, excerpts that were out of order have been moved to the proper location.

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 in any way, they were not circulated for public comment.

Alternatives considered

California Rules of Court, rules 2.1050 and 10.58, specifically 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 and additions meet this responsibility. There are no alternatives to be considered.

Fiscal and Operational Impacts

There are no implementation costs. To the contrary, under its publication agreement with the Judicial Council, the official publisher, LexisNexis Matthew Bender, will pay royalties to the council.

Attachments

1. Full text of *CACI* instructions, at pages 5–68

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406. Apportionment of Responsibility

[[*Name of defendant***] claims that the [negligence/fault] of [***insert name(s) or description(s) of nonparty tortfeasor(s)***] [also] contributed to [***name of plaintiff***]'s harm. To succeed on this claim, [***name of defendant***] must prove both of the following:**

1. **That [***insert name(s) or description(s) of nonparty tortfeasor(s)***] [was/were] [negligent/at fault]; and**

2. **That the [negligence/fault] of [***insert name(s) or description(s) of nonparty tortfeasor(s)***] was a substantial factor in causing [name of plaintiff]'s harm.]**

If you find that the [negligence/fault] of more than one person including [*name of defendant***] [and] [[***name of plaintiff***]/ [and] [***name(s) or description(s) of nonparty tortfeasor(s)***]] was a substantial factor in causing [***name of plaintiff***]'s harm, you must then decide how much responsibility each has by assigning percentages of responsibility to each person listed on the verdict form. The percentages must total 100 percent.**

You will make a separate finding of [*name of plaintiff***]'s total damages, if any. In determining an amount of damages, you should not consider any person's assigned percentage of responsibility.**

["Person" can mean an individual or a business entity.]

New September 2003; Revised June 2006, December 2007, December 2009, June 2011

Directions for Use

This instruction is designed to assist the jury in completing CACI No. VF-402, *Negligence—Fault of Plaintiff and Others at Issue*, which must be given in a multiple-tortfeasor case to determine comparative fault. VF-402 is designed to compare the conduct of all defendants, the conduct of the plaintiff, and the conduct of any nonparty tortfeasors.

Throughout, select "fault" if there is a need to allocate responsibility between tortfeasors whose alleged liability is based on conduct other than negligence, e.g., strict products liability.

Include the first paragraph if the defendant has presented evidence that the conduct of one or more nonparties contributed to the plaintiff's harm. (See *Stewart v. Union Carbide Corp.* (2010) 190 Cal.App.4th 23, 33 [117 Cal.Rptr.3d 791] [defendant has burden to establish concurrent or alternate causes].) "Nonparties" include the universe of tortfeasors who are not present at trial, including defendants who settled before trial and nonjoined alleged tortfeasors. (*Dafonte v. Up-Right* (1992) 2 Cal.4th 593, 603 [7 Cal.Rptr.2d 238, 828 P.2d 140].) Include "also" if the defendant concedes some degree of liability.

If the plaintiff's comparative fault is also at issue, give CACI No. 405, *Comparative Fault of Plaintiff*, in

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addition to this instruction.

Include the last paragraph if any of the defendants or others alleged to have contributed to the plaintiff's harm is not an individual.

Sources and Authority

- Proposition 51. Civil Code section 1431.2.

- "[W]e hold that after *Li*, a concurrent tortfeasor whose negligence is a proximate cause of an indivisible injury remains liable for the total amount of damages, diminished only 'in proportion to the amount of negligence attributable to the person recovering.' " (*American Motorcycle Assn. v. Superior Court* (1978) 20 Cal.3d 578, 590 [146 Cal.Rptr. 182, 578 P.2d 899], citing *Li v. Yellow Cab Co.* (1975) 13 Cal.3d 804, 829 [119 Cal.Rptr. 858, 532 P.2d 1226].)

- "In light of *Li*, however, we think that the long-recognized common law equitable indemnity doctrine should be modified to permit, in appropriate cases, a right of partial indemnity, under which liability among multiple tortfeasors may be apportioned on a comparative negligence basis. … Such a doctrine conforms to *Li's* objective of establishing 'a system under which liability for damage will be borne by those whose negligence caused it in direct proportion to their respective fault.' " (*American Motorcycle Assn., supra,* 20 Cal.3d at p. 583.)

- "[W]e hold that section 1431.2, subdivision (a), does not authorize a reduction in the liability of intentional tortfeasors for noneconomic damages based on the extent to which the negligence of other actors—including the plaintiffs, any codefendants, injured parties, and nonparties—contributed to the injuries in question." (*B.B. v. County of Los Angeles* (2020) 10 Cal.5th 1, 29 [267 Cal.Rptr.3d 203, 471 P.3d 329].)

- "The comparative fault doctrine 'is designed to permit the trier of fact to consider all relevant criteria in apportioning liability. The doctrine "is a flexible, commonsense concept, under which a jury properly may consider and evaluate the relative responsibility of various parties for an injury (whether their responsibility for the injury rests on negligence, strict liability, or other theories of responsibility), in order to arrive at an "equitable apportionment or allocation of loss.' " [Citation.]' " (*Pfeifer v. John Crane, Inc.* (2013) 220 Cal.App.4th 1270, 1285 [164 Cal.App.3d 112].)

- "[A] 'defendant['s]' liability for noneconomic damages cannot exceed his or her proportionate share of fault *as compared with all fault responsible for the plaintiff's injuries*, not merely that of 'defendant[s]' present in the lawsuit." (*Dafonte, supra,* 2 Cal.4th at p. 603, original italics.)

- "The proposition that a jury may apportion liability to a nonparty has been adopted in the Judicial Council of California Civil Jury Instructions (CACI) special verdict form applicable to negligence cases. (See CACI Verdict Form 402 and CACI Instruction No. 406 ['[Verdict Form] 402 is designed to compare the conduct of all defendants, the conduct of the plaintiff, and the conduct of any nonparty tortfeasors. [¶] … [¶] … "Nonparties" include the universe of tortfeasors who are not present at trial, including defendants who settled before trial and nonjoined alleged tortfeasors.'].'" (*Vollaro v. Lispi* (2014) 224 Cal.App.4th 93, 100 fn. 5 [168 Cal.Rptr.3d 323], internal citation omitted.)

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- "[U]nder Proposition 51, fault will be allocated to an entity that is immune from *paying* for its tortious acts, but will not be allocated to an entity that is not a tortfeasor, that is, one whose actions have been declared not to be tortious." (*Taylor v. John Crane, Inc.* (2003) 113 Cal.App.4th 1063, 1071 [6 Cal.Rptr.3d 695], original italics.)

- "A defendant bears the burden of proving affirmative defenses and indemnity cross-claims. Apportionment of noneconomic damages is a form of equitable indemnity in which a defendant may reduce his or her damages by establishing others are also at fault for the plaintiff's injuries. Placing the burden on defendant to prove fault as to nonparty tortfeasors is not unjustified or unduly onerous." (*Wilson v. Ritto* (2003) 105 Cal.App.4th 361, 369 [129 Cal.Rptr.2d 336].)

- "[T]here must be substantial evidence that a nonparty is at fault before damages can be apportioned to that nonparty." (*Scott v. C. R. Bard, Inc.* (2014) 231 Cal.App.4th 763, 785 [180 Cal.Rptr.3d 479].)

- "When a defendant is liable *only* by reason of a derivative nondelegable duty arising from his status as employer or landlord or vehicle owner or coconspirator, or from his role in the chain of distribution of a single product in a products liability action, his liability is *secondary* (vicarious) to that of the actor and he is not entitled to the benefits of Proposition 51." (*Bayer-Bel v. Litovsky* (2008) 159 Cal.App.4th 396, 400 [71 Cal.Rptr.3d 518], original italics, internal citations omitted.)

- "Under the doctrine of strict products liability, all defendants in the chain of distribution are jointly and severally liable, meaning that each defendant can be held liable to the plaintiff for all damages the defective product caused." (*Romine v. Johnson Controls, Inc.* (2014) 224 Cal.App.4th 990, 1010 [169 Cal.Rptr.3d 208].)

- Proposition 51 does not apply in a strict products liability action when a single defective product produced a single injury to the plaintiff. That is, all the defendants in the stream of commerce of that single product remain jointly and severally liable. … [I]n strict products liability asbestos exposure actions, … Proposition 51 applies when there are multiple products that caused the plaintiff's injuries and there is evidence that provides a basis to allocate fault for noneconomic damages between the defective products." (*Romine, supra,* 224 Cal.App.4th at pp. 1011−1012, internal citations omitted.)

- "[T]he jury found that defendants are parties to a joint venture. The incidents of a joint venture are in all important respects the same as those of a partnership. One such incident of partnership is that all partners are jointly and severally liable for partnership obligations, irrespective of their individual partnership interests. Because joint and several liability arises from the partnership or joint venture, Civil Code section 1431.2 is not applicable." (*Myrick v. Mastagni* (2010) 185 Cal.App.4th 1082, 1091 [111 Cal.Rptr.3d 165], internal citations omitted.)

Secondary Sources

6 Witkin, Summary of California Law (11th ed. 2017) Torts, §§ 156, 158–163, 167, 168, 171, 172, 176

Haning et al., California Practice Guide: Personal Injury, Ch. 9-M, *Verdicts And Judgment*, ¶ 9:662.3 (The Rutter Group)

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California Tort Guide (Cont.Ed.Bar 3d ed.) §§ 1.52–1.59

1 Levy et al., California Torts, Ch. 4, *Comparative Negligence, Assumption of the Risk, and Related Defenses*, §§ 4.04–4.03, 4.07–4.08 (Matthew Bender)

5 Levy et al., California Torts, Ch. 74, *Resolving Multiparty Tort Litigation*, § 74.03 (Matthew Bender)

4 California Trial Guide, Unit 90, *Closing Argument*, § 90.91 (Matthew Bender)

California Products Liability Actions, Ch. 2, *Liability for Defective Products*, § 2.14A, Ch. 9, *Damages*, § 9.01 (Matthew Bender)

25 California Forms of Pleading and Practice, Ch. 300, *Indemnity and Contribution*, § 300.61 (Matthew Bender)

11 California Points and Authorities, Ch. 115, *Indemnity and Contribution*, § 115.04 et seq. (Matthew Bender)

16 California Points and Authorities, Ch. 165, *Negligence*, §§ 165.284, 165.380 (Matthew Bender)

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452. Sudden Emergency

[*Name of plaintiff/defendant*] claims that [he/she/*nonbinary pronoun*] was not negligent because [he/she/*nonbinary pronoun*] acted with reasonable care in an emergency situation. [*Name of plaintiff/defendant*] was not negligent if [he/she/*nonbinary pronoun*] proves all of the following:

1. **That there was a sudden and unexpected emergency situation in which someone was in actual or apparent danger of immediate injury;**

2. **That [*name of plaintiff/defendant*] did not cause the emergency; and**

3. **That [*name of plaintiff/defendant*] acted as a reasonably careful person would have acted in similar circumstances, even if it appears later that a different course of action would have been safer.**

New September 2003

Directions for Use

The instruction should not be given unless at least two courses of action are available to the party after the danger is perceived. (*Anderson v. Latimer* (1985) 166 Cal.App.3d 667, 675 [212 Cal.Rptr. 544].)

Additional instructions should be given if there are alternate theories of negligence.

Sources and Authority

- "Under the 'sudden emergency' or 'imminent peril' doctrine, 'a person who, without negligence on his part, is suddenly and unexpectedly confronted with peril, arising from either the actual presence, or the appearance, of imminent danger to himself or to others, is not expected nor required to use the same judgment and prudence that is required of him in the exercise of ordinary care in calmer and more deliberate moments.' 'A party will be denied the benefit of the doctrine ... where that party's negligence causes or contributes to the creation of the perilous situation.' " (*Abdulkadhim v. Wu* (2020) 53 Cal.App.5th 298, 301–302 [266 Cal.Rptr.3d 636], internal citations omitted.)

- "The doctrine of imminent peril is available to either plaintiff or defendant, or, in a proper case, to both." (*Smith v. Johe* (1957) 154 Cal.App.2d 508, 511 [316 P.2d 688].)

- "Whether the conditions for application of the imminent peril doctrine exist is itself a question of fact to be submitted to the jury." (*Damele v. Mack Trucks, Inc.* (1990) 219 Cal.App.3d 29, 37 [267 Cal.Rptr. 197]; see also *Leo v. Dunham* (1953) 41 Cal.2d 712, 715 [264 P.2d 1].)

- "[A] person who, without negligence on his part, is suddenly and unexpectedly confronted with peril, arising from either the actual presence, or the appearance, of imminent danger to himself or to others, is not expected nor required to use the same judgment and prudence that is required of him in the

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exercise of ordinary care in calmer and more deliberate moments." (*Leo, supra,* 41 Cal.2d at p. 714.)

- "The doctrine of imminent peril is properly applied only in cases where an unexpected physical danger is presented so suddenly as to deprive the driver of his power of using reasonable judgment. [Citations.] A party will be denied the benefit of the doctrine of imminent peril where that party's negligence causes or contributes to the creation of the perilous situation. [Citations.]" (*Shiver v. Laramee* (2018) 24 Cal.App.5th 395, 399, [234 Cal.Rptr.3d 256].)

- " 'The test is whether the actor took one of the courses of action which a standard man in that emergency might have taken, and such a course is not negligent even though it led to an injury which might have been prevented by adopting an alternative course of action.' [Citation.]" (*Schultz v. Mathias* (1970) 3 Cal.App.3d 904, 912–913 [83 Cal.Rptr. 888].)

- "An emergency or peril under the sudden emergency or imminent peril doctrine is a set of facts presented to the person alleged to have been negligent. It is *that* actor's behavior that the doctrine excuses. It is irrelevant for purposes of the sudden emergency doctrine whether [defendant's] lane change created a dangerous situation for [plaintiff] or anyone else; the only relevant emergency is the one [*defendant*] faced." (*Abdulkadhim, supra,* 53 Cal.App.5th at p. 302, internal citations omitted, original italics.)

- "The doctrine of imminent peril applies not only when a person perceives danger to himself, but also when he perceives an imminent danger to others." (*Damele, supra,* 219 Cal.App.3d at p. 36.)

- "[T]he mere appearance of an imminent peril to others-not an actual imminent peril-is all that is required." (*Damele, supra,* 219 Cal.App.3d at p. 37.)

Secondary Sources

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

California Tort Guide (Cont.Ed.Bar 3d ed.) § 4.7

1 Levy et al., California Torts, Ch. 1, *Negligence: Duty and Breach*, §§ 1.03, 1.11, 1.30 (Matthew Bender)

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

16 California Points and Authorities, Ch. 165, *Negligence*, § 165.250 (Matthew Bender)

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470. Primary Assumption of Risk—Exception to Nonliability─Coparticipant in Sport or Other Recreational Activity

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[*Name of plaintiff***] claims [he/she/***nonbinary pronoun***] was harmed while participating in [***specify sport or other recreational activity, e.g., touch football***] and that [***name of defendant***] is responsible for that harm. To establish this claim, [***name of plaintiff***] must prove all of the following:**

> **1. That [***name of defendant***] either intentionally injured [***name of plaintiff***] or acted so recklessly that [his/her/***nonbinary pronoun***] conduct was entirely outside the range of ordinary activity involved in [***e.g., touch football***];**
>
> **2. That [***name of plaintiff***] was harmed; and**
>
> **3. That [***name of defendant***]'s conduct was a substantial factor in causing [***name of plaintiff***]'s harm.**

Conduct is entirely outside the range of ordinary activity involved in [*e.g., touch football***] if that conduct (1) increased the risks to [***name of plaintiff***] over and above those inherent in [***e.g., touch football***], and (2) it can be prohibited without discouraging vigorous participation or otherwise fundamentally changing the [sport/activity].**

[*Name of defendant***] is not responsible for an injury resulting from conduct that was merely accidental, careless, or negligent.**

New September 2003; Revised April 2004, October 2008, April 2009, December 2011, December 2013; Revised and Renumbered From CACI No. 408 May 2017; Revised May 2018

Directions for Use

This instruction sets forth a plaintiff's response to the affirmative defense of primary assumption of risk asserted by a defendant who was a coparticipant in the sport or other recreational activity. For an instruction applicable to coaches, instructors, or trainers, see CACI No. 471, *Primary Assumption of Risk─Exception to Nonliability─Instructors, Trainers, or Coaches*. For an instruction applicable to facilities owners and operators and to event sponsors, see CACI No. 472, *Primary Assumption of Risk─Exception to Nonliability─ Facilities Owners and Operators and Event Sponsors*. For an instruction applicable to occupations with inherent risk, see CACI No. 473, *Primary Assumption of Risk─Exception to Nonliability─Occupation Involving Inherent Risk.*

Primary assumption of risk generally absolves the defendant of a duty of care toward the plaintiff with regard to injury incurred in the course of a sporting or other recreational activity covered by the doctrine. (See *Knight v. Jewett* (1992) 3 Cal.4th 296, 320 [11 Cal.Rptr.2d 2, 834 P.2d 696].) Element 1 sets forth the exceptions in which there is a duty.

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While duty is generally a question of law, some courts have held that whether the defendant has increased the risk beyond those inherent in the sport or activity is a question of fact for the jury. (See *Luna v. Vela* (2008) 169 Cal.App.4th 102, 112–113 [86 Cal.Rptr.3d 588] and cases cited therein, including cases *contra*.) There may also be disputed facts that must be resolved by a jury before it can be determined if the doctrine applies. (See *Shin v. Ahn* (2007) 42 Cal.4th 482, 486 [64 Cal.Rptr.3d 803, 165 P.3d 581].)

Sources and Authority

- "Primary assumption of risk arises where a plaintiff voluntarily participates in an activity or sport involving certain inherent risks; primary assumption of risk ... bar[s] recovery because no duty of care is owed as to such risks." (*Connelly v. Mammoth Mountain Ski Area* (1995) 39 Cal.App.4th 8, 11 [45 Cal.Rptr.2d 855], internal citations omitted.)

- "Although the doctrine is often applied as between sports coparticipants, it defines the duty owed as between persons engaged in any activity involving inherent risks. The doctrine applies to activity 'done for enjoyment or thrill, requires physical exertion as well as elements of skill, and involves a challenge containing a potential risk of injury' … ." (*Jimenez v. Roseville City School Dist.* (2016) 247 Cal.App.4th 594, 601 [202 Cal.Rptr.3d 536], internal citations omitted; see also *Bertsch v. Mammoth Community Water Dist.* (2016) 247 Cal.App.4th 1201, 1208 [202 Cal.Rptr.3d 757] ["These factors certainly apply to skateboarding"]; *Swigart v. Bruno* (2017) 13 Cal.App.5th 529, 540 [220 Cal.Rptr.3d 556] [horseback riding is an inherently dangerous sport]; *Foltz v. Johnson* (2017) 16 Cal.App.5th 647, 656–657 [224 Cal.Rptr.3d 506] [off-road dirt bike riding].)

- "A coparticipant in an active sport ordinarily bears no liability for an injury resulting from conduct in the course of the sport that is merely careless or negligent." (*Ford v. Gouin* (1992) 3 Cal.4th 339, 342 [11 Cal.Rptr.2d 30, 834 P.2d 724].)

- "[W]e conclude that a participant in an active sport breaches a legal duty of care to other participants—i.e., engages in conduct that properly may subject him or her to financial liability—only if the participant intentionally injures another player or engages in conduct that is so reckless as to be totally outside the range of the ordinary activity involved in the sport." (*Knight, supra,* 3 Cal.4th at p. 320.)

- "The *Knight* rule, however, 'does not grant unbridled legal immunity to all defendants participating in sporting activity. The Supreme Court has stated that "it is well established that defendants generally do have a duty to use due care not to increase the risks to a participant over and above those inherent in the sport." Thus, even though "defendants generally have no legal duty to eliminate (or protect a plaintiff against) risks inherent in the sport itself," they may not increase the likelihood of injury above that which is inherent.' " (*Distefano v. Forester* (2001) 85 Cal.App.4th 1249, 1261 [102 Cal.Rptr.2d 813], internal citations omitted.)

- "In *Freeman v. Hale,* the Court of Appeal advanced a test ... for determining what risks are inherent in a sport: '[C]onduct is totally outside the range of ordinary activity involved in the sport (and thus any risks resulting from that conduct are not inherent to the sport) if the prohibition of that conduct would neither deter vigorous participation in the sport nor otherwise fundamentally alter the nature of the sport.' " (*Distefano, supra,* 85 Cal.App.4th at p. 1261.)

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- "[G]olfers have a limited duty of care to other players, breached only if they intentionally injure them or engage in conduct that is 'so reckless as to be totally outside the range of the ordinary activity involved in the sport.' " (*Shin, supra,* 42 Cal.4th at p. 497.)

- "The [horseback] rider generally assumes the risk of injury inherent in the sport. Another person does not owe a duty to protect the rider from injury by discouraging the rider's vigorous participation in the sport or by requiring that an integral part of horseback riding be abandoned. And the person has no duty to protect the rider from the careless conduct of others participating in the sport. The person owes the horseback rider only two duties: (1) to not 'intentionally' injure the rider; and (2) to not 'increase the risk of harm beyond what is inherent in [horseback riding]' by 'engag[ing] in conduct that is so reckless as to be totally outside the range of the ordinary activity involved in the sport' " (*Levinson v. Owens* (2009) 176 Cal.App.4th 1534, 1545–1546 [98 Cal.Rptr.3d 779].)

- "[T]he general test is 'that a participant in an active sport breaches a legal duty of care to other participants—i.e., engages in conduct that properly may subject him or her to financial liability—only if the participant intentionally injures another player or engages in conduct that is so reckless as to be totally outside the range of the ordinary activity involved in the sport.' Although a defendant has no duty of care to a plaintiff with regard to inherent risks, a defendant still has a duty not to increase those risks." (*Swigart, supra,* 13 Cal.App.5th at p. 538, internal citations omitted.)

- "The question of which risks are inherent in a recreational activity is fact intensive but, on a sufficient record, may be resolved on summary judgment. Judges deciding inherent risk questions under this doctrine 'may consider not only their own or common experience with the recreational activity involved but may also consult case law, other published materials, and documentary evidence introduced by the parties on a motion for summary judgment.' " (*Foltz, supra,* 16 Cal.App.5th at p. 656, internal citations omitted.)

- "[W]hether defendant breached the limited duty of care he owed other golfers by engaging in conduct that was 'so reckless as to be totally outside the range of the ordinary activity involved in [golf]' depends on resolution of disputed material facts. Thus, defendant's summary judgment motion was properly denied." (*Shin, supra,* 42 Cal.4th at p. 486, internal citation omitted.)

- "Although we recognize the Court of Appeal decisions specifically addressing the point are in conflict, we believe resolving this issue is not a matter of further defining [defendant]'s duty, which would be a question of law for the court. Rather, it requires application of the governing standard of care (the duty not to increase the risks inherent in the sport) to the facts of this particular case—the traditional role of the trier of fact. (See, e.g., *Vine v. Bear Valley Ski Co., supra,* 118 Cal.App.4th at pp. 591–592 [whether defendant's design of snowboard jump increased inherent risks of snowboarding is question for jury]; *Solis v. Kirkwood Resort Co., supra,* 94 Cal.App.4th at p. 365 [whether artificial jumps built by resort increased inherent risk of falling while skiing is question for jury]; *Lowe v. California League of Prof. Baseball* (1997) 56 Cal.App.4th 112, 123 [65 Cal.Rptr.2d 105] [whether distraction caused by activities of minor league baseball team's mascot increased inherent risk of spectator being hit by a foul ball 'is issue of fact to be resolved at trial']; but see *Huff v. Wilkins, supra,* 138 Cal.App.4th at p. 745 ['it is the trial court's province to determine whether defendants breached their duty not to increase the inherent risk of a collision [in the sport of off-

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roading], and it should hold a hearing for this purpose before impaneling a jury']; *American Golf Corp. v. Superior Court* (2000) 79 Cal.App.4th 30, 37 [93 Cal.Rptr.2d 683] ['[i]t is for the court to decide … whether the defendant has increased the risks of the activity beyond the risks inherent in the sport']; see also *Huffman v. City of Poway* (2000) 84 Cal.App.4th 975, 995, fn. 23 [101 Cal.Rptr.2d 325] [indicating it is for the court to determine whether defendant's conduct increased the risk inherent in participating in a particular sport, but that trial court may receive expert testimony on the customary practices in the sport to make that determination].) [¶] Our conclusion it is for the trier of fact to determine whether [defendant] breached his limited duty not to increase the risks inherent in the sport of volleyball finds solid support in the Supreme Court's most recent sports injury, primary assumption of the risk decision, *Shin v. Ahn, supra,* 42 Cal.4th 482, a case that postdates the appellate court decisions suggesting the issue is one for the court to resolve." (*Luna v. Vela* (2008) 169 Cal.App.4th 102, 112–113 [86 Cal.Rptr.3d 588].)

- "The determinant of duty, 'inherent risk,' is to be decided solely as a question of law and based on the general characteristics of the sport activity and the parties' relationship to it." (*Griffin v. The Haunted Hotel, Inc.* (2015) 242 Cal.App.4th 490, 501 [194 Cal.Rptr.3d 830].)

- "Primary assumption of risk has often been applied in the context of active sports, but the doctrine also applies to other recreational activities that ' "involv[e] an inherent risk of injury to voluntary participants ... where the risk cannot be eliminated without altering the fundamental nature of the activity." ' 'Where the doctrine applies to a recreational activity, operators, instructors and participants in the activity owe other participants only the duty not to act so as to increase the risk of injury over that inherent in the activity.' Coparticipants must not intentionally or recklessly injure other participants, but the doctrine is a complete defense to a claim of negligence. However, recovery for injuries caused by risks *not* inherent in the activity is not barred by the doctrine." (*Wolf v. Weber* (2020) 52 Cal.App.5th 406, 410–411 [266 Cal.Rptr.3d 104], original italics, internal citations omitted.)

- "Admittedly, it is sometimes said that '[t]he existence and scope of a defendant's duty of care in the primary assumption of risk context "is a *legal* question which depends on the nature of the sport or activity … and on the parties' general relationship to the activity, and is an issue to be decided by the court, rather than the jury." ' This statement of the rule is correct where there is no dispute about the inherent risks, and such cases may be resolved on summary judgment. [¶] However this statement is overly broad. Although the risks inherent in *many* activities are not subject to reasonable dispute (e.g., being hit with a baseball during a game), the risks inherent in *some* activities are not commonly known. In such cases, expert testimony may be required ' "for purposes of weighing whether the inherent risks of the activity were increased by the defendant's conduct." ' Thus, it is not entirely accurate to say inherent risks of an activity always present purely legal questions, because sometimes the nature of an activity and its risks must be gleaned from the evidence." (*Jimenez, supra,* 247 Cal.App.4th at p. 608, original italics.)

- "[Plaintiff] has repeatedly argued that primary assumption of the risk does not apply because she did not impliedly consent to having a weight dropped on her head. However, a plaintiff's expectation does not define the limits of primary assumption of the risk. 'Primary assumption of risk focuses on the legal question of duty. It does not depend upon a plaintiff's implied consent to injury, nor is the plaintiff's subjective awareness or expectation relevant. … .' " (*Cann v. Stefanec* (2013) 217

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Cal.App.4th 462, 471 [158 Cal.Rptr.3d 474].)

- "Primary assumption of the risk does not depend on whether the plaintiff subjectively appreciated the risks involved in the activity; instead, the focus is an objective one that takes into consideration the risks that are ' "inherent" ' in the activity at issue." (*Swigart, supra,* 13 Cal.App.5th at p. 538.)

- "A jury could find that, by using a snowboard without the retention strap, in violation of the rules of the ski resort and a county ordinance, defendant unnecessarily increased the danger that his snowboard might escape his control and injure other participants such as plaintiff. The absence of a retention strap could therefore constitute conduct not inherent to the sport which increased the risk of injury." (*Campbell v. Derylo* (1999) 75 Cal.App.4th 823, 829 [89 Cal.Rptr.2d 519].)

- "The existence and scope of a defendant's duty depends on the role that defendant played in the activity. Defendants were merely the hosts of a social gathering at their cattle ranch, where [plaintiff] asked to ride one of their horses; they were not instructors and did not assume any of the responsibilities of an instructor." (*Levinson, supra,* 176 Cal.App.4th at pp. 1550–1551, internal citation omitted.)

- "[T]he primary assumption of risk doctrine is not limited to activities classified as sports, but applies as well to other recreational activities 'involving an inherent risk of injury to voluntary participants … where the risk cannot be eliminated without altering the fundamental nature of the activity.' " (*Nalwa v. Cedar Fair, L.P.* (2012) 55 Cal.4th 1148, 1156 [150 Cal.Rptr.3d 551, 290 P.3d 1158].)

- "Whether a duty exists 'does not turn on the reasonableness or unreasonableness of the plaintiff's conduct, but rather on [(1)] the nature of the activity or sport in which the defendant is engaged and [(2)] the relationship of the defendant and the plaintiff to that activity or sport.' It is the 'nature of the activity' and the parties' relationship to it that determines whether the doctrine applies—not its characterization as a sporting event." (*McGarry v. Sax* (2008) 158 Cal.App.4th 983, 999–1000 [70 Cal.Rptr.3d 519], internal citations omitted.)

- "[T]o the extent that ' " 'a plaintiff *unreasonably* undertakes to encounter a specific known risk imposed by a defendant's negligence,' " ' he or she is subject to the defense of comparative negligence but not to an absolute defense. This type of comparative negligence has been referred to as ' "secondary assumption of risk." ' Assumption of risk that is based upon the absence of a defendant's duty of care is called ' "primary assumption of risk." ' 'First, in "primary assumption of risk" cases—where the defendant owes no duty to protect the plaintiff from a particular risk of harm—a plaintiff who has suffered such harm is not entitled to recover from the defendant, whether the plaintiff's conduct in undertaking the activity was *reasonable* or unreasonable. Second, in "secondary assumption of risk" cases—involving instances in which the defendant has breached the duty of care owed to the plaintiff—the defendant is not entitled to be entirely relieved of liability for an injury proximately caused by such breach, simply because the plaintiff's conduct in encountering the risk of such an injury was reasonable rather than unreasonable.' " (*Kindrich v. Long Beach Yacht Club* (2008) 167 Cal.App.4th 1252, 1259 [84 Cal.Rptr.3d 824], original italics, internal citations omitted.)

- "Even were we to conclude that [plaintiff]'s decision to jump off the boat was a voluntary one, and

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that therefore he assumed a risk inherent in doing so, this is not enough to provide a complete defense. Because voluntary assumption of risk as a complete defense in a negligence action was abandoned in *Li v. Yellow Cab Co.* (1975) 13 Cal.3d 804, 829 [119 Cal.Rptr. 858, 532 P.2d 1226], only the absence of duty owed a plaintiff under the doctrine of primary assumption of risk would provide such a defense. But that doctrine does not come into play except when a plaintiff and a defendant are engaged in certain types of activities, such as an 'active sport.' That was not the case here; plaintiff was merely the passenger on a boat. Under *Li,* he may have been contributorily negligent but this would only go to reduce the amount of damages to which he is entitled." (*Kindrich, supra,* 167 Cal.App.4th at p. 1258.)

- "Though most cases in which the doctrine of primary assumption of risk exists involve recreational sports, the doctrine has been applied to dangerous activities in other contexts (see, e.g., *Saville v. Sierra College* (2005) 133 Cal.App.4th 857 [36 Cal.Rptr.3d 515] [training in peace officer takedown maneuvers]; *Hamilton v. Martinelli & Associates* (2003) 110 Cal.App.4th 1012 [2 Cal.Rptr.3d 168] [training on physical restraint methods]; *Aaris v. Las Virgenes Unified School Dist.* (1998) 64 Cal.App.4th 1112 [75 Cal.Rptr.2d 801] [practice of cheerleader routines]; *Bushnell* [*v. Japanese-American Religious & Cultural Center*]*,* 43 Cal.App.4th 525 [50 Cal.Rptr.2d 671] [practice of moves in judo class]; and *Herrle v. Estate of Marshall* (1996) 45 Cal.App.4th 1761 [53 Cal.Rptr.2d 713] [injury to nurse's aide by nursing home patient])." (*McGarry, supra,* 158 Cal.App.4th at pp. 999–1000, internal citation omitted.)

Secondary Sources

6 Witkin, Summary of California Law (11th ed. 2017) Torts, §§ 1496–1508

1 Levy et al., California Torts, Ch. 4, *Comparative Negligence, Assumption of the Risk, and Related Defenses*, § 4.03, Ch. 15, *General Premises Liability*, § 15.21 (Matthew Bender)

23 California Forms of Pleading and Practice, Ch. 273, *Games, Sports, and Athletics,* § 273.30 (Matthew Bender)

33 California Forms of Pleading and Practice, Ch. 380, *Negligence*, § 380.172 (Matthew Bender)

16 California Points and Authorities, Ch. 165, *Negligence,* § 165.401 (Matthew Bender)

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601. Negligent Handling of Legal Matter

To recover damages from [*name of defendant*], [*name of plaintiff*] must prove that [he/she/*nonbinary pronoun*/it] would have obtained a better result if [*name of defendant*] had acted as a reasonably careful attorney. [*Name of plaintiff*] was not harmed by [*name of defendant*]'s conduct if the same harm would have occurred anyway without that conduct.

New September 2003; Revised June 2015, May 2020

Directions for Use

In cases involving professionals other than attorneys, this instruction would need to be modified by inserting the type of the professional in place of "attorney." (See, e.g., *Mattco Forge, Inc. v. Arthur Young & Co.* (1997) 52 Cal.App.4th 820, 829−830 [60 Cal.Rptr.2d 780] [trial-within-a-trial method was applied to accountants].)

The plaintiff must prove that *but for* the attorney's negligent acts or omissions, the plaintiff would have obtained a more favorable judgment or settlement in the underlying action. (*Viner v. Sweet* (2003) 30 Cal.4th 1232, 1241 [135 Cal.Rptr.2d 629, 70 P.3d 1046].) The second sentence expresses this "but for" standard.

Sources and Authority

- "If the allegedly negligent conduct does not cause damage, it generates no cause of action in tort. The mere breach of a professional duty, causing only nominal damages, speculative harm, or the threat of future harm—not yet realized—does not suffice to create a cause of action for negligence." (*Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 749−750 [76 Cal.Rptr.2d 749, 958 P.2d 1062].)

- "In the legal malpractice context, the elements of causation and damage are particularly closely linked." (*Namikas v. Miller* (2014) 225 Cal.App.4th 1574, 1582 [171 Cal.Rptr.3d 23].)

- "In a client's action against an attorney for legal malpractice, the client must prove, among other things, that the attorney's negligent acts or omissions caused the client to suffer some financial harm or loss. When the alleged malpractice occurred in the performance of transactional work (giving advice or preparing documents for a business transaction), must the client prove this causation element according to the 'but for' test, meaning that the harm or loss would not have occurred without the attorney's malpractice? The answer is yes." (*Viner, supra,* 30 Cal.4th at p. 1235.)

- "[The trial-within-a-trial method] is the most effective safeguard yet devised against speculative and conjectural claims in this era of ever expanding litigation. It is a standard of proof designed to limit damages to those actually *caused* by a professional's malfeasance." (*Mattco Forge Inc., supra,* 52 Cal.App.4th at p. 834.)

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- " 'Damage to be subject to a proper award must be such as follows the act complained of *as a legal certainty* … .' Conversely, ' " '[t]he mere probability that a certain event would have happened, upon which a claim for damages is predicated, will not support the claim or furnish the foundation of an action for such damages.' " ' " (*Filbin v. Fitzgerald* (2012) 211 Cal.App.4th 154, 165−166 [149 Cal.Rptr.3d 422], original italics, footnote and internal citations omitted.)

- "One who establishes malpractice on the part of his or her attorney *in prosecuting a lawsuit* must also prove that careful management of it would have resulted in a favorable judgment and collection thereof, as there is no damage in the absence of these latter elements." (*DiPalma v. Seldman* (1994) 27 Cal.App.4th 1499, 1506−1507 [33 Cal.Rptr.2d 219], original italics.)

- " 'The element of collectibility requires a showing of the debtor's solvency. " ['W]here a claim is alleged to have been lost by an attorney's negligence, … to recover more than nominal damages it must be shown that it was a valid subsisting debt, *and that the debtor was solvent*.' [Citation.]" The loss of a collectible judgment "by definition means the lost opportunity to collect a money judgment from a solvent [defendant] and is certainly legally sufficient evidence of actual damage." ' " (*Wise v. DLA Piper LLP (US)* (2013) 220 Cal.App.4th 1180, 1190 [164 Cal.Rptr.3d 54], original italics, internal citations omitted.)

- "Collectibility is part of the plaintiff's case, and a component of the causation and damages showing, rather than an affirmative defense which the Attorney Defendants must demonstrate." (*Wise, supra,* 220 Cal.App.4th at p. 1191.)

- "Because of the legal malpractice, the original target is out of range; thus, the misperforming attorney must stand in and submit to being the target instead of the former target which the attorney negligently permitted to escape. This is the essence of the case-within-a-case doctrine." (*Arciniega v. Bank of San Bernardino* (1997) 52 Cal.App.4th 213, 231 [60 Cal.Rptr.2d 495].)

- "Where the attorney's negligence does not result in a total loss of the client's claim, the measure of damages is the difference between what was recovered and what would have been recovered but for the attorney's wrongful act or omission. [¶] Thus, in a legal malpractice action, if a reasonably competent attorney would have obtained a $3 million recovery for the client but the negligent attorney obtained only a $2 million recovery, the client's damage due to the attorney's negligence would be $1 million-the difference between what a competent attorney would have obtained and what the negligent attorney obtained." (*Norton v. Superior Court* (1994) 24 Cal.App.4th 1750, 1758 [30 Cal.Rptr.2d 217].)

- "[A] plaintiff who alleges an inadequate settlement in the underlying action must prove that, if not for the malpractice, she would *certainly* have received more money in settlement or at trial. [¶] The requirement that a plaintiff need prove damages to 'a legal certainty' is difficult to meet in any case. It is particularly so in 'settle and sue' cases … ." (*Filbin, supra,* 211 Cal.App.4th at p. 166, original italics, internal citation omitted.)

- "[W]e conclude the applicable standard of proof for the elements of causation and damages in a 'settle and sue' legal malpractice action is the preponderance of the evidence standard. First, use of the preponderance of the evidence standard of proof is appropriate because it is the 'default standard

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of proof in civil cases' and use of a higher standard of proof 'occurs only when interests " 'more substantial than mere loss of money' " are at stake.' " (*Masellis v. Law Office of Leslie F. Jensen* (2020) 50 Cal.App.5th 1077, 1092 [264 Cal.Rptr.3d 621].)

- "In a legal malpractice action, causation is an issue of fact for the jury to decide except in those cases where reasonable minds cannot differ; in those cases, the trial court may decide the issue itself as a matter of law." (*Yanez v. Plummer* (2013) 221 Cal.App.4th 180, 187 [164 Cal.Rptr.3d 309].)

- " 'The trial-within-a-trial method does not "recreate what a particular judge or fact finder would have done. Rather, the jury's task is to determine what a reasonable judge or fact finder would have done … ." … Even though "should" and "would" are used interchangeably by the courts, the standard remains an *objective* one. The trier of fact determines what *should* have been, not what the result *would* have been, or could have been, or might have been, had the matter been before a *particular judge* or jury. …' " (*Blanks v. Seyfarth Shaw LLP* (2009) 171 Cal.App.4th 336, 357 [89 Cal.Rptr.3d 710], original italics.)

- "If the underlying issue originally was a factual question that would have gone to a tribunal rather than a judge, it is the jury who must decide what a reasonable tribunal would have done. The identity or expertise of the original trier of fact (i.e., a judge or an arbitrator or another type of adjudicator) does not alter the jury's responsibility in the legal malpractice trial-within-a-trial." (*Blanks, supra,* 171 Cal.App.4th at pp. 357–358.)

Secondary Sources

1 Witkin, California Procedure (5th ed. 2008) Attorneys, §§ 319−322

Vapnek et al., California Practice Guide: Professional Responsibility, Ch. 6-E, *Professional Liability*, ¶ 6:322 (The Rutter Group)

3 Levy et al., California Torts, Ch. 32, *Liability of Attorneys*, § 32.10 et seq. (Matthew Bender)

7 California Forms of Pleading and Practice, Ch. 76, *Attorney Professional Liability*, § 76.50 et seq. (Matthew Bender)

2A California Points and Authorities, Ch. 24A, *Attorneys at Law: Malpractice*, § 24A.20 et seq. (Matthew Bender)

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1009A. Liability to Employees of Independent Contractors for Unsafe Concealed Conditions

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[*Name of plaintiff*] claims that [he/she/*nonbinary pronoun*] was harmed by an unsafe concealed condition while employed by [*name of plaintiff's employer*] and working on [*name of defendant*]'s property. To establish this claim, [*name of plaintiff*] must prove all of the following:

1. **That [*name of defendant*] [owned/leased/occupied/controlled] the property;**

2. **That [*name of defendant*] knew, or reasonably should have known, of a preexisting unsafe concealed condition on the property;**

3. **That [*name of plaintiff's employer*] neither knew nor could be reasonably expected to know of the unsafe concealed condition;**

4. **That the condition was not part of the work that [*name of plaintiff's employer*] was hired to perform;**

5. **That [*name of defendant*] failed to warn [*name of plaintiff's employer*] of the condition;**

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.**

An unsafe condition is concealed if either it is not visible or its dangerous nature is not apparent to a reasonable person.

Derived from former CACI No. 1009 April 2007; Revised April 2009, December 2011

Directions for Use

This instruction is for use if a concealed dangerous condition on property causes injury to an employee of an independent contractor hired to perform work on the property. 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 the owner's retained control, see CACI No. 1009B, *Liability to Employees of Independent Contractors for Unsafe Conditions—Retained Control*. 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*.

See also the Vicarious Responsibility Series, CACI No. 3700 et seq., for instructions on the liability of a hirer for the acts of an independent contractor.

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- "[T]he hirer as landowner may be independently liable to the contractor's employee, even if it does not retain control over the work, if: (1) it knows or reasonably should know of a concealed, preexisting hazardous condition on its premises; (2) the contractor does not know and could not reasonably ascertain the condition; and (3) the landowner fails to warn the contractor." (*Kinsman v. Unocal Corp.* (2005) 37 Cal.4th 659, 675 [36 Cal.Rptr.3d 495, 123 P.3d 931].)

- "[T]here is no reason to distinguish conceptually between premises liability based on a hazardous substance that is concealed because it is invisible to the contractor and known only to the landowner and premises liability based on a hazardous substance that is visible but is known to be hazardous only to the landowner. If the hazard is not reasonably apparent, and is known only to the landowner, it is a concealed hazard, whether or not the substance creating the hazard is visible." (*Kinsman, supra*, 37 Cal.4th at p. 678.)

- "A landowner's duty generally includes a duty to inspect for concealed hazards. But the responsibility for job safety delegated to independent contractors may and generally does include explicitly or implicitly a limited duty to inspect the premises as well. Therefore, … the landowner would not be liable when the contractor has failed to engage in inspections of the premises implicitly or explicitly delegated to it. Thus, for example, an employee of a roofing contractor sent to repair a defective roof would generally not be able to sue the hirer if injured when he fell through the same roof due to a structural defect, inasmuch as inspection for such defects could reasonably be implied to be within the scope of the contractor's employment. On the other hand, if the same employee fell from a ladder because the wall on which the ladder was propped collapsed, assuming that this defect was not related to the roof under repair, the employee may be able to sustain a suit against the hirer. Put in other terms, the contractor was not being paid to inspect the premises generally, and therefore the duty of general inspection could not be said to have been delegated to it. Under those circumstances, the landowner's failure to reasonably inspect the premises, when a hidden hazard leads directly to the employee's injury, may well result in liability." (*Kinsman, supra,* 37 Cal.4th at pp. 677-678, internal citations omitted.)

- "The court also told the jury that [defendant] was liable if its negligent use or maintenance of the property was a substantial factor in harming [plaintiff] (see CACI Nos. 1000, 1001, 1003 & 1011). These instructions were erroneous because they did not say that these principles would only apply to [defendant] if the hazard was concealed." (*Alaniz v. Sun Pacific Shippers, L.P.* (2020) 48 Cal.App.5th 332, 338–339 [261 Cal.Rptr.3d 702].)

Secondary Sources

6 Witkin, Summary of California Law (11th ed. 2017) Torts, § 1259

Friedman et al., California Practice Guide: Landlord-Tenant, Ch. 6-A, *Liability For Defective Conditions On Premises*, ¶¶ 6:4, 6:9.12 (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)

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

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

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1201. Strict Liability—Manufacturing Defect—Essential Factual Elements

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[*Name of plaintiff*] claims that the [*product*] contained a manufacturing defect. 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*] contained a manufacturing defect when it left [*name of defendant*]'s possession;**

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

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

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

Directions for Use

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 design defect case]; *Cronin v. J.B.E. Olson Corp.* (1972) 8 Cal.3d 121, 125–126 [104 Cal.Rptr. 433, 501 P.2d 1153] [product misuse asserted as a defense to manufacturing defect]; 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

- "[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 manufacturing defect occurs when an item is manufactured in a substandard condition." (*Gonzalez v. Autoliv ASP, Inc.* (2007) 154 Cal.App.4th 780, 792 [64 Cal.Rptr.3d 908].)

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- "A product has a manufacturing defect if it differs from the manufacturer's intended result or from other ostensibly identical units of the same product line. In other words, a product has a manufacturing defect if the product as manufactured does not conform to the manufacturer's design." (*Garrett v. Howmedica Osteonics Corp.* (2013) 214 Cal.App.4th 173, 190 [153 Cal.Rptr.3d 693].)

- " 'Regardless of the theory which liability is predicated upon ... it is obvious that to hold a producer, manufacturer, or seller liable for injury caused by a particular product, there must first be proof that the defendant produced, manufactured, sold, or was in some way responsible for the product ... .' " (*Garcia v. Joseph Vince Co.* (1978) 84 Cal.App.3d 868, 874 [148 Cal.Rptr. 843], internal citation omitted.)

- "[W]here a plaintiff alleges a product is defective, proof that the product has malfunctioned is essential to establish liability for an injury *caused by the defect*." (*Khan v. Shiley Inc.* (1990) 217 Cal.App.3d 848, 855 [266 Cal.Rptr. 106], original italics.)

- "We think that a requirement that a plaintiff also prove that the defect made the product 'unreasonably dangerous' places upon him a significantly increased burden and represents a step backward in the area pioneered by this court." (*Cronin, supra,* 8 Cal.3d at pp. 134–135.)

- "[T]he policy underlying the doctrine of strict liability compels the conclusion that recovery should not be limited to cases involving latent defects." (*Luque v. McLean* (1972) 8 Cal.3d 136, 145 [104 Cal.Rptr. 443, 501 P.2d 1163].)

- "A manufacturer is liable only when a defect in its product was a legal cause of injury. A tort is a legal cause of injury only when it is a substantial factor in producing the injury." (*Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 572 [34 Cal.Rptr.2d 607, 882 P.2d 298], internal citations omitted.)

- "[Plaintiff] argues whether the alleged defects in the cup were a cause of her injuries is a question for the jury. ' "Ordinarily, proximate cause is a question of fact which cannot be decided as a matter of law. ... Nevertheless, where the facts are such that the only reasonable conclusion is an absence of causation, the question is one of law, not of fact." ' " (*Shih v. Starbucks Corp.* (2020) 53 Cal.App.5th 1063, 1071 [267 Cal.Rptr.3d 919], internal citation omitted.)

- "[S]trict liability should not be imposed upon a manufacturer when injury results from a use of its product that is not reasonably foreseeable." (*Cronin, supra,* 8 Cal.3d at p. 126.)

Secondary Sources

6 Witkin, Summary of California Law (11th ed. 2017) Torts, § 1591

Haning et al., California Practice Guide: Personal Injury, Ch. 2(II)-D, *Strict Liability For Defective Products*, ¶¶ 2:1215, 2:1216 (The Rutter Group)

California Products Liability Actions, Ch. 2, *Liability for Defective Products*, § 2.11, Ch. 7, *Proof*, § 7.06 (Matthew Bender)

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40 California Forms of Pleading and Practice, Ch. 460, *Products Liability*, §§ 460.11, 460.30 (Matthew Bender)

19 California Points and Authorities, Ch. 190, *Products Liability*, § 190.140 (Matthew Bender)

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

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[*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.

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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.)

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- "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].)

- "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.)

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- "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.)
- " An exception [to the rule that expert testimony is generally improper] exists where the product is in specialized use with a limited group of consumers. In such cases, 'if the expectations of the product's limited group of ordinary consumers are beyond the lay experience common to all jurors, expert testimony on the limited subject of what the product's actual consumers do expect may be proper.' " (*McCabe v. American Honda Motor Co.* (2002) 100 Cal.App.4th 1111, 1120 fn. 3 [123 Cal.Rptr.2d 303], internal citations 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,

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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)

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1205. Strict Liability—Failure to Warn—Essential Factual Elements

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[*Name of plaintiff*] claims that the [*product*] lacked sufficient [instructions] [or] [warning of potential [risks/side effects/allergic reactions]]. 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*] had potential [risks/side effects/allergic reactions] that were [known/ [or] knowable in light of the [scientific/ [and] medical] knowledge that was generally accepted in the scientific community] at the time of [manufacture/distribution/sale];**

3. **That the potential [risks/side effects/allergic reactions] presented a substantial danger when the [*product*] is used or misused in an intended or reasonably foreseeable way;**

4. **That ordinary consumers would not have recognized the potential [risks/side effects/allergic reactions];**

5. **That [*name of defendant*] failed to adequately warn [or instruct] of the potential [risks/side effects/allergic reactions];**

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

7. **That the lack of sufficient [instructions] [or] [warnings] was a substantial factor in causing [*name of plaintiff*]'s harm.**

[The warning must be given to the prescribing physician and must include the potential risks, side effects, or allergic reactions that may follow the foreseeable use of the product. [*Name of defendant*] had a continuing duty to warn physicians as long as the product was in use.]

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

Directions for Use

With regard to element 2, it has been often stated in the case law that a manufacturer is liable for failure to warn of a risk that is "knowable in light of generally recognized and prevailing best scientific and medical knowledge available." (See, e.g., *Anderson v. Owens-Corning Fiberglas Corp.* (1991) 53 Cal.3d 987, 1002 [281 Cal.Rptr. 528, 810 P.2d 549]; *Carlin v. Superior Court* (1996) 13 Cal.4th 1104, 1112 [56 Cal.Rptr.2d 162, 920 P.2d 1347]; *Saller v. Crown Cork & Seal Company* (2010) 187 Cal.App.4th 1220, 1239 [115 Cal.Rptr.3d 151]; *Rosa v. City of Seaside* (N.D. Cal. 2009) 675 F.Supp.2d 1006, 1012.) The advisory committee believes that this standard is captured by the phrase "generally accepted in the scientific community." A risk may be "generally recognized" as a view (knowledge) advanced by one

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body of scientific thought and experiment, but it may not be the "prevailing" or "best" scientific view; that is, it may be a minority view. The committee believes that when a risk is (1) generally recognized (2) as prevailing in the relevant scientific community, and (3) represents the best scholarship available, it is sufficient to say that the risk is knowable in light of "the generally accepted" scientific knowledge.

The last bracketed paragraph should be read only in prescription product cases: In the case of *prescription drugs* and *implants*, the physician stands in the shoes of the ordinary user because it is through the physician that a patient learns of the properties and proper use of the drug or implant. Thus, the duty to warn in these cases runs to the physician, not the patient. (*Bigler-Engler v. Breg, Inc.* (2017) 7 Cal.App 5th 276, 319 [213 Cal.Rptr.3d 82], original italics.)

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 design defect 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

- "Our law recognizes that even ' "a product flawlessly designed and produced may nevertheless possess such risks to the user without a suitable warning that it becomes 'defective' simply by the absence of a warning." …' Thus, manufacturers have a duty to warn consumers about the hazards inherent in their products. The purpose of requiring adequate warnings is to inform consumers about a product's hazards and faults of which they are unaware, so that the consumer may then either refrain from using the product altogether or avoid the danger by careful use." (*Taylor v. Elliott Turbomachinery Co., Inc.* (2009) 171 Cal.App.4th 564, 577 [90 Cal.Rptr.3d 414], internal citations and footnote omitted.)

- "Negligence and strict products liability are separate and distinct bases for liability that do not automatically collapse into each other because the plaintiff might allege both when a product warning contributes to her injury." (*Conte v. Wyeth, Inc.* (2008) 168 Cal.App.4th 89, 101 [85 Cal.Rptr.3d 299].)

- "The 'known or knowable' standard arguably derives from negligence principles, and failure to warn claims are generally ' "rooted in negligence" to a greater extent than' manufacturing or design defect claims. Unlike those other defects, a ' "warning defect" relates to a failure extraneous to the product itself' and can only be assessed by examining the manufacturer's conduct. These principles notwithstanding, California law recognizes separate failure to warn claims under both strict liability and negligence theories. In general, a product seller will be *strictly liable* for failure to warn if a

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warning was feasible and the absence of a warning caused the plaintiff's injury. Reasonableness of the seller's failure to warn is immaterial in the strict liability context. Conversely, to prevail on a claim for *negligent* failure to warn, the plaintiff must prove that the seller's conduct fell below the standard of care. If a prudent seller would have acted reasonably in not giving a warning, the seller will not have been negligent." (*Webb v. Special Electric Co., Inc.* (2016) 63 Cal.4th 167, 181 [202 Cal.Rptr.3d 460, 370 P.3d 1022], original italics, footnote and internal citations omitted.)

- "It is true that the two types of failure to warn claims are not necessarily exclusive: 'No valid reason appears to require a plaintiff to elect whether to proceed on the theory of strict liability in tort or on the theory of negligence. … [¶] Nor does it appear that instructions on the two theories will be confusing to the jury. There is nothing inconsistent in instructions on the two theories and to a large extent the two theories parallel and supplement each other.' Despite the often significant overlap between the theories of negligence and strict liability based on a product defect, a plaintiff is entitled to instructions on both theories if both are supported by the evidence." (*Oxford v. Foster Wheeler LLC* (2009) 177 Cal.App.4th 700, 717 [99 Cal.Rptr.3d 418].)

- "The actual knowledge of the individual manufacturer, even if reasonably prudent, is not the issue. We view the standard to require that the manufacturer is held to the knowledge and skill of an expert in the field; it is obliged to keep abreast of any scientific discoveries and is presumed to know the results of all such advances." (*Carlin, supra,* 13 Cal.4th at p. 1113, fn. 3.)

- "[A] defendant in a strict products liability action based upon an alleged failure to warn of a risk of harm may present evidence of the state of the art, i.e., evidence that the particular risk was neither known nor knowable by the application of scientific knowledge available at the time of manufacture and/or distribution." (*Anderson, supra,* 53 Cal.3d at p. 1004.)

- "[T]here can be no liability for failure to warn where the instructions or warnings sufficiently alert the user to the possibility of danger." (*Aguayo v. Crompton & Knowles Corp.* (1986) 183 Cal.App.3d 1032, 1042 [228 Cal.Rptr. 768], internal citation omitted.)

- "A duty to warn or disclose danger arises when an article is or should be known to be dangerous for its intended use, either inherently or because of defects." (*DeLeon v. Commercial Manufacturing and Supply Co.* (1983) 148 Cal.App.3d 336, 343 [195 Cal.Rptr. 867], internal citation omitted.)

- " California is well settled into the majority view that knowledge, actual or constructive, is a requisite for strict liability for failure to warn ... ." (*Anderson, supra,* 53 Cal.3d at p. 1000.)

- "[T]he duty to warn is not conditioned upon [actual or constructive] knowledge [of a danger] where the defectiveness of a product depends on the adequacy of instructions furnished by the supplier which are essential to the assembly and use of its product." (*Midgley v. S. S. Kresge Co.* (1976) 55 Cal.App.3d 67, 74 [127 Cal.Rptr. 217].)

- Under *Cronin,* plaintiffs in cases involving manufacturing and design defects do not have to prove that a defect made a product unreasonably dangerous; however, that case "did not preclude weighing the degree of dangerousness in the failure to warn cases." (*Cavers v. Cushman Motor Sales, Inc.* (1979) 95 Cal.App.3d 338, 343 [157 Cal.Rptr. 142].)

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- "Two types of warnings may be given. If the product's dangers may be avoided or mitigated by proper use of the product, 'the manufacturer may be required adequately to instruct the consumer as to how the product should be used.' If the risks involved in the use of the product are unavoidable, as in the case of potential side effects of prescription drugs, the supplier must give an adequate warning to enable the potential user to make an informed choice whether to use the product or abstain." (*Buckner v. Milwaukee Electric Tool Corp.* (2013) 222 Cal.App.4th 522, 532 [166 Cal.Rptr.3d 202], internal citation omitted.)

- "[T]he warning requirement is not limited to unreasonably or unavoidably dangerous products. Rather, directions or warnings are in order where reasonably required *to prevent the use of a product from becoming unreasonably dangerous*. It is the lack of such a warning which renders a product unreasonably dangerous and therefore defective." (*Gonzales v. Carmenita Ford Truck Sales, Inc.* (1987) 192 Cal.App.3d 1143, 1151 [238 Cal.Rptr. 18], original italics.)

- "In most cases, ... the adequacy of a warning is a question of fact for the jury." (*Jackson v. Deft, Inc.* (1990) 223 Cal.App.3d 1305, 1320 [273 Cal.Rptr. 214].)

- "There is no duty to warn of known risks or obvious dangers." (*Chavez v. Glock, Inc.* (2012) 207 Cal.App.4th 1283, 1304 [144 Cal.Rptr.3d 326].)

- "In the context of prescription drugs, a manufacturer's duty is to warn physicians about the risks known or reasonably known to the manufacturer. The manufacturer has no duty to warn of risks that are 'merely speculative or conjectural, or so remote and insignificant as to be negligible.' " (*T.H. v. Novartis Pharmaceuticals Corp.* (2017) 4 Cal.5th 145, 164 [226 Cal.Rptr.3d 336, 407 P.3d 18], internal citations omitted.)

- "[A] pharmaceutical manufacturer may not be required to provide warning of a risk known to the medical community." (*Carlin, supra,* 13 Cal.4th at p. 1116.)

- "To prevail on her failure-to-warn claims, [plaintiff] ' "will ultimately have to prove that if [defendant] had properly reported the adverse events to the FDA as required under federal law, that information would have reached [her] doctors in time to prevent [her] injuries.' [Citation.]" But at this stage, [plaintiff] need only allege ' "a causal connection" ' between [defendant's] failure to report and her injuries." (*Mize v. Mentor Worldwide LLC* (2020) 51 Cal.App.5th 850, 863–864 [265 Cal.Rptr.3d 468], internal citation omitted.)

- "To be liable in California, even under a strict liability theory, the plaintiff must prove that the defendant's failure to warn was a substantial factor in causing his or her injury. (CACI No. 1205.) The natural corollary to this requirement is that a defendant is not liable to a plaintiff if the injury would have occurred even if the defendant had issued adequate warnings." (*Huitt v. Southern California Gas Co.* (2010) 188 Cal.App.4th 1586, 1604 [116 Cal.Rptr.3d 453].)

- "When a manufacturer or distributor has no effective way to convey a product warning to the ultimate consumer, the manufacturer should be permitted to rely on downstream suppliers to provide the warning. 'Modern life would be intolerable unless one were permitted to rely to a certain extent on

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others doing what they normally do, particularly if it is their duty to do so.' " (*Persons v. Salomon N. Am.* (1990) 217 Cal.App.3d 168, 178 [265 Cal.Rptr. 773], internal citation omitted.)

- "[A] manufacturer's liability to the ultimate consumer may be extinguished by 'intervening cause' where the manufacturer either provides adequate warnings to a middleman or the middleman alters the product before passing it to the final consumer." (*Garza v. Asbestos Corp., Ltd.* (2008) 161 Cal.App.4th 651, 661 [74 Cal.Rptr.3d 359].)

- " 'A manufacturer's duty to warn is a continuous duty which lasts as long as the product is in use.' [¶] ... [T]he manufacturer must continue to provide physicians with warnings, at least so long as it is manufacturing and distributing the product." (*Valentine v. Baxter Healthcare Corp.* (1999) 68 Cal.App.4th 1467, 1482 [81 Cal.Rptr.2d 252].)

- " '[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. … [A] manufacturer owes a foreseeable user of its product a duty to warn of risks of using the product.' " (*Wright v. Stang Manufacturing Co.* (1997) 54 Cal.App.4th 1218, 1235 [63 Cal.Rptr.2d 422].)

- "California law does not impose a duty to warn about dangers arising entirely from another manufacturer's product, even if it is foreseeable that the products will be used together." (*O'Neil v. Crane Co.* (2012) 53 Cal.4th 335, 361 [135 Cal.Rptr.3d 288, 266 P.3d 987].)

- "The *O'Neil* [*supra*] court concluded that *Tellez-Cordova* [*Tellez-Cordova v. Campbell-Hausfeld/Scott Fetzger Co.* (2004) 129 Cal.App.4th 577] marked an exception to the general rule barring imposition of strict liability on a manufacturer for harm caused by another manufacturer's product. That exception is applicable when 'the defendant's own product contributed substantially to the harm … .' In expounding the exception, the court rejected the notion that imposition of strict liability on manufacturers is appropriate when it is merely foreseeable that their products will be used in conjunction with products made or sold by others. The *O'Neil* court further explained: 'Recognizing a duty to warn was appropriate in *Tellez-Cordova* because there the defendant's product was intended to be used with another product *for the very activity that created a hazardous situation*. Where the intended use of a product inevitably creates a hazardous situation, it is reasonable to expect the manufacturer to give warnings. Conversely, where the hazard arises entirely from another product, and the defendant's product does not create or contribute to that hazard, liability is not appropriate.' " (*Sherman v. Hennessy Industries, Inc.* (2015) 237 Cal.App.4th 1133, 1142 [188 Cal.Rptr.3d 769], original italics, internal citations omitted ; see also *Hetzel v. Hennessy Industries, Inc.* (2016) 247 Cal.App.4th 521, 529 [202 Cal.Rptr.3d 310] [*O'Neil* does not require evidence of exclusive use, but rather requires a showing of inevitable use]; *Rondon v. Hennessy Industries, Inc.* (2016) 247 Cal.App.4th 1367, 1379 [202 Cal.Rptr.3d 773] [same].)

- "[L]ike a manufacturer, a raw material supplier has a duty to warn about product risks that are known or knowable in light of available medical and scientific knowledge." (*Webb, supra,* 63 Cal.4th at p. 181.)

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- "[T]he duty of a component manufacturer or supplier to warn about the hazards of its products is not unlimited. … 'Making suppliers of inherently safe raw materials and component parts pay for the mistakes of the finished product manufacturer would not only be unfair, but it also would impose and intolerable burden on the business world . . . . Suppliers of versatile materials like chains, valves, sand gravel, etc., cannot be expected to become experts in the infinite number of finished products that might conceivably incorporate their multi-use raw materials or components.' Thus, cases have subjected claims made against component suppliers to two related doctrines, the 'raw material supplier defense' and 'the bulk sales/sophisticated purchaser rule.' Although the doctrines are distinct, their application oftentimes overlaps and together they present factors which should be carefully considered in evaluating the liability of component suppliers. Those factors include whether the raw materials or components are inherently dangerous, whether the materials are significantly altered before integration into an end product, whether the supplier was involved in designing the end-product and whether the manufacturer of the end product was in a position to discover and disclose hazards." (*Artiglio v. General Electric Co.* (1998) 61 Cal.App.4th 830, 837 [71 Cal.Rptr.2d 817].)

Secondary Sources

6 Witkin, Summary of California Law (11th ed. 2017) Torts, §§ 1631–1643

Haning et al., California Practice Guide: Personal Injury, Ch. 2(II)-D, *Strict Liability for Defective Products*, ¶¶ 2:1275–2:1276 (The Rutter Group)

California Products Liability Actions, Ch. 2, *Liability for Defective Products*, § 2.11[4]; Ch. 7, *Proof*, § 7.05 (Matthew Bender)

40 California Forms of Pleading and Practice, Ch. 460, *Products Liability*, §§ 460.11, 460.164 (Matthew Bender)

19 California Points and Authorities, Ch. 190, *Products Liability*, §§ 190.193–190.194 (Matthew Bender)

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1222. Negligence—Manufacturer or Supplier—Duty to Warn—Essential Factual Elements

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[*Name of plaintiff*] claims that [*name of defendant*] was negligent by not using reasonable care to warn [or instruct] about the [*product*]'s dangerous condition or about facts that made the [*product*] likely to be dangerous. 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 [*name of defendant*] knew or reasonably should have known that the [*product*] was dangerous or was likely to be dangerous when used or misused in a reasonably foreseeable manner;**

3. **That [*name of defendant*] knew or reasonably should have known that users would not realize the danger;**

4. **That [*name of defendant*] failed to adequately warn of the danger [or instruct on the safe use of the [*product*]];**

5. **That a reasonable [manufacturer/distributor/seller] under the same or similar circumstances would have warned of the danger [or instructed on the safe use of the [*product*]];**

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

7. **That [*name of defendant*]'s failure to warn [or instruct] was a substantial factor in causing [*name of plaintiff*]'s harm.**

[The warning must be given to the prescribing physician and must include the potential risks or side effects that may follow the foreseeable use of the product. [*Name of defendant*] had a continuing duty to warn physicians as long as the product was in use.]

New September 2003; Revised June 2011, December 2012, May 2020

Directions for Use

Give this instruction in a case involving product liability in which a claim for failure to warn is included under a negligence theory. For an instruction on failure to warn under strict liability and for additional sources and authority, see CACI No. 1205, *Strict Liability—Failure to Warn—Essential Factual Elements*. For instructions on design and manufacturing defect under a negligence theory, see CACI No. 1220, *Negligence—Essential Factual Elements*, and CACI No. 1221, *Negligence—Basic Standard of Care*.

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

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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] [strict liability design defect 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*.

The last bracketed paragraph is to be used in prescription drug cases only.

Sources and Authority

- "[T]he manufacturer has a duty to use reasonable care to give warning of the dangerous condition of the product or of facts which make it likely to be dangerous to those whom he should expect to use the product or be endangered by its probable use, if the manufacturer has reason to believe that they will not realize its dangerous condition." (*Putensen v. Clay Adams, Inc.* (1970) 12 Cal.App.3d 1062, 1076–1077 [91 Cal.Rptr. 319].)

- "Under California law, a manufacturer generally has no duty to warn of risks from another manufacturer's product, and is typically liable only for harm caused by its own product." (*Johnson & Johnson Talcum Powder Cases* (2019) 37 Cal.App.5th 292, 315 [249 Cal.Rptr.3d 642].)

- "Negligence law in a failure-to-warn case requires a plaintiff to prove that a manufacturer or distributor did not warn of a particular risk for reasons which fell below the acceptable standard of care, i.e., what a reasonably prudent manufacturer would have known and warned about." (*Chavez v. Glock, Inc.* (2012) 207 Cal.App.4th 1283, 1305 [144 Cal.Rptr.3d 326], internal citation omitted.)

- "Thus, the question defendants wanted included in the special verdict form—whether a reasonable manufacturer under the same or similar circumstances would have given a warning—is an essential inquiry in the negligent failure to warn claim." (*Trejo v. Johnson & Johnson* (2017) 13 Cal.App.5th 110, 137 [220 Cal.Rptr.3d 127] [citing this instruction].)

- "Negligence and strict products liability are separate and distinct bases for liability that do not automatically collapse into each other because the plaintiff might allege both when a product warning contributes to her injury." (*Conte v. Wyeth, Inc.* (2008) 168 Cal.App.4th 89, 101 [85 Cal.Rptr.3d 299].)

- "The 'known or knowable' standard arguably derives from negligence principles, and failure to warn claims are generally ' "rooted in negligence" to a greater extent than' manufacturing or design defect claims. Unlike those other defects, a ' "warning defect" relates to a failure extraneous to the product itself' and can only be assessed by examining the manufacturer's conduct. These principles notwithstanding, California law recognizes separate failure to warn claims under both strict liability

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and negligence theories. In general, a product seller will be strictly liable for failure to warn if a warning was feasible and the absence of a warning caused the plaintiff's injury. Reasonableness of the seller's failure to warn is immaterial in the strict liability context. Conversely, to prevail on a claim for negligent failure to warn, the plaintiff must prove that the seller's conduct fell below the standard of care. If a prudent seller would have acted reasonably in not giving a warning, the seller will not have been negligent." (*Webb v. Special Electric Co., Inc.* (2016) 63 Cal.4th 167, 181 [202 Cal.Rptr.3d 460, 370 P.3d 1022], footnote and internal citations omitted.)

- "It is true that the two types of failure to warn claims are not necessarily exclusive: 'No valid reason appears to require a plaintiff to elect whether to proceed on the theory of strict liability in tort or on the theory of negligence. … [¶] Nor does it appear that instructions on the two theories will be confusing to the jury. There is nothing inconsistent in instructions on the two theories and to a large extent the two theories parallel and supplement each other.' Despite the often significant overlap between the theories of negligence and strict liability based on a product defect, a plaintiff is entitled to instructions on both theories if both are supported by the evidence." (*Oxford v. Foster Wheeler LLC* (2009) 177 Cal.App.4th 700, 717 [99 Cal.Rptr.3d 418].)

- "(1) [T]he strict liability instructions 'more than subsumed the elements of duty to warn set forth in the negligence instructions'; (2) under the instructions, there is no 'real difference between a warning to ordinary users about a product *use* that involves a substantial danger, and a warning about a product that is dangerous or likely to be dangerous for its intended use'; (3) [defendant]'s duty under the strict liability instructions 'to warn of potential risks and side effects envelope[d] a broader set of risk factors than the duty, [under the] negligence instructions, to warn of facts which make the product "likely to be dangerous" for its intended use'; (4) the reference in the strict liability instructions here to 'potential risks … that were known or knowable through the use of scientific knowledge' encompasses the concept in the negligence instructions of risks [defendant] 'knew or reasonably should have known'; and (5) for all these reasons, the jury's finding that [defendant] was not liable under a strict liability theory 'disposed of any liability for failure to warn' on a negligence theory." (*Trejo, supra,* 13 Cal.App.5th at pp. 132–133, original italics, internal citations omitted.)

- "In the context of prescription drugs, a manufacturer's duty is to warn physicians about the risks known or reasonably known to the manufacturer. The manufacturer has no duty to warn of risks that are 'merely speculative or conjectural, or so remote and insignificant as to be negligible.' If the manufacturer provides an adequate warning to the prescribing physician, the manufacturer need not communicate a warning directly to the patient who uses the drug." (*T.H. v. Novartis Pharmaceuticals Corp.* (2017) 4 Cal.5th 145, 164 [226 Cal.Rptr.3d 336, 407 P.3d 18], internal citations omitted.)

- "Because the same warning label must appear on the brand-name drug as well as its generic bioequivalent, a brand-name drug manufacturer owes a duty of reasonable care in ensuring that the label includes appropriate warnings, regardless of whether the end user has been dispensed the brand-name drug or its generic bioequivalent. If the person exposed to the generic drug can reasonably allege that the brand-name drug manufacturer's failure to update its warning label foreseeably and proximately caused physical injury, then the brand-name manufacturer's liability for its own negligence does not automatically terminate merely because the brand-name manufacturer transferred its rights in the brand-name drug to a successor manufacturer." (*T.H., supra,* 4 Cal.5th at p. 156.)

Secondary Sources

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6 Witkin, Summary of California Law (11th ed. 2017) Torts, §§ 1317–1321

Haning et al., California Practice Guide: Personal Injury, Ch. 2(II)-D, *Strict Liability For Defective Products*, ¶¶ 2:1271, 2:1295 (The Rutter Group)

California Products Liability Actions, Ch. 2, *Liability for Defective Products*, § 2.21, Ch. 7, *Proof*, § 7.05 (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*, § 190.165 et seq. (Matthew Bender)

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2201. Intentional Interference With Contractual Relations—Essential Factual Elements

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[*Name of plaintiff*] claims that [*name of defendant*] intentionally interfered with the contract between [him/her/*nonbinary pronoun*/it] and [*name of third party*]. To establish this claim, [*name of plaintiff*] must prove all of the following:

1. **That there was a contract between [*name of plaintiff*] and [*name of third party*];**

2. **That [*name of defendant*] knew of the contract;**

3. **That [*name of defendant*]'s conduct prevented performance or made performance more expensive or difficult;**

4. **That [*name of defendant*] [intended to disrupt the performance of this contract/ [or] knew that disruption of performance was certain or substantially certain to occur];**

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.**

New September 2003; Revised June 2012, December 2013

Directions for Use

This tort is sometimes called intentional interference with performance of a contract. (See *Little v. Amber Hotel Co.* (2011) 202 Cal.App.4th 280, 291 [136 Cal.Rptr.3d 97].) If the validity of a contract is an issue, see the series of contracts instructions (CACI No. 300 et seq.).

Sources and Authority

- "[A]llowing interference with at-will contract claims without requiring independent wrongfulness risks chilling legitimate business competition. An actionable claim for interference with contractual relations does not require that the defendant have the specific intent to interfere with a contract. A plaintiff states a claim so long as it alleges that the defendant knew interference was ' "certain or substantially certain to occur as a result of [defendant's] action." ' Without an independent wrongfulness requirement, a competitor's good faith offer that causes a business to withdraw from an at-will contract could trigger liability or at least subject the competitor to costly litigation. In fact, even if a business in an at-will contract solicits offers on its own initiative, a third party that submits an offer could face liability if it knew that acceptance of the offer would cause the soliciting business to withdraw from its existing contract. Allowing disappointed competitors to state claims for interference with at-will contracts without alleging independently wrongful conduct may expose routine and legitimate business competition to litigation. [¶] We therefore hold that to state a claim for interference with an at-will contract by a third party, the plaintiff must allege that the defendant engaged in an independently wrongful act." (*Ixchel Pharma, LLC v. Biogen, Inc.* (2020) 9 Cal.5th

1130, 1148 [266 Cal.Rptr.3d 665, 470 P.3d 571], internal citation omitted.)

- "California recognizes a cause of action against *noncontracting parties* who interfere with the performance of a contract. 'It has long been held that *a stranger to a contract* may be liable in tort for intentionally interfering with the performance of the contract.' " (*Redfearn v. Trader Joe's Co.* (2018) 20 Cal.App.5th 989, 997 [230 Cal.Rptr.3d 98], original italics.)

- "[C]ases have pointed out that while the tort of inducing breach of contract requires proof of a breach, the cause of action for interference with contractual relations is distinct and requires only proof of interference." (*Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1129 [270 Cal.Rptr. 1, 791 P.2d 587], internal citations omitted.)

- "The elements which a plaintiff must plead to state the cause of action for intentional interference with contractual relations are (1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of this contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage." (*Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1126 [270 Cal.Rptr. 1, 791 P.2d 587], internal citations omitted.)

- "[A] cause of action for intentional interference with contract requires an underlying enforceable contract. Where there is no existing, enforceable contract, only a claim for interference with prospective advantage may be pleaded." (*PMC, Inc. v. Saban Entertainment, Inc.* (1996) 45 Cal.App.4th 579, 601 [52 Cal.Rptr.2d 877].)

- "Because interference with an existing contract receives greater solicitude than does interference with prospective economic advantage, it is not necessary that the defendant's conduct be wrongful apart from the interference with the contract itself." (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 55 [77 Cal.Rptr.2d 709, 960 P.2d 513], internal citations omitted.)

- "The question is whether a plaintiff must plead and prove that the defendant engaged in wrongful acts *with the specific intent* of interfering with the plaintiff's business expectancy. We conclude that specific intent is not a required element of the tort of interference with prospective economic advantage. While a plaintiff may satisfy the intent requirement by pleading specific intent, i.e., that the defendant desired to interfere with the plaintiff's prospective economic advantage, a plaintiff may alternately plead that the defendant knew that the interference was certain or substantially certain to occur as a result of its action." (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1154 [131 Cal.Rptr.2d 29, 63 P.3d 937], original italics.)

- "We caution that although we find the intent requirement to be the same for the torts of intentional interference with contract and intentional interference with prospective economic advantage, these torts remain distinct." (*Korea Supply Co., supra,* 29 Cal.4th at p. 1157.)

- "Plaintiff need not allege an actual or inevitable breach of contract in order to state a claim for disruption of contractual relations. We have recognized that interference with the plaintiff's performance may give rise to a claim for interference with contractual relations if plaintiff's performance is made more costly or more burdensome. Other cases have pointed out that while the

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tort of inducing breach of contract requires proof of a breach, the cause of action for interference with contractual relations is distinct and requires only proof of interference." (*Pacific Gas & Electric Co., supra,* 50 Cal.3d at p. 1129, internal citations omitted.)

- "*[A] contracting party* cannot be held liable in tort for conspiracy to interfere with its own contract." (*Asahi Kasei Pharma Corp. v. Actelion Ltd.* (2013) 222 Cal.App.4th 945, 961 [166 Cal.Rptr.3d 134], original italics.)

- "[O]ne, like [defendant] here, who is not a party to the contract or an agent of a party to the contract is a 'stranger' for purpose of the tort of intentional interference with contract. A nonparty to a contract that contemplates the nonparty's performance, by that fact alone, is not immune from liability for contract interference. Liability is properly imposed if each of the elements of the tort are otherwise satisfied." (*Redfearn, supra,* 20 Cal.App.5th at p. 1003.)

- "[I]nterference with an at-will contract is actionable interference with the contractual relationship, on the theory that a contract 'at the will of the parties, respectively, does not make it one at the will of others.' " (*Pacific Gas & Electric Co., supra,* 50 Cal.3d at p. 1127, internal citations and quotations omitted.)

- "We conclude that a plaintiff seeking to state a claim for intentional interference with contract or prospective economic advantage because defendant induced another to undertake litigation, must allege that the litigation was brought without probable cause and that the litigation concluded in plaintiff's favor." (*Pacific Gas & Electric Co., supra,* 50 Cal.3d at p. 1137.)

- "[A]n actor with ' "a financial interest in the business of another is privileged purposely to cause him not to enter into or continue a relation with a third person in that business if the actor [¶] (a) does not employ improper means, and [¶] (b) acts to protect his interest from being prejudiced by the relation[.]" ' " (*Asahi Kasei Pharma Corp, supra,* 222 Cal.App.4th at p. 962.)

Secondary Sources

5 Witkin, Summary of California Law (11th ed. 2017) Torts, §§ 854, 855, 875

Chin et al., California Practice Guide: Employment Litigation, Ch. 5(I)-F, *Intentional Interference With Contract Or Prospective Economic Advantage,* ¶ 5:461 et seq. (The Rutter Group)

3 Levy et al., California Torts, Ch. 40, *Fraud and Deceit and Other Business Torts*, §§ 40.110–40.117 (Matthew Bender)

49 California Forms of Pleading and Practice, Ch. 565, *Unfair Competition,* § 565.133 (Matthew Bender)

12 California Points and Authorities, Ch. 122, *Interference,* § 122.20 et seq. (Matthew Bender)

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2561. Religious Creed Discrimination—Reasonable Accommodation—Affirmative Defense—Undue Hardship (Gov. Code, §§ 12940(*l*)(1), 12926(u))

[*Name of defendant*] claims that accommodating [*name of plaintiff*]'s [religious belief/religious observance] would create an undue hardship to the operation of [his/her/*nonbinary pronoun*/its] business.

To succeed on this defense, [*name of defendant*] must prove that [he/she/*nonbinary pronoun*/it] considered reasonable alternative options for accommodating the [religious belief/religious observance], including (1) excusing [*name of plaintiff*] from duties that conflict with [his/her/*nonbinary pronoun*] [religious belief/religious observance][,] [or] (2) permitting those duties to be performed at another time or by another person[, or (3) [*specify other reasonable accommodation*]].

If you decide that [*name of defendant*] considered but did not adopt [a] reasonable accommodation[s], you must then decide if the accommodation[s] would have created an undue hardship because it would be 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 September 2003; Revoked December 2012; Restored and Revised June 2013; Revised November 2019, May 2020, May 2021

Directions for Use

For religious beliefs and observances, the statute requires the employer (or other covered entity) to demonstrate that the employer explored certain means of accommodating the plaintiff, including two specific possibilities: (1) excusing the plaintiff from duties that conflict with the plaintiff's religious belief or observance or (2) permitting those duties to be performed at another time or by another person. (Gov. Code, § 12940(*l*)(1).) If there is evidence of another reasonable alternative accommodation, include it as a third means of accommodating the plaintiff.

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Sources and Authority

- Religious Accommodation Required Under Fair Employment and Housing Act. Government Code section 12940(*l*)(1).

- “Undue Hardship” Defined. Government Code section 12926(u).

- “If the employee proves a prima facie case and the employer fails to initiate an accommodation for the religious practices, the burden is then on the employer to prove it will incur an undue hardship if it accommodates that belief. ‘[T]he extent of undue hardship on the employer’s business is at issue only where the employer claims that it is unable to offer any reasonable accommodation without such hardship.’ ...” (*Soldinger v. Northwest Airlines, Inc.* (1996) 51 Cal.App.4th 345, 371 [58 Cal.Rptr.2d 747], internal citations omitted.)

- “It would be anomalous to conclude that by ‘reasonable accommodation’ Congress meant that an employer must deny the shift and job preference of some employees, as well as deprive them of their contractual rights, in order to accommodate or prefer the religious needs of others, and we conclude that Title VII does not require an employer to go that far. ... [¶] ... . [¶¶] Alternatively, the Court of Appeals suggested that [the employer] could have replaced [plaintiff] on his Saturday shift with other employees through the payment of premium wages ... . To require [the employer] to bear more than a de minimus cost ... is an undue hardship. Like abandonment of the seniority system, to require [the employer] to bear additional costs when no such costs are incurred to give other employees the days off that they want would involve unequal treatment of employees on the basis of their religion.” (*TWA v. Hardison* (1977) 432 U.S. 63, 81, 84 [97 S.Ct. 2264, 53 L.Ed.2d 113], footnote omitted.)

Secondary Sources

8 Witkin, Summary of California Law (11th ed. 2017) Constitutional Law, §§ 1025, 1026

Chin et al., Cal. Practice Guide: Employment Litigation, Ch. 7-A, *Title VII And The California Fair Employment and Housing Act*, ¶¶ 7:151, 7:215, 7:305, 7:610, 7:631, 7:640−7:641 (The Rutter Group)

2 Wilcox, California Employment Law, Ch. 41, *Substantive Requirements Under Equal Employment Opportunity Laws*, § 41.52[4] (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 115, *Civil Rights: Employment Discrimination*, §§ 115.35[2][a]–[c], 115.54, 115.91 (Matthew Bender)

California Civil Practice: Employment Litigation §§ 2:71–2:73 (Thomson Reuters)

1 Lindemann and Grossman, Employment Discrimination Law (3d ed.) Religion, pp. 227–234 (2000 supp.) at pp. 100–105

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2610. Affirmative Defense—No Certification From Health-Care Provider

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[*Name of defendant*] claims that [he/she/*nonbinary pronoun*/it] denied [*name of plaintiff*]'s request for leave because [he/she/*nonbinary pronoun*] did not provide a health-care provider's certification of [his/her/*nonbinary pronoun*] need for leave. To succeed, [*name of defendant*] must prove both of the following:

1. **That [*name of defendant*] told [*name of plaintiff*] in writing that [he/she/*nonbinary pronoun*/it] required written certification from [*name of plaintiff*]'s health-care provider to [grant/extend] leave; and**

2. **That [*name of plaintiff*] did not provide [*name of defendant*] with the required certification from a health-care provider [within the time set by [*name of defendant*] or as soon as reasonably possible].**

New September 2003

Directions for Use

The time set by the defendant described in element 2 must be at least 15 days.

Sources and Authority

- Certification of Health Care Provider. Government Code section 12945.2~~(k)~~(j).

- Certification of Health Care Provider: Child Care. Government Code section 12945.2~~(j)~~(i).

- Certification of Health Care Provider: Return to Work. Government Code section 12945.2~~(k)(4)~~(j)(4).

- "Health Care Provider" Defined. Government Code section 12945.2~~(c)(6)~~(b)(9).

- Notice and Certification. Cal. Code Regs., tit. 2, § 11088(b).

- ~~"[S]ubdivision (k)(1) of [Government Code] section 12945.2 does not *require* an employer to submit disputes regarding an employee's entitlement to medical leave to a third health care provider." (*Lonicki v. Sutter Health Central* (2008) 43 Cal.4th 201, 211 [74 Cal.Rptr.3d 570, 180 P.3d 321], original italics.)~~

Secondary Sources

8 Witkin, Summary of California Law (11th ed. 2017) Constitutional Law, §§ 1056–1060

Chin et al., California Practice Guide: Employment Litigation, Ch. 12-B, *Family and Medical Leave Act (FMLA)/California Family Rights Act (CFRA)*, ¶¶ 12:311, 12:880, 12:883–12:884, 12:905, 12:915 (The Rutter Group)

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1 Wilcox, California Employment Law, *Leaves of Absence*, § 8.26 (Matthew Bender)

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2611. Affirmative Defense—Fitness for Duty Statement

[*Name of defendant*] claims that [he/she/*nonbinary pronoun*/it] refused to return [*name of plaintiff*] to work because [he/she/*nonbinary pronoun*] did not provide a written statement from [his/her/*nonbinary pronoun*] health-care provider that [he/she/*nonbinary pronoun*] was fit to return to work. To succeed, [*name of defendant*] must prove both of the following:

1. **That [*name of defendant*] has a uniformly applied practice or policy that requires employees on leave because of their own serious health condition to provide a written statement from their health-care provider that they are able to return to work; and**

2. **That [*name of plaintiff*] did not provide [*name of defendant*] with a written statement from [his/her/*nonbinary pronoun*] health-care provider of [his/her/*nonbinary pronoun*] fitness to return to work.**

New September 2003

Sources and Authority

- Certification on Health Care Provider: Child Care. Government Code section 12945.2~~(j)~~(i).
- Certification of Health Care Provider: Return to Work. Government Code section 12945.2~~(k)(4)~~(j)(4).
- “Health Care Provider” Defined. Government Code section 12945.2~~(c)(6)~~(b)(9).
- Notice and Certification. Cal. Code Regs., tit. 2, § 11088(b).

Secondary Sources

8 Witkin, Summary of California Law (11th ed. 2017) Constitutional Law, §§ 1056–1060

Chin et al., California Practice Guide: Employment Litigation, Ch. 12-B, *Family and Medical Leave Act (FMLA)/California Family Rights Act (CFRA)*, ¶¶ 12:311, 12:880, 12:884, 12:915 (The Rutter Group)

1 Wilcox, California Employment Law, Ch. 8, *Leaves of Absence*, § 8.26 (Matthew Bender)

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3201. Failure to Promptly Repurchase or Replace New Motor Vehicle After Reasonable Number of Repair Opportunities—Essential Factual Elements (Civ. Code, § 1793.2(d))

[*Name of plaintiff*] claims that [*name of defendant*] failed to promptly repurchase or replace [a/an] [*new motor vehicle*] after a reasonable number of repair opportunities. To establish this claim, [*name of plaintiff*] must prove all of the following:

1. **That [*name of plaintiff*] [bought/leased] [a/an] [*new motor vehicle*] [from/distributed by/manufactured by] [*name of defendant*];**

2. **That [*name of defendant*] gave [*name of plaintiff*] a written warranty that [*describe alleged express warranty*];**

3. **That the vehicle had [a] defect[s] that [was/were] covered by the warranty and that substantially impaired its use, value, or safety to a reasonable person in [*name of plaintiff*]'s situation;**

4. **[That [*name of plaintiff*] delivered the vehicle to [*name of defendant*] or its authorized repair facility for repair of the defect[s];]**

   [*or*]

   [That [*name of plaintiff*] notified [*name of defendant*] in writing of the need for repair of the defect[s] because [he/she/*nonbinary pronoun*] reasonably could not deliver the vehicle to [*name of defendant*] or its authorized repair facility because of the nature of the defect[s];]

5. **That [*name of defendant*] or its authorized repair facility failed to repair the vehicle to match the written warranty after a reasonable number of opportunities to do so; and**

6. **That [*name of defendant*] did not promptly replace or buy back the vehicle.**

[It is not necessary for [*name of plaintiff*] to prove the cause of a defect in the [*new motor vehicle*].]

[A written warranty need not include the words "warranty" or "guarantee," but if those words are used, a warranty is created. It is also not necessary for [*name of defendant*] to have specifically intended to create a warranty. A warranty is not created if [*name of defendant*] simply stated the value of the vehicle or gave an opinion about the vehicle. General statements concerning customer satisfaction do not create a warranty.]

New September 2003; Revised February 2005, December 2005, April 2007, December 2007, December 2011

Directions for Use

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If remedies are sought under the California Uniform Commercial Code, the plaintiff may be required to prove reasonable notification within a reasonable time. (Cal. U. Com. Code, § 2607(3).) If the court determines that proof is necessary, add the following element to this instruction:

> That [*name of plaintiff*] took reasonable steps to notify [*name of defendant*] within a reasonable time that the [*new motor vehicle*] had a defect covered by the warranty;

See also CACI No. 1243, *Notification/Reasonable Time*.

Regarding element 4, if the plaintiff claims that the consumer goods could not be delivered for repair, the judge should decide whether written notice of nonconformity is required. The statute, Civil Code section 1793.2(c), is unclear on this point.

Include the bracketed sentence preceding the final bracketed paragraph if appropriate to the facts. The Song-Beverly Consumer Warranty Act does not require a consumer to prove the cause of the defect or failure, only that the consumer good "did not conform to the express warranty." (See *Oregel v. American Isuzu Motors, Inc.* (2001) 90 Cal.App.4th 1094, 1102, fn. 8 [109 Cal.Rptr.2d 583].)

In addition to sales of consumer goods, the Consumer Warranty Act applies to leases. (Civ. Code, §§ 1791(g)-(i), 1795.4.) This instruction may be modified for use in cases involving an express warranty in a lease of a motor vehicle.

See also CACI No. 3202, "*Repair Opportunities" Explained*, CACI No. 3203, *Reasonable Number of Repair Opportunities—Rebuttable Presumption*, and CACI No. 3204, *"Substantially Impaired" Explained*.

Sources and Authority

- Song-Beverly Consumer Warranty Act: Right of Action. Civil Code section 1794(a).
- Extension of Warranty Period. Civil Code section 1793.1(a)(2).
- Song-Beverly Does Not Preempt Commercial Code. Civil Code section 1790.3.
- "Express Warranty" Defined. Civil Code section 1791.2.
- Express Warranty Made by Someone Other Than Manufacturer. Civil Code section 1795.
- "New Motor Vehicle" Defined. Civil Code section 1793.22(e)(2).
- Replacement or Reimbursement After Reasonable Number of Repair Attempts. Civil Code section 1793.2(d)(2).
- Buyer's Delivery of Nonconforming Goods. Civil Code section 1793.2(c).

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- Extension of Warranty. Civil Code section 1793.1(a)(2).

- Tolling of Warranty Period for Nonconforming Goods. Civil Code section 1795.6.

- " 'The Song-Beverly Act is a remedial statute designed to protect consumers who have purchased products covered by an express warranty. … One of the most significant protections afforded by the act is … that "if the manufacturer or its representative in this state does not service or repair the goods to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either replace the goods or reimburse the buyer in an amount equal to the purchase price paid by the buyer … ." …' In providing these remedies, the Legislature has not required that the consumer maintain possession of the goods at all times. All that is necessary is that the consumer afford the manufacturer a reasonable number of attempts to repair the goods to conform to the applicable express warranties." (*Martinez v. Kia Motors America, Inc.* (2011) 193 Cal.App.4th 187, 191 [122 Cal.Rptr.3d 497], internal citation omitted.)

- "Broadly speaking, the Act regulates warranty terms; imposes service and repair obligations on manufacturers, distributors and retailers who make express warranties; requires disclosure of specified information in express warranties; and broadens a buyer's remedies to include costs, attorney fees and civil penalties. ... [¶] [T]he purpose of the Act has been to provide broad relief to purchasers of consumer goods with respect to warranties." (*National R.V., Inc. v. Foreman* (1995) 34 Cal.App.4th 1072, 1080 [40 Cal.Rptr.2d 672].)

- "A plaintiff pursuing an action under the Act has the burden to prove that (1) the vehicle had a nonconformity covered by the express warranty that substantially impaired the use, value or safety of the vehicle (the nonconformity element); (2) the vehicle was presented to an authorized representative of the manufacturer of the vehicle for repair (the presentation element); and (3) the manufacturer or his representative did not repair the nonconformity after a reasonable number of repair attempts (the failure to repair element)." (*Donlen v. Ford Motor Co.* (2013) 217 Cal.App.4th 138, 152 [158 Cal.Rptr.3d 180].)

- The Song-Beverly Act does not apply unless the vehicle was purchased in California. (*Cummins, Inc. v. Superior Court* (2005) 36 Cal.4th 478, 490 [30 Cal.Rptr.3d 823, 115 P.3d 98].)

- "Under well-recognized rules of statutory construction, the more specific definition [of 'new motor vehicle'] found in the current section 1793.22 governs the more general definition [of 'consumer goods'] found in section 1791." (*Jensen v. BMW of North America, Inc.* (1995) 35 Cal.App.4th 112, 126 [41 Cal.Rptr.2d 295].)

- " 'Nonconformity' is defined as 'a nonconformity which substantially impairs the use, value, or safety of the new motor vehicle to the buyer or lessee.' The term is similar to what the average person would understand to be a 'defect.' " (*Schreidel v. American Honda Motor Co.* (1995) 34 Cal.App.4th 1242, 1249 [40 Cal.Rptr.2d 576], internal citation omitted; see also *Robertson v. Fleetwood Travel Trailers of California, Inc.* (2006) 144 Cal.App.4th 785, 801, fn.11 [50 Cal.Rptr.3d 731] [nonconformity can include entire complex of related conditions].)

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- "The issue of whether the problems constituted substantial impairment is one for the trier of fact." (*Schreidel, supra,* 34 Cal.App.4th at p. 1250.)

- "[S]ection 1793.2, subdivision (d)(2), differs from section 1793.2, subdivision (d)(1), in that it gives the new motor vehicle consumer the right to elect restitution in lieu of replacement; provides specific procedures for the motor vehicle manufacturer to follow in the case of replacement and in the case of restitution; and sets forth rules for offsetting the amount attributed to the consumer's use of the motor vehicle. These 'Lemon Law' provisions clearly provide greater consumer protections to those who purchase new motor vehicles than are afforded under the general provisions of the Act to those who purchase other consumer goods under warranty." (*National R.V., Inc., supra,* 34 Cal.App.4th at p. 1079, internal citations and footnotes omitted.)

- The act does not require a consumer to give a manufacturer, in addition to its local representative, at least one opportunity to fix a problem. Regarding previous repair efforts entitling an automobile buyer to reimbursement, "[t]he legislative history of [Civil Code section 1793.2] demonstrates beyond any question that ... a differentiation between manufacturer and local representative is unwarranted." (*Ibrahim v. Ford Motor Co.* (1989) 214 Cal.App.3d 878, 888 [263 Cal.Rptr. 64].)

- "[T]he only affirmative step the Act imposes on consumers is to 'permit[] the manufacturer a reasonable *opportunity* to repair the vehicle.' " (*Oregel, supra,* 90 Cal.App.4th at p. 1103, original italics, internal citation omitted.)

- "[T]he Act does not *require* consumers to take any affirmative steps to secure relief for the failure of a manufacturer to service or repair a vehicle to conform to applicable warranties—other than, of course, permitting the manufacturer a reasonable opportunity to repair the vehicle. ... In reality, … , the manufacturer seldom on its own initiative offers the consumer the options available under the Act: a replacement vehicle or restitution. Therefore, as a practical matter, the consumer will likely request replacement or restitution. But the consumer's request is not mandated by any provision in the Act. Rather, the consumer's request for replacement or restitution is often prompted by the manufacturer's unforthright approach and stonewalling of fundamental warranty problems." (*Lukather v. General Motors, LLC* (2010) 181 Cal.App.4th 1041, 1050 [104 Cal.Rptr.3d 853], original italics.)

- "[Defendant] argues allowing evidence of postwarranty repairs extends the term of its warranty to whatever limit an expert is willing to testify. We disagree. Evidence that a problem was fixed for a period of time but reappears at a later date is relevant to determining whether a fundamental problem in the vehicle was ever resolved. Indeed, that a defect first appears after a warranty has expired does not necessarily mean the defect did not exist when the product was purchased. Postwarranty repair evidence may be admitted on a case-by-case basis where it is relevant to showing the vehicle was not repaired to conform to the warranty during the warranty's existence." (*Donlen, supra,* 217 Cal.App.4th at p. 149, internal citations omitted.)

- "[W]e hold that registration renewal and nonoperation fees are not recoverable as collateral charges under section 1793.2, subdivision (d)(2)(B) of the Act because they are not collateral to the price paid for the vehicle, but they are recoverable as incidental damages under section 1794 of the Act if they were incurred and paid as a result of a manufacturer's failure to promptly provide a replacement vehicle or restitution under section 1793.2, subdivision (d)(2)." (*Kirzhner v. Mercedes-Benz USA,*

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LLC (2020) 9 Cal.5th 966, 987 [266 Cal.Rptr.3d 346, 470 P.3d 56].)

Secondary Sources

4 Witkin, Summary of California Law (11th ed. 2017) Sales, §§ 52, 57, 321–334

1 California UCC Sales and Leases (Cont.Ed.Bar) Warranties, §§ 7.4, 7.8, 7.15, 7.87; *id.,* Prelitigation Remedies, § 13.68; *id.*, Litigation Remedies, § 14.25, *id.*, Division 10: Leasing of Goods, § 17.31

8 California Forms of Pleading and Practice, Ch. 91, *Automobiles: Actions Involving Defects and Repairs*, § 91.15 (Matthew Bender)

20 California Points and Authorities, Ch. 206*, Sales*, § 206.104 (Matthew Bender)

California Civil Practice: Business Litigation §§ 53:1, 53:3–53:4, 53:10–53:11, 53:14–53:17, 53:22–53:23, 53:26–53:27 (Thomson Reuters)

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3709. Ostensible Agent

[*Name of plaintiff*] **claims that** [*name of defendant*] **is responsible for** [*name of agent*]**'s conduct because [he/she/**_nonbinary pronoun_**] was** [*name of defendant*]**'s apparent [employee/agent]. To establish this claim,** [*name of plaintiff*] **must prove all of the following:**

1. **That** [*name of defendant*] **intentionally or carelessly created the impression that** [*name of agent*] **was** [*name of defendant*]**'s [employee/agent];**

2. **That** [*name of plaintiff*] **reasonably believed that** [*name of agent*] **was** [*name of defendant*]**'s [employee/agent]; and**

3. **That** [*name of plaintiff*] **reasonably relied on [his/her/**_nonbinary pronoun_**] belief.**

New September 2003; Revised November 2019

Directions for Use

Give this instruction with CACI No. 3701, *Tort Liability Asserted Against Principal—Essential Factual Elements,* if the plaintiff is relying on the doctrine of ostensible agency to establish the principal-agent relationship in CACI No. 3701.

A somewhat different instruction is required to hold a hospital responsible for the acts of a physician under ostensible agency when the physician is actually an employee of a different entity. In that context, it has been said that the only relevant factual issue is whether the patient had reason to know that the physician was not an agent of the hospital. (See *Markow v. Rosner* (2016) 3 Cal.App.5th 1027 [208 Cal.Rptr.3d 363]; see also *Mejia v. Community Hospital of San Bernardino* (2002) 99 Cal.App.4th 1448, 1454 [122 Cal.Rptr.2d 233].)

Sources and Authority

- Agency Is Actual or Ostensible. Civil Code section 2298.

- "Ostensible Agency" Defined. Civil Code section 2300.

- "Ostensible Authority" Defined. Civil Code section 2317.

- When Principal is Bound by Ostensible Agent. Civil Code section 2334.

- " '[O]stensible authority arises as a result of conduct of the principal which causes the *third party* reasonably to believe that the agent possesses the authority to act on the principal's behalf.' 'Ostensible authority may be established by proof that the principal approved prior similar acts of the agent.' ' "[W]here the principal knows that the agent holds himself out as clothed with certain authority, and remains silent, such conduct on the part of the principal may give rise to liability. …"

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…' " (*Chicago Title Ins. Co. v. AMZ Ins. Services, Inc.* (2010) 188 Cal.App.4th 401, 426–427 [115 Cal.Rptr.3d 707], original italics, internal citations omitted.)

- "Whether an agent has ostensible authority is a question of fact and such authority may be implied from circumstances." (*Pierson v. Helmerich & Payne Internat. Drilling Co.* (2016) 4 Cal.App.5th 608, 635 [209 Cal.Rptr.3d 222].)

- " 'It is elementary that there are three requirements necessary before recovery may be had against a principal for the act of an ostensible agent. The person dealing with the agent must do so with belief in the agent's authority and this belief must be a reasonable one; such belief must be generated by some act or neglect of the principal sought to be charged; and the third person in relying on the agent's apparent authority must not be guilty of negligence.' " (*Associated Creditors' Agency v. Davis* (1975) 13 Cal.3d 374, 399 [118 Cal.Rptr. 772, 530 P.2d 1084], internal citations omitted.)

- "Ostensible agency cannot be established by the representations or conduct of the purported agent; the statements or acts of the principal must be such as to cause the belief the agency exists." (*American Way Cellular, Inc. v. Travelers Property Casualty Co. of America* (2013) 216 Cal.App.4th 1040, 1053 [157 Cal.Rptr.3d 385].)

- "Liability of the principal for the acts of an ostensible agent rests on the doctrine of 'estoppel,' the essential elements of which are representations made by the principal, justifiable reliance by a third party, and a change of position from such reliance resulting in injury." (*Preis v. American Indemnity Co.* (1990) 220 Cal.App.3d 752, 761 [269 Cal.Rptr. 617], internal citation omitted.)

- "But the adequacy of the notice is only one of the many fact questions that arise under ostensible agency. The jury must also determine whether the patient entrusted herself to the hospital, whether the hospital selected the doctor, and whether the patient reasonably believed the doctor was an agent of the hospital." (*Whitlow v. Rideout Memorial Hospital* (2015) 237 Cal.App.4th 631, 641 [188 Cal.Rptr.3d 246].)

- "It is well established in California that a hospital may be liable for the negligence of physicians on the staff, unless the hospital has clearly notified the patient that the treating physicians are not hospital employees and there is no reason to believe the patient was unable to understand or act on the information. This rule is founded on the theory of ostensible agency." (*Wicks v. Antelope Valley Healthcare Dist.* (2020) 49 Cal.App.5th 866, 882 [263 Cal.Rptr.3d 397].)

- "[A]lthough a hospital may not control, direct or supervise physicians on its staff, a hospital may be liable for their negligence on an ostensible agency theory, unless (1) the hospital gave the patient actual notice that the treating physicians are not hospital employees, and (2) there is no reason to believe the patient was unable to understand or act on the information, or (3) the patient was treated by his or her personal physician and knew or should have known the true relationship between the hospital and physician." (*Wicks, supra,* 49 Cal.App.5th at p. 884.)

- ~~"Where a patient seeks to hold a hospital liable for the negligence of a physician, the doctrine of ostensible agency is now commonly expressed as having two elements: '(1) conduct by the hospital that would cause a reasonable person to believe that the physician was an agent of the hospital, and~~

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~~(2) reliance on that apparent agency relationship by the plaintiff.' Generally, the first element is satisfied 'when the hospital "holds itself out" to the public as a provider of care,' 'unless it gave the patient contrary notice.' Nonetheless, a hospital's 'contrary notice' may be insufficient 'to avoid liability in an emergency room context, where an injured patient in need of immediate medical care cannot be expected to understand or act upon that information.' Reliance upon an apparent agency is demonstrated 'when the plaintiff "looks to" the hospital for services, rather than to an individual physician.' Ultimately, 'there is really only one relevant factual issue: whether the patient had reason to know that the physician was not an agent of the hospital. As noted above, hospitals are generally deemed to have held themselves out as the provider of services unless they gave the patient contrary notice, and the patient is generally presumed to have looked to the hospital for care unless he or she was treated by his or her personal physician. Thus, unless the patient had some reason to know of the true relationship between the hospital and the physician—i.e., because the hospital gave the patient actual notice or because the patient was treated by his or her personal physician—ostensible agency is readily inferred.' " (*Markow, supra,* 3 Cal.App.5th at p. 1038, internal citations omitted.)~~

Secondary Sources

3 Witkin, Summary of California Law (11th ed. 2017) Agency and Employment, §§ 154–159

Haning et al., California Practice Guide: Personal Injury, Ch. 2(II)-A, *Vicarious Liability*, ¶¶ 2:676, 2:677 (The Rutter Group)

1 Levy et al., California Torts, Ch. 8, *Vicarious Liability*, § 8.04[6] (Matthew Bender)

37 California Forms of Pleading and Practice, Ch. 427, *Principal and Agent*, §§ 427.11, 427.22 (Matthew Bender)

18 California Points and Authorities, Ch. 182, *Principal and Agent*, §§ 182.04, 182.120 et seq. (Matthew Bender)

California Civil Practice: Torts § 3:29 (Thomson Reuters)

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3725. Going-and-Coming Rule—Vehicle-Use Exception

In general, an employee is not acting within the scope of employment while traveling to and from the workplace. But if an employer requires an employee to drive to and from the workplace so that the vehicle is available for the employer's business, then the drive to and from work is within the scope of employment. The employer's requirement may be either express or implied.

The drive to and from work may also be within the scope of employment if the use of the employee's vehicle provides some direct or incidental benefit to the employer. There may be a benefit to the employer if (1) the employee has agreed to make the vehicle available as an accommodation to the employer, and (2) the employer has reasonably come to rely on the vehicle's use and expects the employee to make it available regularly. The employee's agreement may be either express or implied.

New September 2003; Revised June 2014, May 2017, May 2019, May 2020

Directions for Use

This instruction sets forth the vehicle use exception to the going-and-coming rule, sometimes called the required-vehicle exception. (See (*Jorge v. Culinary Institute of America* (2016) 3 Cal.App.5th 382, 398, fn. 6 [207 Cal.Rptr.3d 586]; see also *Pierson v. Helmerich & Payne International Drilling Co.* (2016) 4 Cal.App.5th 608, 624–630 [209 Cal.Rptr.3d 222 [vehicle-use exception encompasses two categories; required-vehicle and incidental-use, both of which are expressed within CACI No. 3725].) It may be given with CACI No. 3720, *Scope of Employment*.

Under the going-and-coming rule, commute time is not within the scope of employment. However, commute time is within the scope of employment if the use of a personally owned vehicle is either an express or implied condition of employment, or if the employee has agreed, expressly or implicitly, to make the vehicle available as an accommodation to the employer and the employer has reasonably come to rely on its use and to expect the employee to make the vehicle available on a regular basis while still not requiring it as a condition of employment. (See *Lobo v. Tamco* (2010) 182 Cal.App.4th 297, 301 [105 Cal.Rptr.3d 718].) Whether there is such a requirement or agreement can be a question of fact for the jury. (See *Ducey v. Argo Sales Co.* (1979) 25 Cal.3d 707, 723 [159 Cal. Rptr. 835, 602 P.2d 755].)

Under this exception, the commute itself is considered the employer's business. However, scope of employment may end if the employee substantially deviates from the commute route for personal reasons. (See *Moradi v. Marsh USA, Inc.* (2013) 219 Cal.App.4th 886, 899, 907–908 [162 Cal.Rptr.3d 280].) If substantial deviation is alleged, give CACI No. 3723, *Substantial Deviation*.

One court has stated that the employee must have been using the vehicle to do the employer's business or provide a benefit for the employer *at the time of the accident*. (*Newland v. County of L.A.* (2018) 24 Cal.App.5th 676, 693 [234 Cal.App.3d 374], emphasis added.) However, many cases have applied the vehicle use exception without imposing this time-of-the-accident requirement. (See, e.g., *Moradi, supra,* 219 Cal.App.4th at p. 892 (employee was just going home at the time of the accident); *Lobo, supra,* 182

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Cal.App.4th at p. 302 (same); *Huntsinger v. Glass Containers Corp.* (1972) 22 Cal.App.3d 803, 806–807 [99 Cal.Rptr. 666] (same); see also *Smith v. Workers' Comp. Appeals Bd.* (1968) 69 Cal.2d 814, 815 [73 Cal.Rptr. 253, 447 P.2d 365] (workers compensation case: accident happened on the way to work).) *Newland* could be read as requiring the employee to need the vehicle for the employer's business on the *day* of the accident, even if the employee was not engaged in the employer's business at the *time* of the accident. (See *Newland supra,* 24 Cal.App.5th at p. 696 ["no evidence that [employee] required a vehicle for work on the day of the accident, and no evidence that the [employer] received any direct or incidental benefit from [employee] driving to and from work that day"].)

Sources and Authority

- " 'An offshoot of the doctrine of respondeat superior is the so-called "going and coming rule." Under this rule, an employee is not regarded as acting within the scope of employment while going to or coming from the workplace. … This is based on the concept that the employment relationship is suspended from the time the employee leaves work until he or she returns, since the employee is not ordinarily rendering services to the employer while traveling. …' " (*Jeewarat v. Warner Brothers Entertainment, Inc.* (2009) 177 Cal.App.4th 427, 435 [98 Cal.Rptr.3d 837].)

- "The 'required-vehicle' exception to the going and coming rule and its variants have been given many labels. In *Halliburton, supra,* 220 Cal.App.4th 87, we used the phrase 'incidental benefit exception' as the equivalent of the required-vehicle exception. In *Felix v. Asai* (1987) 192 Cal.App.3d 926 [237 Cal. Rptr. 718] (*Felix*), we used the phrase 'vehicle-use exception.' The phrase 'required-use doctrine' also has been used. The 'vehicle-use' variant appears in the title to California Civil Jury Instruction (CACI) No. 3725, 'Going-and-Coming Rule—Vehicle-Use Exception.' The various labels and the wide range of circumstances they cover have the potential to create uncertainty about the factual elements of the exception—a topic of particular importance when reviewing a motion for summary judgment for triable issues of *material* fact. [¶] To structure our analysis of this exception, and assist the clear statement of the factual elements of its variants, we adopt the phrase 'vehicle-use exception' from *Felix* and CACI No. 3725 to describe the exception in its broadest form. Next, under the umbrella of the vehicle-use exception, we recognize two identifiable categories with different factual elements. We label those two categories as the 'required-vehicle exception' and 'incidental benefit exception' because those labels emphasize the factual difference between the two categories." (*Pierson, supra,* 4 Cal.App.5th at pp. 624–625, original italics, internal citations omitted.)

- "Our division of the vehicle-use exception for purposes of this summary judgment motion should not be read as implying that this division is required, or even helpful, when presenting the scope of employment issue to a jury. The broad formulation of the vehicle-use exception in CACI No. 3725 correctly informs the jury that the issue of ultimate fact—namely, the scope of employment—may be proven in different ways." (*Pierson, supra,* 4 Cal.App.5th at p. 625, fn. 4.)

- "The portion of CACI No. 3725 addressing an employer requirement states: '[I]f an employer requires an employee to drive to and from the workplace so that the vehicle is available for the employer's business, then the drive to and from work is within the scope of employment. The employer's requirement may be either express or implied.' " (*Pierson, supra,* 4 Cal.App.5th at p. 625.)

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- "Our formulation of the incidental benefit exception is based on the part of CACI No. 3725 that states: 'The drive to and from work may … be within the scope of employment if the use of the employee's vehicle provides some direct or incidental benefit to the employer. There may be a benefit to the employer if (1) the employee has agreed to make the vehicle available as an accommodation to the employer, and (2) the employer has reasonably come to rely on the vehicle's use and expects the employee to make it available regularly.' The 'agreement may be either express or implied.' The existence of an express or implied agreement can be a question of fact for the jury." (*Pierson, supra,* 4 Cal.App.5th at p. 629.)

- "[T]he exception 'covers situations where there is an express or implied employer requirement. "If an employer *requires* an employee to furnish a vehicle as an express or implied condition of employment, the employee will be in the scope of his employment while commuting to and from the place of his employment." ' Whether there is an express or implied requirement ' "can be a question of fact for the jury," ' but 'the question of fact sometimes can be decided by a court as a matter of law.' " (*Savaikie v. Kaiser Foundation Hospitals* (2020) 52 Cal.App.5th 223, 230 [265 Cal.Rptr.3d 92], original italics.)

- " '[W]hen a business enterprise requires an employee to drive to and from its office in order to have his vehicle available for company business during the day, accidents on the way to or from the office are statistically certain to occur eventually, and, the business enterprise having required the driving to and from work, the risk of such accidents are risks incident to the business enterprise.' [¶] These holdings are the bases for the CACI instruction, the first paragraph of which tells the jury that the drive to and from work is within the scope of employment if the "employer requires [the] employee to drive to and from the workplace so that the vehicle is available for the employer's business," and the second paragraph, that the drive may be if 'the use of the employee's vehicle provides some direct or incidental benefit to the employer' and 'there may be a benefit to the employer if, one, the employee has [agreed] to make the vehicle available as an accommodation to the employer, and two, the employer has reasonably come to rely on the vehicle's use and expect the employee to make it available regularly.' (CACI No. 3725.)" (*Jorge, supra,* 3 Cal.App.5th at pp. 401–402, internal citation omitted.)

- " 'A well-known exception to the going-and-coming rule arises *where the use of the car gives some incidental benefit to the employer*. Thus, the key inquiry is whether there is an incidental benefit derived by the employer. [Citation.]' … The exception can apply if the use of a personally owned vehicle is either an express or implied condition of employment, or if the employee has agreed, expressly or implicitly, to make the vehicle available as an accommodation to the employer and the employer has 'reasonably come to rely upon its use and [to] expect the employee to make the vehicle available on a regular basis while still not requiring it as a condition of employment.' " (*Lobo, supra,* 182 Cal.App.4th at p. 297, original italics, internal citations omitted.)

- " 'To be sure, ordinary commuting is beyond the scope of employment … . Driving a required vehicle, however, is a horse of another color because it satisfies the control and benefit elements of respondeat superior. An employee who is required to use his or her own vehicle provides an "essential instrumentality" for the performance of the employer's work. … When a vehicle must be provided by an employee, the employer benefits by not having to have available an office car and yet possessing a means by which off-site visits can be performed by its employees.' " (*Moradi, supra,*

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219 Cal.App.4th at p. 899.)

- "When an employer requires an employee to use a personal vehicle, it exercises meaningful control over the method of the commute by compelling the employee to foreswear the use of carpooling, walking, public transportation, or just being dropped off at work." (*Moradi, supra,* 219 Cal.App.4th at p. 899.)

- "The cases invoking the required-vehicle exception all involve employees whose jobs entail the regular use of a vehicle to accomplish the job in contrast to employees who use a vehicle to commute to a definite place of business." (*Tryer v. Ojai Valley School Dist.* (1992) 9 Cal.App.4th 1476, 1481 [12 Cal.Rptr.2d 114].)

- "[N]ot all benefits to the employer are of the type that satisfy the incidental benefits exception. The requisite benefit must be one that is 'not common to commute trips by ordinary members of the work force.' Thus, employers benefit when employees arrive at work on time, but this benefit is insufficient to satisfy the incidental benefits exception. An example of a sufficient benefit is where an employer enlarges the available labor market by providing travel expenses and paying for travel time." (*Pierson, supra,* 4 Cal.App.5th at p. 630.)

- "Where the incidental benefit exception applies, the employee's commute directly between work and home is considered to be within the scope of employment for respondeat superior purposes. Minor deviations from a direct commute are also included, but there is no respondeat superior liability if the employee substantially departs from the employer's business or is engaged in a purely personal activity at the time of the tortious injury." (*Halliburton Energy Services, Inc. v. Department of Transportation* (2013) 220 Cal.App.4th 87, 97 [162 Cal.Rptr.3d 752].)

- "Here, the required vehicle exception to the going and coming rule, not the special errand exception, governs our analysis. Accordingly, we have not applied the six factors used in special errand cases to determine whether [employee] was acting within the scope of her employment at the time of the accident. [¶] Rather, we have applied the relevant principles under the required vehicle exception. Those principles differ from the six factors used to determine whether the special errand exception applies. In the present case, [employer] required [employee] to use her personal vehicle to travel to and from the office and other destinations. She also had to use her personal vehicle before, during, and after regular work hours to develop new business. We have properly examined whether [employee]'s use of her personal vehicle conferred an incidental benefit on [employer]—it did; whether her planned stops at the frozen yogurt shop and the yoga studio were an unforeseeable, substantial departure from her commute—they were not; whether they were a foreseeable, minor deviation from her regular commute—they were; whether they were not so unusual or startling that it would be unfair to include the resulting loss among the other costs of the employer's business—they were not; and whether they were necessary for [employee]'s comfort, convenience, health, and welfare—they were." (*Moradi, supra,* 219 Cal.App.4th at pp. 907−908.)

- "One exception to the going and coming rule has been recognized when the commute involves ' "an incidental benefit to the employer, not common to commute trips by ordinary members of the work force." [Citation.]' When the employer incidentally benefits from the employee's commute, that commute may become part of the employee's workday for the purposes of respondeat superior

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liability. [¶] The incidental benefit exception has been applied when the employer furnishes, or requires the employee to furnish, a vehicle for transportation on the job, and the negligence occurs while the employee is traveling to or from work in that vehicle." (*Halliburton Energy Services, Inc., supra,* 220 Cal.App.4th at p. 96, internal citation omitted.)

- "[T]he employer benefits when a vehicle is available to the employee during off-duty hours in case it is needed for emergency business trips." (*Moreno v. Visser Ranch, Inc.* (2018) 30 Cal.App.5th 568, 580 [241 Cal.Rptr.3d 678].)

- "Public policy would be ill-served by a rule establishing 24-hour employer liability for on-call employees, regardless of the nature of the employee's activities at the time of an accident." (*Le Elder v. Rice* (1994) 21 Cal.App.4th 1604, 1610 [26 Cal.Rptr.2d 749].)

- "[T]he trier of fact remains free to determine in a particular case that the employee's use of his or her vehicle was too infrequent to confer a sufficient benefit to the employer so as to make it reasonable to require the employer to bear the cost of the employee's negligence in operating the vehicle. This is particularly true in the absence of an express requirement that the employee make his or her vehicle available for the employer's benefit or evidence that the employer actually relied on the availability of the employee's car to further the employer's purposes." (*Lobo v. Tamco* (2014) 230 Cal.App.4th 438, 447 [178 Cal.Rptr.3d 515].)

- "Whether the transit is part of the employment relationship tends to be a more subtle issue than whether the transit was between home and work. … 'These are the extraordinary transits that vary from the norm because the employer requires a special, different transit, means of transit, or use of a car, for some particular reason of his own. When the employer gains that kind of a particular advantage, the job does more than call for routine transport to it; it plays a different role, bestowing a special benefit upon the employer by reason of the extraordinary circumstances. The employer's special request, his imposition of an unusual condition, removes the transit from the employee's choice or convenience and places it within the ambit of the employer's choice or convenience, restoring the employer-employee relationship.' " (*Zhu v. Workers' Comp. Appeals Bd.* (2017) 12 Cal.App.5th 1031, 1038–1039 [219 Cal.Rptr.3d 630].)

- "Liability may be imposed on an employer for an employee's tortious conduct while driving to or from work, if at the time of the accident, the employee's use of a personal vehicle was required by the employer or otherwise provided a benefit to the employer." (*Newland, supra,* 24 Cal.App.5th at p. 679.)

Secondary Sources

3 Witkin, Summary of California Law (11th ed. 2017) Agency and Employment, § 195

Haning et al., California Practice Guide: Personal Injury, Ch. 2(II)-A, *Vicarious Liability*, ¶ 2:803 (The Rutter Group)

2 Levy et al., California Torts, Ch. 20, *Motor Vehicles*, § 20.42[3][d] (Matthew Bender)

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2 California Employment Law, Ch. 30, *Employers' Tort Liability to Third Parties for Conduct of Employees*, § 30.05 (Matthew Bender)

21 California Forms of Pleading and Practice, Ch. 248, *Employer's Liability for Employee's Torts*, § 248.16 (Matthew Bender)

37 California Forms of Pleading and Practice, Ch. 427, *Principal and Agent*, § 427.22 (Matthew Bender)

10 California Points and Authorities, Ch. 100A, *Employer and Employee: Respondeat Superior*, § 100A.26 et seq. (Matthew Bender)

California Civil Practice: Torts § 3:10 (Thomson Reuters)

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4901. Prescriptive Easement

[*Name of plaintiff*] **claims that [he/she/***nonbinary pronoun***] is entitled to a nonexclusive use of [***name of defendant***]'s property for the purpose of [***describe use, e.g., reaching the access road***]. This right is called a prescriptive easement. In order to establish a prescriptive easement, [***name of plaintiff***] must prove that for a period of five years all of the following were true:**

> **1. That [***name of plaintiff***] has been using [***name of defendant***]'s property for the purpose of [***e.g., reaching the access road***];**
>
> **2. That [***name of plaintiff***]'s use of the property was continuous and uninterrupted;**
>
> **3. That [***name of plaintiff***]'s use of [***name of defendant***]'s property was open and easily observable, or was under circumstances that would give reasonable notice to [***name of defendant***]; and**
>
> **4. That [***name of plaintiff***] did not have [***name of defendant***]'s permission to use the land.**

New November 2019

Directions for Use

Use this instruction for a claim that the plaintiff has obtained a prescriptive easement to use the defendant's property. A claimant for a prescriptive easement is entitled to a jury trial. (*Arciero Ranches v. Meza* (1993) 17 Cal.App.4th 114, 124 [21 Cal.Rptr.2d 127].)

If the case involves periods of prescriptive use by successive users (i.e., "tacking"), modify each element to account for the prior use by others. (*Windsor Pacific LLC v. Samwood Co., Inc.* (2013) 213 Cal.App.4th 263, 270 [152 Cal.Rptr.3d 518], disapproved on other grounds in *Mountain Air Enterprises, LLC v. Sundowner Towers, LLC* (2017) 3 Cal.5th 744, 756 fn. 3 [220 Cal.Rptr.3d 650, 398 P.3d 556].)

There is a split of authority over the standard of proof for a prescriptive easement. (Compare *Vieira Enterprises, Inc. v. McCoy* (2017) 8 Cal.App.5th 1057, 1074 [214 Cal.Rptr.3d 193] [preponderance of evidence] with *Grant v. Ratliff* (2008) 164 Cal.App.4th 1304, 1310 [79 Cal.Rptr.3d 902] [clear and convincing evidence].)

Sources and Authority

- " 'The elements necessary to establish a prescriptive easement are well settled. The party claiming such an easement must show use of the property which has been open, notorious, continuous and adverse for an uninterrupted period of five years. [Citations.] Whether the elements of prescription are established is a question of fact for the trial court [citation], and the findings of the court will not be disturbed where there is substantial evidence to support them.' '[A]n essential element necessary to the establishment of a prescriptive easement is visible, open and

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notorious use sufficient to impart actual or constructive notice of the use to the owner of the servient tenement. [Citation.]' " (*McLear-Gary v. Scott* (2018) 25 Cal.App.5th 145, 159 [235 Cal.Rptr.3d 443], internal citation omitted.)

- "Periods of prescriptive use by successive owners of the dominant estate can be 'tacked' together if the first three elements are satisfied." (*Windsor Pacific LLC, supra,* 213 Cal.App.4th at p. 270.)

- "[The] burden of proof as to each and all of the requisite elements to create a prescriptive easement is upon the one asserting the claim. [Citations.] [Para.] . . . [The] existence or nonexistence of each of the requisite elements to create a prescriptive easement is a question of fact for the court or jury." (*Twin Peaks Land Co. v. Briggs* (1982) 130 Cal.App.3d 587, 593 [181 Cal.Rptr. 25].)

- "[A] party seeking to establish a prescriptive easement has the burden of proof by clear and convincing evidence. The higher standard of proof demonstrates there is no policy favoring the establishment of prescriptive easements." (*Grant, supra,* 164 Cal.App.4th at p. 1310, internal citation omitted.)

- "[Plaintiff] correctly contends that the burden of proof of a prescriptive easement or prescriptive termination of an easement is not clear and convincing evidence . . . ." (*Vieira Enterprises, Inc., supra,* 8 Cal.App.5th at p. 1064.)

- "Whether the use is hostile or is merely a matter of neighborly accommodation, however, is a question of fact to be determined in light of the surrounding circumstances and the relationship between the parties." (*Warsaw v. Chicago Metallic Ceilings, Inc.* (1984) 35 Cal.3d 564, 572 [199 Cal.Rptr. 773, 676 P.2d 584].)

- " 'The term "adverse" in this context is essentially synonymous with "hostile" and " 'under claim of right.' " [Citations.] A claimant need not believe that his or her use is legally justified or expressly claim a right of use for the use to be adverse. [Citations.] Instead, a claimant's use is adverse to the owner if the use is made without any express or implied recognition of the owner's property rights. [Citations.] In other words, a claimant's use is adverse to the owner if it is wrongful and in defiance of the owner's property rights. [Citation.]' " (*McBride v. Smith* (2018) 18 Cal.App.5th 1160, 1181 [227 Cal.Rptr.3d 390].)

- "Claim of right does not require a belief or claim that the use is legally justified. It simply means that the property was used without permission of the owner of the land. As the American Law of Property states in the context of adverse possession: 'In most of the cases asserting [the requirement of a claim of right], it means no more than that possession must be hostile, which in turn means only that the owner has not expressly consented to it by lease or license or has not been led into acquiescing in it by the denial of adverse claim on the part of the possessor.' One text proposes that because the phrase ' "claim of right " ' has caused so much trouble by suggesting the need for an intent or state of mind, it would be better if the phrase and the notions it has spawned were forgotten." (*Felgenhauer v. Soni* (2004) 121 Cal.App.4th 445, 450 [17 Cal.Rptr.3d 135], internal citations omitted.)

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- “Prescription cannot be gained if the use is permissive.” (*Ranch at the Falls LLC v. O’Neal* (2019) 38 Cal.App.5th 155, 182 [250 Cal.Rptr.3d 585], citation omitted.)

- “Use with the owner’s permission, however, is not adverse to the owner. [Citations.] To be adverse to the owner a claimant’s use must give rise to a cause of action by the owner against the claimant. [Citations.] This ensures that a prescriptive easement can arise only if the owner had an opportunity to protect his or her rights by taking legal action to prevent the wrongful use, yet failed to do so. [Citations.]” (*McBride, supra,* 18 Cal.App.5th at p. 1181.)

- “Prescriptive rights ‘are limited to the uses which were made of the easements during the prescriptive period. [Citations.] Therefore, no different or greater use can be made of the easements without defendants' consent.’ While the law permits increases in the scope of use of an easement where ‘the change is one of degree, not kind’, ‘an actual change in the physical objects passing over the road’ constitutes a ‘substantial change in the nature of the use and a consequent increase of burden upon the servient estate … more than a change in the degree of use.’ ‘ “In ascertaining whether a particular use is permissible under an easement appurtenant created by prescription there must be considered … the needs which result from a normal evolution in the use of the dominant tenement and the extent to which the satisfaction of those needs increases the burden on the servient tenement.” ’ ‘[T]he question of whether there has been an unreasonable use of an easement is one of fact … .’ ” (*McLear-Gary, supra,* 25 Cal.App.5th at p. 160, internal citations omitted.)

Secondary Sources

12 Witkin, Summary of California Law (11th ed. 2017) Real Property, § 415 et seq.

10 California Real Estate Law and Practice, Ch. 343, *Easements*, § 343.15 (Matthew Bender)

2 California Forms of Pleading and Practice, Ch. 13, *Adverse Possession*, § 13.13 (Matthew Bender)

20 California Forms of Pleading and Practice, Ch. 240, *Easements*, § 240.16 (Matthew Bender)

22 California Points and Authorities, Ch. 225, *Trespass*, § 225.180 (Matthew Bender)

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RULES COMMITTEE ACTION REQUEST FORM

Rules Committee action requested [Choose from drop down menu below]**:**
Recommend JC approval (has circulated for comment)

Rules Committee Meeting Date: April 14, 2021

Title of proposal: Jury Instructions: Civil Jury Instructions (Release 39)

Proposed rules, forms, or standards *(include amend/revise/adopt/approve):*
Judicial Council of California Civil Jury Instructions (CACI)

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

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

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by Rules Committee date: November 2, 2020
Project description from annual agenda: Maintenance—Case Law; Maintenance—Legislation; New Instructions and Expansion into New Subject Matter Areas; Maintenance—Comments from Users; Maintenance—Sources and Authority

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)
California Rules of Court, rules 2.1050(d) and 10.58(a), require the advisory committee to update, amend, and add topics to CACI on a regular basis and to submit its recommendations to the council for approval. Jury instructions are currently revised twice a year, and more often if necessary. Upon approval by the Judicial Council, release 39 will be published as the official supplement to the 2021 edition of the Judicial Council of California Civil Jury Instructions (CACI). Release 38 was approved by the Judicial Council in November 2020.

Information for JC Staff regarding form translations:

- *List any amended forms in this proposal that have already been translated:*

- *List any new forms that require translation by statute or that you will request to be translated:*

JUDICIAL COUNCIL OF CALIFORNIA

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

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 21-088
For business meeting on: May 20–21, 2021

Title
Jury Instructions: Civil Jury Instructions (Release 39)

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

Recommended by
Advisory Committee on Civil Jury Instructions
Hon. Martin J. Tangeman, Chair

Agenda Item Type
Action Required

Effective Date
May 21, 2021

Date of Report
April 1, 2021

Contact

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

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Executive Summary

The Advisory Committee on Civil Jury Instructions recommends revocation of two civil jury instructions and approval of new and revised civil jury instructions prepared by the committee. These changes bring the instructions up to date with developments in the law over the previous six months. On Judicial Council approval, the instructions will be published in the official supplement to the 2021 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 May 21, 2021, approve for publication under rules 2.1050 and 10.58 of the California Rules of Court the following civil jury instructions prepared by the committee:

1. Revocation of 2 instructions: CACI Nos. 2613 and 2630;

2. Addition of 5 new instructions and verdict forms: CACI Nos. 1305B, VF-1303B, 3055, 4329, 4562; and

3. Revisions to 25 instructions and verdict forms: CACI Nos. 440, 702, 1010, 1305A (renumbered from 1305), VF-1303A (renumbered from VF-1303), VF-2506A, VF-2506B, VF-2506C, VF-2507A, VF-2507B, VF-2507C, 2600, 2601, 2602, 2603, 2620, 2705, 3050, 3704, 3904A, 4302, 4303, 4308, 4560, and 4561.

A table of contents and the proposed new, revised, and revoked civil jury instructions and verdict forms are attached at pages 6–111.

Relevant Previous Council Action

At its meeting on July 16, 2003, the Judicial Council adopted what is now rule 10.58 of the California Rules of Court, which established the advisory committee and its charge.[1] At that meeting, the council approved the *CACI* instructions under what is now rule 2.1050 of the California Rules of Court. Since that time, the committee has complied with both rules by regularly proposing to the council additions and changes to *CACI* to ensure that the instructions remain clear, accurate, current, and complete.

This is release 39 of *CACI*. The council approved release 38 at its November 2020 meeting.

Analysis/Rationale

A total of 32 instructions are presented in this release. The Judicial Council's Rules Committee has also approved changes to 17 additional instructions under a delegation of authority from the council to the Rules Committee.[2]

The instructions were revised and added based on comments or suggestions from justices, judges, and attorneys; proposals by staff and committee members; and recent developments in the law. Below is a summary of the more significant additions and changes recommended to the council.

Revoked instructions

CACI Nos. 2613, *Affirmative Defense—Key Employee*, and 2630, *Violation of New Parent Leave Act—Essential Factual Elements*. The committee proposes revocation of two instructions

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[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 October 20, 2006, meeting, 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.

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in the California Family Rights Act (CFRA) series due to statutory changes. Senate Bill 1383 (Stats. 2020, ch. 86), effective January 1, 2021, repealed the New Parent Leave Act, and repealed and replaced the CFRA to expand coverage (including adding provisions that made the New Parent Leave Act unnecessary). The expanded CFRA also eliminated an employer's ability to deny reinstatement to a "key employee." Considering this new legislation, the committee believes these two instructions are no longer supported by law. The committee, however, does recommend revisions to other instructions in the CFRA series to reflect accurately the expanded scope of the CFRA, discussed below.

New instructions

CACI No. 1305B, *Battery by Peace Officer (Deadly Force)—Essential Factual Elements*, and VF-1303B, *Battery by Peace Officer (Deadly Force)*. Assembly Bill 392 (Stats. 2019, ch. 170), effective January 1, 2020, amended Penal Code section 835a, which is the basis for this new battery instruction. The statutory amendments principally relate to the use of deadly force by a peace officer. Former CACI No. 1305, *Battery by Peace Officer—Essential Factual Elements*, had served as the battery instruction for both deadly and nondeadly force cases. In the last release, the council approved revisions to similar instructions in the negligence series. The committee now proposes a new battery instruction (No. 1305B) and an accompanying verdict form (No. VF-1303B) addressing battery based on a peace officer's use of deadly force.

CACI No. 3055, *Rebuttal of Retaliatory Motive*. In *Nieves v. Bartlett,*[3] the Supreme Court held that the so-called *Mt. Healthy* test applies in section 1983 retaliation cases. Under the *Mt. Healthy* test, if a plaintiff shows that the defendant's retaliation was a substantial or motivating factor behind the defendant's retaliatory conduct (like an arrest or other state action) then "the defendant can prevail only by showing that the [arrest or other state action] would have been initiated without respect to retaliation."[4] The committee recommends a new instruction that sets out a defendant's burden to rebut a plaintiff's retaliation claim under section 1983.

Revised instructions

CACI No. 1010, *Affirmative Defense—Recreation Immunity—Exceptions*. In the invitation to comment posted on January 26, 2021 (CACI 21-01), the committee proposed changes mainly, but not solely, supported by a new appellate decision, *Hoffmann v. Young*.[5] On February 10, 2021, the California Supreme Court granted a petition for review.[6] Because the appellate opinion is no longer binding authority (Cal. Rules of Court, rule 8.1115(e)(1)), the committee now withdraws the proposed revisions for which the new appellate decision was the only authority. The committee's proposed change to the third exception stated in the instruction, however, has

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[3] (2019) __ U.S. __ [139 S.Ct. 1715, 204 L.Ed.2d 1].

[4] 139 S.Ct. at p. 1725.

[5] (2020) 56 Cal.App.5th 1021 [271 Cal.Rptr.3d 33], rehg. denied (Nov. 18, 2020), review granted Feb. 10, 2021, S266003.

[6] (Feb. 10, 2021, S266003) __ Cal.5th __ [2021 Cal. LEXIS 931, at *1].

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other support, so the committee recommends deleting the phrase "for the recreational purpose" from the third exception of the instruction, and adding a case quote in the Sources and Authority that supports this change.

CACI No. 1305A, *Battery by Law Enforcement Officer (Nondeadly Force)—Essential Factual Elements*. As noted above, CACI No. 1305 had addressed battery by a peace officer generally. That instruction included a use note advising that modification may be necessary depending on whether the case involves deadly or nondeadly force. At the urging of several commenters in the last public comment cycle, the committee recommends revising the instruction to address Penal Code section 835a. Due to the new deadly force battery instruction, No. 1305B, the committee also recommends renumbering No. 1305 as No. 1305A.

Two commenters observed that a statement in the Directions for Use about the type of officer this claim may be brought against was not supported by clear authority. To address these concerns, the committee has revised the Directions for Use to express the potential issue created by Penal Code section 835a's use of the term "peace officer" in its deadly force provisions. The Directions for Use now state, "It would appear that a battery claim involving nondeadly force does not depend on whether the individual qualifies as a peace officer under the Penal Code."

CACI Nos. 2600 et seq. (California Family Rights Act series). Senate Bill 1383 (Stats. 2020, ch. 86) replaced the existing CFRA, expanding it to apply to employers having as few as five employees. The expanded CFRA extends leave rights to employees who care for grandparents, grandchildren, siblings, and adult children with serious medical conditions, and includes leave for bonding with a child and leave for reasons related to certain military exigencies (i.e., deployment or other military activities). So that the instructions accurately reflect the legislative changes to the CFRA, the committee recommends revisions to CACI Nos. 2600, 2601, 2602 (retitled), 2603, and 2620.

CACI Nos. 4302, *Termination for Failure to Pay Rent—Essential Factual Elements*, and 4303, *Sufficiency and Service of Notice of Termination for Failure to Pay Rent*. The COVID-19 Tenant Relief Act of 2020 (Assem. Bill 3088), effective August 31, 2020, provides, among other things, certain protections to residential tenants being terminated for failure to pay rent due from March 1, 2020, through January 31, 2021. Recognizing that the pandemic was likely to lead to additional changes in unlawful detainer law, the committee cautiously recommended adding only a use note alerting users that modification would be necessary due to this new legislation. While the public comment period was open, the Legislature enacted additional urgency legislation (Sen. Bill 91; Stats. 2021, ch. 2) that, among other things, extended the relevant time period from January 31, 2021, to June 30, 2021.

Commenters suggested including references to the newest legislation and more information about the modifications necessary under the two new statutes, and even proposed new instructions for use in cases under these statutes. Based on these comments, the committee recommends expanding the Directions for Use to address the new urgency legislation, and to

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give an example of a modification necessary under these laws. The committee will consider the commenter's proposals for alternative instructions in the next release cycle.

Policy implications

Jury instructions express the law; there are no policy implications.

Comments

The proposed additions, revisions, and revocations in *CACI* circulated for comment from January 26 through March 3, 2021. Comments were received from nine different commenters. All nine commenters submitted comments on multiple instructions. No instruction or issue generated a particularly large number of comments, and few comments indicated serious substantive opposition to any of the proposed changes.

The committee evaluated all comments and revised some of the instructions in light of the comments received. A chart summarizing the comments received on all instructions and the committee's responses is attached at pages 112–164.

Alternatives considered

Rules 2.1050(d) 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. The committee did, however, consider suggestions received from members of the legal community that did not result in recommendations for this release. Some suggestions were deferred for further consideration while others were declined for lack of support.

Fiscal and Operational Impacts

No implementation costs are associated with this proposal. To the contrary, under the publication agreement, the official publisher, LexisNexis, will publish the 2021 supplement of *CACI* and pay royalties to the Judicial Council. Other licensing agreements with other publishers provide additional royalties. The official publisher will also make the revised content available free of charge to all judicial officers in both print and online document assembly software.

Attachments and Links

1. Jury instructions, at pages 6–111
2. Chart of comments, at pages 112–164

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440. Negligent Use of Nondeadly Force by Law Enforcement Officer in Arrest or Other Seizure—Essential Factual Elements

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A law enforcement officer may use reasonable force to [arrest/detain/ [,/or] prevent escape of/ [,/or] overcome resistance by] a person when the officer has reasonable cause to believe that that person has committed or is committing a crime. However, the officer may use only that degree of force necessary to [arrest/detain/ [,/or] prevent escape of/ [,/or] overcome resistance by] the person. [Even if the officer is mistaken, a person being arrested or detained has a duty not to use force to resist the officer unless the officer is using unreasonable force.]

[*Name of plaintiff*] claims that [*name of defendant*] was negligent in using unreasonable force to [arrest/detain/ [,/or] prevent escape of/ overcome resistance by] [him/her/*nonbinary pronoun*]. To establish this claim, [*name of plaintiff*] must prove all of the following:

1. **That [*name of defendant*] used force to [arrest/detain/ [,/or] prevent escape of/ [,/or] overcome resistance by] [*name of plaintiff*];**

2. **That the amount of force used by [*name of defendant*] was unreasonable;**

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

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

In deciding whether [*name of defendant*] used unreasonable force, you must consider the totality of the circumstances ~~of the [arrest/detention/ [,/or] prevent escape of/ [,/or] overcome resistance by] and~~ to determine what amount of force a reasonable [*insert type of officer*] in [*name of defendant*]'s position would have used under the same or similar circumstances. "Totality of the circumstances" means all facts known to the officer at the time, including the conduct of [*name of defendant*] and [*name of plaintiff*] leading up to the use of force. Among the factors to be considered are the following:

(a) **Whether [*name of plaintiff*] reasonably appeared to pose an immediate threat to the safety of [*name of defendant*] or others;**

(b) **The seriousness of the crime at issue; [and]**

(c) **Whether [*name of plaintiff*] was actively resisting [arrest/detention] or attempting to avoid [arrest/detention] by flight[; and/.]**

[(d) **[*Name of defendant*]'s tactical conduct and decisions before using force on [*name of plaintiff*].]**

[An ~~peace~~ officer who makes or attempts to make an arrest does not have to retreat or stop because the person being arrested is resisting or threatening to resist. Tactical repositioning or other deescalation tactics are not retreat. An ~~peace~~ officer does not lose the right to self-defense by using

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objectively reasonable force to [arrest/detain/ [,/or] prevent escape of/ [,/or] overcome resistance by] the person.]

New June 2016; Revised May 2020, November 2020, May 2021

Directions for Use

Use this instruction if the plaintiff makes a negligence claim under state law arising from the force used in effecting an arrest or detention. Such a claim is often combined with a claimed civil rights violation under 42 United States Code section 1983. See CACI No. 3020, *Excessive Use of Force—Unreasonable Arrest or Other Seizure—Essential Factual Elements*. It might also be combined with a claim for battery. See CACI No. 1305, *Battery by Peace Officer—Essential Factual Elements*. For additional authorities on excessive force by a law enforcement officer, see the Sources and Authority to these two CACI instructions.

By its terms, Penal Code section 835a's deadly force provisions apply to "peace officers." It would appear that a negligence claim involving nondeadly force does not depend on whether the individual qualifies as a peace officer under the Penal Code. (See Pen. Code, § 835a; see also Pen. Code, § 830 et seq. [defining peace officer].) For cases involving the use of deadly force by a peace officer, use CACI No. 441, *Negligent Use of Deadly Force by Peace Officer—Essential Factual Elements*. (Pen. Code, § 835a.) This instruction and CACI No. 441 may require modification if the jury must decide whether the force used by the defendant was deadly or nondeadly force~~, or if the jury must decide whether the defendant was a peace officer~~.

Include the last bracketed sentence in the first paragraph only if there is evidence the person being arrested or detained used force to resist the officer.

Factors (a), (b), and (c) are often referred to as the "*Graham* factors." (See *Graham v. Connor* (1989) 490 U.S. 386, 396 [109 S.Ct. 1865, 104 L.Ed.2d 443].) The *Graham* factors are to be applied under California negligence law. (*Hernandez v. City of Pomona* (2009) 46 Cal.4th 501, 514 [94 Cal. Rptr. 3d 1, 207 P.3d 506].) They are not exclusive (see *Glenn v. Wash. County* (9th Cir. 2011) 673 F.3d 864, 872); additional factors may be added if appropriate to the facts of the case. If negligence, civil rights, and battery claims are all involved, the instructions can be combined so as to give the *Graham* factors only once. A sentence may be added to advise the jury that the factors apply to multiple claims.

Factor (d) is bracketed because no reported California state court decision has held that an officer's tactical decisions before using nondeadly force can be actionable negligence. It has been held that liability can arise if the officer's earlier tactical conduct and decisions show, as part of the totality of circumstances, that the ultimate use of deadly force was unreasonable. (*Hayes v. County of San Diego* (2014) 57 Cal.4th 622, 639 [160 Cal.Rptr.3d 684, 305 P.3d 252].) In this respect, California negligence law differs from the federal standard under the Fourth Amendment. (*Hayes, supra,* 57 Cal.4th at p. 639 ["[T]he state and federal standards are not the same, which we now confirm~~.~~"]; cf. *Vos v. City of Newport Beach* (9th Cir. 2018) 892 F.3d 1024, 1037 ["To determine police liability [under state law negligence], a court applies tort law's 'reasonable care' standard, which is distinct from the Fourth Amendment's

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'reasonableness' standard. The Fourth Amendment is narrower and 'plac[es] less emphasis on preshooting conduct.' ".)

Include the final bracketed paragraph only if the defendant claims that the person being arrested resisted arrest or threatened resistance.

Sources and Authority

- Legislative Findings re Use of Force by Law Enforcement. Penal Code section 835a(a).

- Use of Objectively Reasonable Force to Arrest. Penal Code section 835a(b).

- When Peace Officer Need Not Retreat. Penal Code section 835a(d).

- Definitions. Penal Code section 835a(e).

- "There is an abundance of authority permitting a plaintiff to go to the jury on both intentional and negligent tort theories, even though they are inconsistent. It has often been pointed out that there is no prohibition against pleading inconsistent causes of action stated in as many ways as plaintiff believes his evidence will show, and he is entitled to recover if one well pleaded count is supported by the evidence." (*Grudt v. City of Los Angeles* (1970) 2 Cal.3d 575, 586 [86 Cal.Rptr. 465, 468 P.2d 825].)

- "The evidence relevant to negligence and intentional tort overlaps here and presents a case similar to *Grudt*. … [¶] This court held it was reversible error to exclude the negligence issue from the jury even though plaintiff also had pled intentional tort. The court pointed to the rule that a party may proceed on inconsistent causes of action unless a nonsuit is appropriate." (*Munoz v. Olin* (1979) 24 Cal.3d 629, 635 [156 Cal.Rptr. 727, 596 P.2d 1143].)

- "Consistent with these principles and the factors the high court has identified, the federal court in this case did not instruct the jury to conduct some abstract or nebulous balancing of competing interests. Instead, as noted above, it instructed the jury to determine the reasonableness of the officers' actions in light of 'the totality of the circumstances at the time,' including 'the severity of the crime at issue, whether the plaintiff posed a reasonable threat to the safety of the officer or others, and whether the plaintiff was actively resisting detention or attempting to escape.' The same consideration of the totality of the circumstances is required in determining reasonableness under California negligence law. Moreover, California's civil jury instructions specifically direct the jury, in determining whether police officers used unreasonable force for purposes of tort liability, to consider the same factors that the high court has identified and that the federal court's instructions in this case set forth. (Judicial Council of Cal. Civ. Jury Instns. (2008) CACI No. 1305.) Thus, plaintiffs err in arguing that the federal and state standards of reasonableness differ in that the former involves a fact finder's balancing of competing interests." (*Hernandez, supra,* 46 Cal.4th at p. 514, internal citation omitted.)

- "Determining whether the force used to effect a particular seizure is 'reasonable' under the Fourth Amendment requires a careful balancing of ' "the nature and quality of the intrusion on the individual's Fourth Amendment interests" ' against the countervailing governmental interests at stake. Our Fourth Amendment jurisprudence has long recognized that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or

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threat thereof to effect it. Because '[t]he test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application,' however, its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." (*Graham, supra,* 490 U.S. at p. 396, internal citations omitted.)

- "The most important of these [*Graham* factors, above] is whether the suspect posed an immediate threat to the officers or others, as measured objectively under the circumstances." (*Mendoza v. City of West Covina* (2012) 206 Cal.App.4th 702, 712 [141 Cal.Rptr.3d 553].)

- "Plaintiff must prove unreasonable force as an element of the tort." (*Edson v. City of Anaheim* (1998) 63 Cal.App.4th 1269, 1272 [74 Cal.Rptr.2d 614].)

- " ' "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. … [T]he question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. …" ' In calculating whether the amount of force was excessive, a trier of fact must recognize that peace officers are often forced to make split-second judgments, in tense circumstances, concerning the amount of force required." (*Brown v. Ransweiler* (2009) 171 Cal.App.4th 516, 527–528 [89 Cal.Rptr.3d 801], internal citations omitted.)

- " '[A]s long as an officer's conduct falls within the range of conduct that is reasonable under the circumstances, there is no requirement that he or she choose the "most reasonable" action or the conduct that is the least likely to cause harm and at the same time the most likely to result in the successful apprehension of a violent suspect, in order to avoid liability for negligence.' " (*Hayes, supra,* 57 Cal.4th at p. 632.)

- "The California Supreme Court did not address whether decisions before non-deadly force can be actionable negligence, but addressed this issue only in the context of 'deadly force.' " (*Mulligan v. Nichols* (9th Cir. 2016) 835 F.3d 983, 991, fn. 7.)

- "[T]here is no right to use force, reasonable or otherwise, to resist an unlawful detention ... ." (*Evans v. City of Bakersfield* (1994) 22 Cal.App.4th 321, 333 [27 Cal.Rptr.2d 406].)

- "[E]xecution of an unlawful arrest or detention does not give license to an individual to strike or assault the officer *unless* excessive force is used or threatened; excessive force in that event triggers the individual's right of self-defense." (*Evans, supra,* 22 Cal.App.4th at p. 331, original italics, internal citation omitted.)

Secondary Sources

5 Witkin, Summary of California Law (11th ed. 2017) Torts, § 496

3 Levy et al., California Torts, Ch. 41, *Assault and Battery*, § 41.24 seq. (Matthew Bender)

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6 California Forms of Pleading and Practice, Ch. 58, *Assault and Battery*, § 58.22 (Matthew Bender)

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702. Waiver of Right-of-Way

A [driver/pedestrian] who has the right-of-way may give up that right and let ~~[another vehicle/a pedestrian]~~ another person go first. If the other person ~~a [driver/pedestrian]~~ reasonably believes that a [driver/pedestrian] ~~[[another/a] driver/a pedestrian]~~ has given up the right-of-way, then the other person ~~[the driver/the pedestrian]~~ may go first.

New September 2003; Revised May 2020, May 2021

Sources and Authority

- "[I]f one who has the right of way 'conducts himself in such a definite manner as to create a reasonable belief in the mind of another person that the right-of-way has been waived, then such other person is entitled to assume that the right of way has been given up to him ...'." (*Hopkins v. Tye* (1959) 174 Cal.App.2d 431, 433 [344 P.2d 640].)

- "A conscious intentional act of waiver of the right of way by the pedestrian is not required. Whether there is a waiver depends upon the acts of the pedestrian. If they are such that a driver could reasonably believe that the pedestrian did not intend to assert her right of way, a waiver occurs." (*Cohen v. Bay Area Pie Company* (1963) 217 Cal.App.2d 69, 72–73 [31 Cal.Rptr. 426], internal citation omitted.)

Secondary Sources

6 Witkin, Summary of California Law (11th ed. 2017) Torts, §§ 1010, 1011

California Tort Guide (Cont.Ed.Bar 3d ed.) § 4.15

2 Levy et al., California Torts, Ch. 20, *Motor Vehicles*, § 20.68[1][c] (Matthew Bender)

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1010. Affirmative Defense—Recreation Immunity—Exceptions (Civ. Code, § 846)

[*Name of defendant*] is not responsible for [*name of plaintiff*]'s harm if [*name of defendant*] proves that [*name of plaintiff*]'s harm resulted from [his/her/*nonbinary pronoun*/*name of person causing injury's*] entry on or use of [*name of defendant*]'s property for a recreational purpose. However, [*name of defendant*] may be still responsible for [*name of plaintiff*]'s harm if [*name of plaintiff*] proves that

[*Choose one or more of the following three options*:]

[[*name of defendant*] willfully or maliciously failed to protect others from or warn others about a dangerous [condition/use/structure/activity] on the property.]

[**or**]

[a charge or fee was paid to [*name of defendant*/the owner] for permission to enter the property for a recreational purpose.]

[**or**]

[[*name of defendant*] expressly invited [*name of plaintiff*] to enter the property~~ for the recreational purpose~~.]

If you find that [*name of plaintiff*] has proven one or more of these three exceptions to immunity, then you must still decide whether [*name of defendant*] is liable in light of the other instructions that I will give you.

New September 2003; Revised October 2008, December 2014, May 2017, November 2017, May 2021

Directions for Use

This instruction sets forth the statutory exceptions to recreational immunity. (See Civ. Code, § 846.) In the opening paragraph, if the plaintiff was not the recreational user of the property, insert the name of the person whose conduct on the property is alleged to have caused plaintiff's injury. Immunity extends to injuries to persons who are neither on the property nor engaged in a recreational purpose if the injury was caused by a recreational user of the property. (See *Wang v. Nibbelink* (2016) 4 Cal.App.5th 1, 17 [208 Cal.Rptr.3d 461].)

Choose one or more of the optional exceptions according to the facts. Depending on the facts, the court could instruct that the activity involved was a "recreational purpose" as a matter of law. For a comprehensive list of "recreational purposes," refer to Civil Code section 846.

Whether the term "willful or malicious failure" has a unique meaning under this statute is not entirely clear. One court construing this statute has said that three elements must be present to raise a negligent

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act to the level of willful misconduct: (1) actual or constructive knowledge of the peril to be apprehended, (2) actual or constructive knowledge that injury is a probable, as opposed to a possible, result of the danger, and (3) conscious failure to act to avoid the peril. (See *New v. Consolidated Rock Products Co.* (1985) 171 Cal.App.3d 681, 689−690 [217 Cal.Rptr. 522].)

For the second exception involving payment of a fee, insert the name of the defendant if the defendant is the landowner. If the defendant is someone who is alleged to have created a dangerous condition on the property other than the landowner, select "the owner." (See *Pacific Gas & Electric Co. v. Superior Court* (2017) 10 Cal.App.5th 563, 566 [216 Cal.Rptr.3d 426].)

Federal courts interpreting California law have addressed whether the "express invitation" must be personal to the user. The Ninth Circuit has held that invitations to the general public do not qualify as "express invitations" within the meaning of section 846. In *Ravell v. United States* (9th Cir. 1994) 22 F.3d 960, 963, the Ninth Circuit held that California law requires a personal invitation for a section 846 invitation, citing *Johnson v. Unocal Corp*. (1993) 21 Cal.App.4th 310, 317 [26 Cal.Rptr.2d 148]. However, the issue has not been definitively resolved by the California Supreme Court.

Sources and Authority

- Recreational Immunity. Civil Code section 846.
- "[A]n owner of ... real property owes no duty of care to keep the premises safe for entry or use by others for recreational purposes or to give recreational users warning of hazards on the property, unless: (1) the landowner willfully or maliciously fails to guard or warn against a dangerous condition, use, structure or activity; (2) permission to enter for a recreational purpose is granted for a consideration; or (3) the landowner expressly invites rather than merely permits the user to come upon the premises." (*Ornelas v. Randolph* (1993) 4 Cal.4th 1095, 1099–1100 [17 Cal.Rptr.2d 594, 847 P.2d 560].)
- "Generally, whether one has entered property for a recreational purpose within the meaning of the statute is a question of fact, to be determined through a consideration of the 'totality of the facts and circumstances, including ... the prior use of the land. While the plaintiff's subjective intent will not be controlling, it is relevant to show purpose.' " (*Ornelas, supra,* 4 Cal.4th at p. 1102, internal citation omitted.)
- "The phrase 'interest in real property' should not be given a narrow or technical interpretation that would frustrate the Legislature's intention in passing and amending section 846." (*Hubbard v. Brown* (1990) 50 Cal.3d 189, 196 [266 Cal.Rptr. 491, 785 P.2d 1183].)
- "[D]efendants' status as business invitees of the landowner does not satisfy the prerequisite that the party seeking to invoke the immunity provisions of section 846 be '[a]n owner of any estate or any other interest in real property, whether possessory or nonpossessory.' Although such invitee may be entitled to be present on the property during such time as the work is being performed, such presence does not convey any estate or interest in the property." (*Jenson v. Kenneth I. Mullen, Consulting Engineers, Inc.* (1989) 211 Cal.App.3d 653, 658 [259 Cal.Rptr. 552].)

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- "Subpart (c) of the third paragraph of section 846 is not limited to injuries to persons on the premises and therefore on its face encompasses persons off-premises such as [plaintiff] and her husband. It is not limited to injuries to recreational participants. Had the Legislature wanted to narrow the third paragraph's immunity to injured recreational users, it could have done so, as it did in the first paragraph." (*Wang, supra,* 4 Cal.App.5th at p. 17.)

- "The concept of willful misconduct has a well-established, well-defined meaning in California law. 'Willful or wanton misconduct is intentional wrongful conduct, done either with a knowledge that serious injury to another will probably result, or with a wanton and reckless disregard of the possible results.' " (*New, supra,* 171 Cal.App.3d at p. 689, internal citations omitted.)

- "Clearly, consideration means some type of entrance fee or charge for permitting a person to use specially constructed facilities. There are many amusement facilities in government-owned parks that charge admission fees and a consideration in this or a similar context was intended." (*Moore v. City of Torrance* (1979) 101 Cal.App.3d 66, 72 [166 Cal.Rptr. 192], disapproved of on other grounds in *Delta Farms Reclamation Dist. v. Superior Court* (1983) 33 Cal.3d 699, 707 [190 Cal.Rptr. 494, 660 P.2d 1168].)

- "We conclude that the consideration exception to recreational use immunity does apply to [defendant] even though [plaintiff]'s fee for recreational access to the campground was not paid to it … . We hold that the payment of consideration in exchange for permission to enter a premises for a recreational purpose abrogates the section 846 immunity of any nonpossessory interest holder who is potentially responsible for the plaintiff's injuries, including a licensee or easement holder who possesses only a limited right to enter and use a premises on specified terms but no right to control third party access to the premises. The contrary interpretation urged by [defendant], making immunity contingent not on payment of consideration but its receipt, is supported neither by the statutory text nor the Legislature's purpose in enacting section 846, which was to encourage free public access to property for recreational use. It also would lead to troubling, anomalous results we do not think the Legislature intended. At bottom, construing this exception as applying only to defendants who receive or benefit from the consideration paid loses sight of the fact that recreational immunity is merely a tool. It is the Legislature's chosen means, not an end unto itself." (*Pacific Gas & Electric Co., supra,* 10 Cal.App.5th at p. 566.)

- "A landowner must gain some immediate and reasonably direct advantage, usually in the form of an entrance fee, before the exception to immunity for consideration under section 846 comes into play." (*Johnson, supra,* 21 Cal.App.4th at p. 317.)

- "The purpose of section 846 is to encourage landowners to permit people to use their property for recreational use without fear of reprisal in the form of lawsuits. The trial court should therefore construe the exceptions for consideration and express invitees narrowly. (*Johnson, supra,* 21 Cal.App.4th at p. 315.)

- "The language of section 846, item (c), which refers to '*any persons who are expressly invited rather than merely permitted to come upon the premises by the landowner*' (italics added) does not say a person must be invited for a *recreational* purpose. The exception instead defines a person who is 'expressly invited' by distinguishing this person from one who is 'merely permitted' to come onto the

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land." (*Calhoon v. Lewis* (2000) 81 Cal.App.4th 108, 114 [96 Cal.Rptr.2d 394], original italics.)

- "Civil Code section 846's liability shield does not extend to acts of vehicular negligence by a landowner or by the landowner's employee while acting within the course of the employment. We base this conclusion on section 846's plain language. The statutory phrase 'keep the premises safe' is an apt description of the property-based duties underlying premises liability, a liability category that does not include vehicular negligence. Furthermore, a broad construction of that statutory phrase would render superfluous another provision of section 846 shielding landowners from liability for failure to warn recreational users about hazardous conditions or activities on the land." (*Klein v. United States of America* (2010) 50 Cal.4th 68, 72 [112 Cal.Rptr.3d 722, 235 P.3d 42].)

Secondary Sources

6 Witkin, Summary of California Law (11th ed. 2017) Torts, §§ 1245–1253

1 Levy et al., California Torts, Ch. 15, *General Premises Liability*, § 15.22 (Matthew Bender)

11 California Real Estate Law and Practice, Ch. 381, *Tort Liability of Property Owners*, § 381.30 (Matthew Bender)

36 California Forms of Pleading and Practice, Ch. 421, *Premises Liability*, § 421.21 (Matthew Bender)

17 California Points and Authorities, Ch. 178, *Premises Liability*, § 178.130 et seq. (Matthew Bender)

~~1~~ California Civil Practice: Torts § 16:34 (Thomson Reuters)

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1305A. Battery by Peace Law Enforcement Officer (Nondeadly Force)—Essential Factual Elements

[*Name of plaintiff*] claims that [*name of defendant*] harmed [him/her/*nonbinary pronoun*] by using unreasonable force to [arrest/detain [him/her/*nonbinary pronoun*]/ [,/or] prevent [his/her/*nonbinary pronoun*] escape/ [,/or] overcome [his/her/*nonbinary pronoun*] resistance/[*insert other applicable action*]]. To establish this claim, [*name of plaintiff*] must prove all of the following:

1. **That [*name of defendant*] intentionally touched [*name of plaintiff*] [or caused [*name of plaintiff*] to be touched];**

2. **That [*name of defendant*] used unreasonable force to [arrest/detain/ [,/or] prevent the escape of/ [,/or] overcome the resistance of/*insert other applicable action*] on [*name of plaintiff*];**

3. **That [*name of plaintiff*] did not consent to the use of that force;**

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

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

[A/An] [*insert type of peace officer*] may use reasonable force to [arrest/detain/ [,/or] prevent the escape of/ [,/or] overcome the resistance of] a person when the officer has reasonable cause to believe that that person has committed a crime. [Even if the officer is mistaken, a person being arrested or detained has a duty not to use force to resist the officer unless the officer is using unreasonable force.] [A peace officer may use deadly force only if a reasonable officer in the same situation would have believed, based on the totality of the circumstances known to or perceived by [*name of defendant*] at the time, that it was necessary in defense of human life.]

In deciding whether [*name of defendant*] used unreasonable force, you must consider the totality of the circumstances and determine the what amount of force that would have appeared a reasonable to [a/an] [*insert type of peace officer*] in [*name of defendant*]'s position would have used under the same or similar circumstances. "Totality of the circumstances" means all facts known to the officer at the time, including the conduct of [*name of defendant*] and [*name of plaintiff*] leading up to the use of force. You should consider, among other factors, the following:

(a) **The seriousness of the crime at issue;**

(b) **Whether [*name of plaintiff*] reasonably appeared to pose an immediate threat to the safety of [*name of defendant*] or others;**

(b) **The seriousness of the crime at issue; and**

(c) **Whether [*name of plaintiff*] was actively resisting [arrest/detention] or attempting to**

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evade [arrest/detention].

[~~[A/~~An~~]~~ ~~[*insert type of peace* ~~officer~~]~~ who makes or attempts to make an arrest does not have to retreat or stop because the person being arrested resists or threatens to resist. Tactical repositioning or other deescalation tactics are not retreat. An ~~peace~~ officer does not lose the right to self-defense by using objectively reasonable force to [arrest/detain/ [,/or] prevent escape/ [,/or] overcome resistance.]

New September 2003; Revised December 2012, May 2020, November 2020; Renumbered from CACI No. 1305 and Revised May 2021

Directions for Use

~~Include the first bracketed sentence in cases involving the use of deadly force by a peace officer. Penal Code section 835a will require further modifications to the instruction. For example, if the defendant claims that the use of deadly force was justified because it was necessary in defense of human life, modify the instruction to include the second paragraph in CACI No. 441, *Negligent Use of Deadly Force by Peace Officer—Essential Factual Elements*. Select one or both options from the second paragraph depending on the justification(s) claimed.~~
See CACI No. 1302, *Consent Explained*, and CACI No. 1303, *Invalid Consent*, if there is an issue concerning the plaintiff's consent.

For additional authorities on excessive force, see the Sources and Authority for CACI No. 440, *Negligent Use of Nondeadly Force by Law Enforcement Officer in Arrest or Other Seizure—Essential Factual Elements*, CACI No. 441, *Negligent Use of Deadly Force by Peace Officer—Essential Factual Elements*, and CACI No. 3020, *Excessive Use of Force—Unreasonable Arrest or Other Seizure—Essential Factual Elements*.

By its terms, Penal Code section 835a's deadly force provisions apply to "peace officers." It would appear that a battery claim involving nondeadly force does not depend on whether the individual qualifies as a peace officer under the Penal Code. (See Pen. Code, § 835a; see also Pen. Code, § 830 et seq. [defining peace officer].) For cases involving the use of deadly force by a peace officer, use CACI No. 1305B, *Battery by Peace Officer (Deadly Force)—Essential Factual Elements*. (Pen. Code, § 835a.) This instruction and CACI No. 1305B may require modification if the jury must decide whether the force used by the defendant was deadly or nondeadly.

Include the bracketed sentence in the second paragraph only if the defendant claims that the person being arrested or detained resisted the officer.

Factors (a), (b), and (c) are often referred to as the "*Graham* factors." (See *Graham v. Connor* (1989) 490 U.S. 386, 396 [109 S.Ct. 1865, 104 L.Ed.2d 443].) The *Graham* factors are not exclusive (see *Glenn v. Wash. County* (9th Cir. 2011) 673 F.3d 864, 872); additional factors may be added if appropriate to the facts of the case.

Include the final bracketed paragraph only if the defendant claims that the person being arrested resisted arrest or threatened resistance.

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Sources and Authority

- Use of Objectively Reasonable Force to Arrest. Penal Code section 835a.

- Duty to Submit to Arrest. Penal Code section 834a.

- “Plaintiff must prove unreasonable force as an element of the tort.” (*Edson v. City of Anaheim* (1998) 63 Cal.App.4th 1269, 1272 [74 Cal.Rptr.2d 614].)

- “ ‘ “The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. … [T]he question is whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. …” ’ In calculating whether the amount of force was excessive, a trier of fact must recognize that peace officers are often forced to make split-second judgments, in tense circumstances, concerning the amount of force required.” (*Brown v. Ransweiler* (2009) 171 Cal.App.4th 516, 527–528 [89 Cal.Rptr.3d 801], internal citations omitted.)

- ~~“A police officer’s use of deadly force is reasonable if ‘ “ ‘the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.’ …” …’ ” (*Brown, supra,* 171 Cal.App.4th at p. 528.)~~

- “[T]here is no right to use force, reasonable or otherwise, to resist an unlawful detention ... .” (*Evans v. City of Bakersfield* (1994) 22 Cal.App.4th 321, 333 [27 Cal.Rptr.2d 406].)

- “[E]xecution of an unlawful arrest or detention does not give license to an individual to strike or assault the officer *unless* excessive force is used or threatened; excessive force in that event triggers the individual’s right of self-defense.” (*Evans, supra,* 22 Cal.App.4th at p. 331, original italics, internal citation omitted.)

- “Consistent with these principles and the factors the high court has identified, the federal court in this case did not instruct the jury to conduct some abstract or nebulous balancing of competing interests. Instead, as noted above, it instructed the jury to determine the reasonableness of the officers’ actions in light of ‘the totality of the circumstances at the time,’ including ‘the severity of the crime at issue, whether the plaintiff posed a reasonable threat to the safety of the officer or others, and whether the plaintiff was actively resisting detention or attempting to escape.’ The same consideration of the totality of the circumstances is required in determining reasonableness under California negligence law. Moreover, California’s civil jury instructions specifically direct the jury, in determining whether police officers used unreasonable force for purposes of tort liability, to consider the same factors that the high court has identified and that the federal court’s instructions in this case set forth. (Judicial Council of Cal. Civ. Jury Instns. (2008) CACI No. 1305.) Thus, plaintiffs err in arguing that the federal and state standards of reasonableness differ in that the former involves a fact finder’s balancing of competing interests.” (*Hernandez v. City of Pomona* (2009) 46 Cal.4th 501, 514 [94 Cal. Rptr.3d 1, 207 P.3d 506], internal citation omitted.)

Secondary Sources

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1 Witkin & Epstein, California Criminal Law (4th ed. 2020) §§ 13-14

4 Witkin & Epstein, California Criminal Law (4th ed. 2020) § 39

5 Witkin, Summary of California Law (11th ed. 2017) Torts, § 496

3 Levy et al., California Torts, Ch. 41, *Assault and Battery*, § 41.24 (Matthew Bender)

6 California Forms of Pleading and Practice, Ch. 58, *Assault and Battery*, §§ 58.22, 58.61, 58.92 (Matthew Bender)

2 California Points and Authorities, Ch. 21, *Assault and Battery*, § 21.20 et seq. (Matthew Bender)

California Civil Practice: Torts § 12:22 (Thomson Reuters)

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1305B. Battery by Peace Officer (Deadly Force)—Essential Factual Elements

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A peace officer may use deadly force only when necessary in defense of human life. [*Name of plaintiff*] claims that [*name of defendant*] unnecessarily used deadly force on [him/her/*nonbinary pronoun*/*name of decedent*]. To establish this claim, [*name of plaintiff*] must prove all of the following:

> **1. That [*name of defendant*] intentionally touched [*name of plaintiff*/*decedent*] [or caused [*name of plaintiff*/*decedent*] to be touched];**
>
> **2. That [*name of defendant*] used deadly force on [*name of plaintiff*/*decedent*];**
>
> **3. That [*name of defendant*]'s use of deadly force was not necessary to defend human life;**
>
> **4. That [*name of plaintiff*/*decedent*] was [harmed/killed]; and**
>
> **5. That [*name of defendant*]'s use of deadly force was a substantial factor in causing [*name of plaintiff*/*decedent*]'s [harm/death].**

[*Name of defendant*]'s use of deadly force was necessary to defend human life only if a reasonable officer in the same situation would have believed, based on the totality of the circumstances known to or perceived by [*name of defendant*] at the time, that deadly force was necessary [*insert one or both of the following:*]

> **[to defend against an imminent threat of death or serious bodily harm to [*name of defendant*] [or] [to another person][; or/.]]**
>
> **[to apprehend a fleeing person for a felony, when all of the following conditions are present:**
>
> > **i. The felony threatened or resulted in death or serious bodily injury to another;**
> >
> > **ii. [*Name of defendant*] reasonably believed that the person fleeing would cause death or serious bodily injury to another unless immediately apprehended; and**
> >
> > **iii. If practical under the circumstances, [*name of defendant*] made reasonable efforts to identify [himself/herself/*nonbinary pronoun*] as a peace officer and to warn that deadly force would be used, unless the officer had objectively reasonable grounds to believe the person is aware of those facts.]**

[A peace officer must not use deadly force against a person based only on the danger that person poses to [himself/herself/*nonbinary pronoun*], if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the peace officer or to another person.]

[A person being [arrested/detained] has a duty not to use force to resist the peace officer unless the peace officer is using unreasonable force.]

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"Deadly force" means any use of force that creates a substantial risk of causing death or serious bodily injury, including, but not limited to, the discharge of a firearm.

A threat of death or serious bodily injury is "imminent" when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.

"Totality of the circumstances" means all facts known to the peace officer at the time, including the conduct of [*name of defendant*] and [*name of plaintiff/decedent*] leading up to the use of deadly force. In determining whether [*name of defendant*]'s use of deadly force was necessary in defense of human life, you must consider [*name of defendant*]'s tactical conduct and decisions before using deadly force on [*name of plaintiff/decedent*] and whether [*name of defendant*] used other available resources and techniques as [an] alternative[s] to deadly force, if it was reasonably safe and feasible to do so. [You must also consider whether [*name of defendant*] knew or had reason to know that the person against whom [he/she/*nonbinary pronoun*] used force was suffering from a physical, mental health, developmental, or intellectual disability [that may have affected the person's ability to understand or comply with commands from the officer[s]].]

[A peace officer who makes or attempts to make an arrest does not have to retreat or stop because the person being arrested is resisting or threatening to resist. Tactical repositioning or other deescalation tactics are not retreat. A peace officer does not lose the right to self-defense by use of objectively reasonable force to effect the arrest or to prevent escape or to overcome resistance. A peace officer does, however, have a duty to use reasonable tactical repositioning or other deescalation tactics.]

New May 2021

Directions for Use

Use this instruction for a claim of battery using deadly force by a peace officer. If a plaintiff alleges battery by both deadly and nondeadly force, or if the jury must decide whether the amount of force used was deadly or nondeadly, this instruction may be used along with the CACI No. 1305A, *Battery by Law Enforcement Officer (Nondeadly Force)—Essential Factual Elements*.

By its terms, Penal Code section 835a's deadly force provisions apply to "peace officers," a term defined by the Penal Code. (See Pen. Code, § 835a; see also Pen. Code, § 830 et seq. [defining peace officer].) That the defendant is a peace officer may be stipulated to or decided by the judge as a matter of law. In such a case, the judge must instruct the jury that the defendant was a peace officer. If there are contested issues of fact on this issue, include the specific factual findings necessary for the jury to determine whether the defendant was acting as a peace officer.

In the paragraph after the essential factual elements, select either or both bracketed options depending on

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the asserted justification(s) for the use of deadly force.

"Deadly force" means any use of force that creates a substantial risk of causing death or serious bodily injury, including, but not limited to, the discharge of a firearm. (Pen. Code, § 835a(e)(1).) Note that this definition does not require that the encounter result in the death of the person against whom the force was used. If there is no dispute about the use of deadly force, the court should instruct the jury that deadly force was used.

In the "totality of the circumstances" paragraph, do not include the final optional sentence or its optional clause unless there is evidence of a disability or evidence of the person's ability to comprehend or comply with the officer's commands.

Include the final bracketed paragraph only if the defendant claims that the person being arrested resisted arrest or threatened resistance.

In a wrongful death or survival action, use the name of the decedent victim where applicable and further modify the instruction as appropriate.

Sources and Authority

- Legislative Findings re Use of Force by Law Enforcement. Penal Code section 835a(a).
- When Use of Deadly Force is Justified. Penal Code section 835a(c).
- When Peace Officer Need Not Retreat. Penal Code section 835a(d).
- Definitions. Penal Code section 835a(e).
- "Peace Officer" Defined. Penal Code section 830 et seq.
- "[T]here is no right to use force, reasonable or otherwise, to resist an unlawful detention ... ." (*Evans v. City of Bakersfield* (1994) 22 Cal.App.4th 321, 333 [27 Cal.Rptr.2d 406].)
- "[E]xecution of an unlawful arrest or detention does not give license to an individual to strike or assault the officer *unless* excessive force is used or threatened; excessive force in that event triggers the individual's right of self-defense." (*Evans, supra,* 22 Cal.App.4th at p. 331, original italics, internal citation omitted.)

Secondary Sources

5 Witkin, Summary of California Law (11th ed. 2017) Torts, §§ 427, 993

3 Levy et al., California Torts, Ch. 41, *Assault and Battery*, § 41.24 seq. (Matthew Bender)

6 California Forms of Pleading and Practice, Ch. 58, *Assault and Battery*, § 58.22 (Matthew Bender)

California Civil Practice: Torts § 12:22 (Thomson Reuters)

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VF-1303A. Battery by ~~Peace~~ Law Enforcement Officer (Nondeadly Force)

We answer the questions submitted to us as follows:

1. **Did [*name of defendant*] intentionally touch [*name of plaintiff*] [or cause [*name of plaintiff*] to be touched]?**
   ____ 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 defendant*] use unreasonable force ~~in [arresting/preventing the escape of/overcoming the resistance of/[*insert other applicable action*]]~~ on [*name of plaintiff*]?**
   ____ 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*] consent to the use of that force?**
   ____ Yes ____ No

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

4. **Was [*name of defendant*]'s use of unreasonable force a substantial factor in causing harm to [*name of plaintiff*]?**
   ____ 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. **What are [*name of plaintiff*]'s damages?**

   [a. Past economic loss
   [lost earnings $ ________]
   [lost profits $ ________]
   [medical expenses $ ________]
   [other past economic loss $ ________]
   Total Past Economic Damages: $ ________]

   [b. Future economic loss

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[lost earnings $ ________]
[lost profits $ ________]
[medical expenses $ ________]
[other future economic loss $ ________]
Total Future Economic Damages: $ ________]

[c. Past noneconomic loss, including [physical pain/mental suffering:]
$ ________]

[d. Future noneconomic loss, including [physical pain/mental suffering:]
$ ________]

TOTAL $ ________

Signed: ________________________
Presiding Juror

Dated: ____________

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New September 2003; Revised April 2007, December 2010, December 2016; Renumbered from VF-1303 and Revised May 2021

Directions for Use

This verdict form is based on CACI No. 1305A, *Battery by ~~Peace~~ Law Enforcement Officer (Nondeadly Force)—Essential Factual Elements.*

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.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize "economic" and "noneconomic" damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

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VF-1303B. Battery by Peace Officer (Deadly Force)

We answer the questions submitted to us as follows:

1. **Did [*name of defendant*] intentionally touch [*name of plaintiff/decedent*] [or cause [*name of plaintiff/decedent*] to be touched]?**
 ____ 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 defendant*] use deadly force that was not necessary in defense of human life on [*name of plaintiff/decedent*]?**
 ____ 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. **Was [*name of defendant*]'s use of deadly force a substantial factor in causing [harm/death] to [*name of plaintiff/decedent*]?**
 ____ 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. **What are [*name of plaintiff*]'s damages?**

 [a. Past economic loss
 [lost earnings $ ________]
 [lost profits $ ________]
 [medical expenses $ ________]
 [other past economic loss $ ________]
 Total Past Economic Damages: $ ________]

 [b. Future economic loss
 [lost earnings $ ________]
 [lost profits $ ________]
 [medical expenses $ ________]
 [other future economic loss $ ________]
 Total Future Economic Damages: $ ________]

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[c. Past noneconomic loss, including [physical pain/mental suffering:]

$ ________]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

$ ________]

TOTAL $ ________

Signed: ________________________
Presiding Juror

Dated: ____________

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

New May 2021

Directions for Use

This verdict form is based on CACI No. 1305B, *Battery by Peace Officer (Deadly Force)—Essential Factual Elements.*

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.

If specificity is not required, users do not have to itemize all the damages listed in question 5 and do not have to categorize "economic" and "noneconomic" damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

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2303. Affirmative Defense—Insurance Policy Exclusion

[*Name of defendant*] claims that [*name of plaintiff*]'s [liability/loss] is not covered because it is specifically excluded under the policy. To succeed, [*name of defendant*] must prove that [*name of plaintiff*]'s [liability/loss] [arises out of/is based on/occurred because of] [*state exclusion under the policy*]. This exclusion applies if [*set forth disputed factual issues that jury must determine*].

New September 2003; Revised October 2008, June 2014, May 2021

Directions for Use

The instructions in this series assume the plaintiff is the insured and the defendant is the insurer. The party designations may be changed if appropriate to the facts of the case.

Give this instruction if the court has determined that an exclusionary clause in an insurance policy might apply to foreclose coverage, but the applicability turns on a question of fact. Identify with specificity the disputed factual issues the jury must resolve to determine whether the exclusion applies.

This instruction can be used in cases involving either a third party liability or a first party loss policy. Use CACI No. 2306, *Covered and Excluded Risks—Predominant Cause of Loss*, rather than this instruction, if a first party loss policy is involved and there is evidence that a loss was caused by both covered and excluded perils.

Sources and Authority

- "The burden of bringing itself within any exculpatory clause contained in the policy is on the insurer." (*Clemmer v. Hartford Insurance Co.* (1978) 22 Cal.3d 865, 880 [151 Cal.Rptr. 285, 587 P.2d 1098].)

- "The burden is on an insured to establish that the occurrence forming the basis of its claim is within the basic scope of insurance coverage. And, once an insured has made this showing, the burden is on the insurer to prove the claim is specifically excluded." (*Aydin Corp. v. First State Insurance Co.* (1998) 18 Cal.4th 1183, 1188 [77 Cal.Rptr.2d 537, 959 P.2d 1213].)

- Once the insurer proves that the specific exclusion applies, the insured "should bear the burden of *establishing* the exception because 'its effect is to reinstate coverage that the exclusionary language otherwise bars.' " (*Aydin Corp.*, *supra*, 18 Cal.4th at p. 1188.)

- "The interpretation of an exclusionary clause is an issue of law subject to this court's independent determination." (*Marquez Knolls Property Owners Assn., Inc. v. Executive Risk Indemnity, Inc.* (2007) 153 Cal.App.4th 228, 233 [62 Cal.Rptr.3d 510].)

- "[T]he question of what caused the loss is generally a question of fact, and the loss is not covered if the covered risk was only a remote cause of the loss, or the excluded risk was the efficient proximate,

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or predominate cause." (*State Farm Fire & Casualty Co. v. Von Der Lieth* (1991) 54 Cal.3d 1123, 1131−1132 [2 Cal.Rptr.2d 183, 820 P.2d 285].)

Secondary Sources

2 Witkin, Summary of California Law (11th ed. 2017) Insurance, §§ 85, 88

Croskey et al., California Practice Guide: Insurance Litigation, Ch. 15-I, *Trial*, ¶¶ 15:911–15:912 (The Rutter Group)

1 California Liability Insurance Practice: Claims & Litigation (Cont.Ed.Bar) Analyzing Coverage: Reading and Interpreting Insurance Policies, § 3.63

4 California Insurance Law and Practice, Ch. 41, *Liability Insurance in General*, § 41.11 (Matthew Bender)

26 California Forms of Pleading and Practice, Ch. 308, *Insurance*, § 308.502 (Matthew Bender)

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VF-2506A. Work Environment Harassment—Conduct Directed at Plaintiff—Employer or Entity Defendant (Gov. Code, §§ 12923, 12940(j))

We answer the questions submitted to us as follows:

1. **Was [*name of plaintiff*] [an employee of/a person providing services under a contract with/an unpaid intern with/a volunteer with] [*name of defendant*]?**
____ 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. **Was [*name of plaintiff*] subjected to harassing conduct because [he/she/*nonbinary pronoun*] was [*protected status, e.g., a woman*]?**
____ 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. **Was the harassment severe or pervasive?**
____ 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. **Would a reasonable [*e.g., woman*] in [*name of plaintiff*]'s circumstances have considered the work environment to be hostile, intimidating, offensive, oppressive, or abusive?**
____ 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*] consider the work environment to be hostile, intimidating, offensive, oppressive, or abusive?**
____ 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.

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6. **Did [*name of defendant*] [or [his/her/*nonbinary pronoun*/its] supervisors or agents] know or should [he/she/*nonbinary pronoun*/it/they] have known of the harassing conduct?**
____ Yes ____ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. **Did [*name of defendant*] [or [his/her/*nonbinary pronoun*/its] supervisors or agents] fail to take immediate and appropriate corrective action?**
____ Yes ____ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. **Was the harassing conduct a substantial factor in causing harm to [*name of plaintiff*]?**
____ Yes ____ No

If your answer to question 8 is yes, then answer question 9. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

9. **What are [*name of plaintiff*]'s damages?**

[a. Past economic loss
[lost earnings $ ________]
[lost profits $ ________]
[medical expenses $ ________]
[other past economic loss $ ________]
Total Past Economic Damages: $ ________]

[b. Future economic loss
[lost earnings $ ________]
[lost profits $ ________]
[medical expenses $ ________]
[other future economic loss $ ________]
Total Future Economic Damages: $ ________]

[c. Past noneconomic loss, including [physical pain/mental suffering:]
$ ________]

[d. Future noneconomic loss, including [physical pain/mental suffering:]

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$ ________]

TOTAL $ ________

Signed: ________________________
Presiding Juror

Dated: ____________

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

Derived from former CACI No. VF-2506 December 2007; Revised December 2010, June 2013, December 2016, May 2020, May 2021

Directions for Use

This verdict form is based on CACI No. 2521A, *Work Environment Harassment—Conduct Directed at Plaintiff—Essential Factual Elements—Employer or Entity Defendant*.

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.

Relationships other than employer/employee can be substituted in question 1, as in element 1 of CACI No. 2521A. Depending on the facts of the case, other factual scenarios for employer liability can be substituted in questions 6 and 7, as in element 6 of the instruction.

Modify question 2 if the plaintiff was not actually a member of the protected class, but alleges harassment because the plaintiff was perceived to be a member, or associated with someone who was or was perceived to be a member, of the protected class. (See Gov. Code, § 12926(o).)

If specificity is not required, users do not have to itemize all the damages listed in question 9 and do not have to categorize "economic" and "noneconomic" damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

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VF-2506B. Work Environment Harassment—Conduct Directed at Others—Employer or Entity Defendant (Gov. Code, §§ 12923, 12940(j))

We answer the questions submitted to us as follows:

1. **Was [*name of plaintiff*] [an employee of/a person providing services under a contract with/an unpaid intern with/a volunteer with] [*name of defendant*]?**
 ____ 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*] personally witness harassing conduct that took place in [his/her/*nonbinary pronoun*] immediate work environment?**
 ____ 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. **Was the harassment severe or pervasive?**
 ____ 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. **Would a reasonable [*describe member of protected group, e.g.,* woman] in [*name of plaintiff*]'s circumstances have considered the work environment to be hostile, intimidating, offensive, oppressive, or abusive?**
 ____ 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*] consider the work environment to be hostile, intimidating, offensive, oppressive, or abusive toward [*e.g., women*]?**
 ____ 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.

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6. **Did [*name of defendant*] [or [his/her/*nonbinary pronoun*/its] supervisors or agents] know or should [he/she/*nonbinary pronoun*/it/they] have known of the harassing conduct?**
____ Yes ____ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. **Did [*name of defendant*] [or [his/her/*nonbinary pronoun*/its] supervisors or agents] fail to take immediate and appropriate corrective action?**
____ Yes ____ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. **Was the harassing conduct a substantial factor in causing harm to [*name of plaintiff*]?**
____ Yes ____ No

If your answer to question 8 is yes, then answer question 9. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

9. **What are [*name of plaintiff*]'s damages?**

[a. Past economic loss
[lost earnings $ ________]
[lost profits $ ________]
[medical expenses $ ________]
[other past economic loss $ ________]
Total Past Economic Damages: $ ________]

[b. Future economic loss
[lost earnings $ ________]
[lost profits $ ________]
[medical expenses $ ________]
[other future economic loss $ ________]
Total Future Economic Damages: $ ________]

[c. Past noneconomic loss, including [physical pain/mental suffering:]
$ ________]

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[d. Future noneconomic loss, including [physical pain/mental suffering:]

$ ________]

TOTAL $ ________

Signed: ________________________
Presiding Juror

Dated: ____________

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

Derived from former CACI No. VF-2506 December 2007; Revised December 2010, June 2013, December 2016, May 2020, May 2021

Directions for Use

This verdict form is based on CACI No. 2521B, *Work Environment Harassment—Conduct Directed at Others—Essential Factual Elements—Employer or Entity Defendant*.

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.

Relationships other than employer/employee can be substituted in question 1, as in element 1 of CACI No. 2521B. Depending on the facts of the case, other factual scenarios for employer liability can be substituted in questions 6 and 7, as in element 6 of the instruction.

If specificity is not required, users do not have to itemize all the damages listed in question 9 and do not have to categorize "economic" and "noneconomic" damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

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VF-2506C. Work Environment Harassment—Sexual Favoritism—Employer or Entity Defendant (Gov. Code, §§ 12923, 12940(j))

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We answer the questions submitted to us as follows:

1. **Was [*name of plaintiff*] [an employee of/a person providing services under a contract with/an unpaid intern with/a volunteer with] [*name of defendant*]?**
   ____ 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. **Was there sexual favoritism in the work environment?**
   ____ 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. **Was the sexual favoritism severe or pervasive?**
   ____ 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. **Would a reasonable [*describe member of protected group, e.g.,* woman] in [*name of plaintiff*]'s circumstances have considered the work environment to be hostile, intimidating, offensive, oppressive, or abusive?**
   ____ 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*] consider the work environment to be hostile, intimidating, offensive, oppressive, or abusive because of the sexual favoritism?**
   ____ 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. **Did [*name of defendant*] [or [his/her/*nonbinary pronoun*/its] supervisors or agents]**

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know or should [he/she/*nonbinary pronoun*/it/they] have known of the sexual favoritism?
____ Yes ____ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Did [*name of defendant*] [or [his/her/*nonbinary pronoun*/its] supervisors or agents] fail to take immediate and appropriate corrective action?
____ Yes ____ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. Was the sexual favoritism a substantial factor in causing harm to [*name of plaintiff*]?
____ Yes ____ No

If your answer to question 8 is yes, then answer question 9. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

9. What are [*name of plaintiff*]'s damages?

[a. Past economic loss
[lost earnings $ ________]
[lost profits $ ________]
[medical expenses $ ________]
[other past economic loss $ ________]
Total Past Economic Damages: $ ________]

[b. Future economic loss
[lost earnings $ ________]
[lost profits $ ________]
[medical expenses $ ________]
[other future economic loss $ ________]
Total Future Economic Damages: $ ________]

[c. Past noneconomic loss, including [physical pain/mental suffering:]
$ ________]

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[d. Future noneconomic loss, including [physical pain/mental suffering:]

$ ________]

TOTAL $ ________

Signed: ________________________
Presiding Juror

Dated: ____________

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

Derived from former CACI No. VF-2506 December 2007; Revised December 2010, December 2016, May 2020, May 2021

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Directions for Use

This verdict form is based on CACI No. 2521C, *Work Environment Harassment—Sexual Favoritism—Essential Factual Elements—Employer or Entity Defendant*.

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.

Relationships other than employer/employee can be substituted in question 1, as in element 1 of CACI No. 2521C. Depending on the facts of the case, other factual scenarios for employer liability can be substituted in questions 6 and 7, as in element 6 of the instruction.

If specificity is not required, users do not have to itemize all the damages listed in question 9 and do not have to categorize "economic" and "noneconomic" damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

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VF-2507A. Work Environment Harassment—Conduct Directed at Plaintiff—Individual Defendant (Gov. Code, §§ 12923, 12940(j))

We answer the questions submitted to us as follows:

1. **Was [*name of plaintiff*] [an employee of/a person providing services under a contract with/an unpaid intern with/a volunteer with] [*name of employer*]?**
   ____ 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. **Was [*name of plaintiff*] subjected to harassing conduct because [he/she/*nonbinary pronoun*] was [*protected status, e.g., a woman*]?**
   ____ 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. **Was the harassment severe or pervasive?**
   ____ 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. **Would a reasonable [*e.g., woman*] in [*name of plaintiff*]'s circumstances have considered the work environment to be hostile, intimidating, offensive, oppressive, or abusive?**
   ____ 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*] consider the work environment to be hostile, intimidating, offensive, oppressive, or abusive?**
   ____ 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.

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6. **Did [*name of defendant*] [participate in/assist/ [or] encourage] the harassing conduct?**
____ Yes ____ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. **Was the harassing conduct a substantial factor in causing harm to [*name of plaintiff*]?**
____ Yes ____ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. **What are [*name of plaintiff*]'s damages?**

[a. Past economic loss
[lost earnings $ ________]
[lost profits $ ________]
[medical expenses $ ________]
[other past economic loss $ ________]
Total Past Economic Damages: $ ________]

[b. Future economic loss
[lost earnings $ ________]
[lost profits $ ________]
[medical expenses $ ________]
[other future economic loss $ ________]
Total Future Economic Damages: $ ________]

[c. Past noneconomic loss, including [physical pain/mental suffering:]
$ ________]

[d. Future noneconomic loss, including [physical pain/mental suffering:]
$ ________]

TOTAL $ ________

Signed: ________________________
Presiding Juror

Dated: ____________

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After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

Derived from former CACI No. VF-2507 December 2007; Revised December 2010, June 2013, December 2016, May 2020, May 2021

Directions for Use

This verdict form is based on CACI No. 2522A, *Work Environment Harassment—Conduct Directed at Plaintiff—Essential Factual Elements—Individual Defendant*.

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.

Relationships other than employer/employee can be substituted in question 1, as in element 1 of CACI No. 2522A.

Modify question 2 if the plaintiff was not actually a member of the protected class, but alleges harassment because the plaintiff was perceived to be a member, or associated with someone who was or was perceived to be a member, of the protected class. (See Gov. Code, § 12926(o).)

If specificity is not required, users do not have to itemize all the damages listed in question 8 and do not have to categorize "economic" and "noneconomic" damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

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VF-2507B. Work Environment Harassment—Conduct Directed at Others—Individual Defendant (Gov. Code, §§ 12923, 12940(j))

We answer the questions submitted to us as follows:

1. **Was [*name of plaintiff*] [an employee of/a person providing services under a contract with/an unpaid intern with/a volunteer with] [*name of employer*]?**
____ 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*] personally witness harassing conduct that took place in [his/her/*nonbinary pronoun*] immediate work environment?**
____ 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. **Was the harassment severe or pervasive?**
____ 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. **Would a reasonable [*describe member of protected group, e.g., woman*] in [*name of plaintiff*]'s circumstances have considered the work environment to be hostile, intimidating, offensive, oppressive, or abusive?**
____ 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*] consider the work environment to be hostile, intimidating, offensive, oppressive, or abusive toward [*e.g., women*]?**
____ 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.

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6. **Did [*name of defendant*] [participate in/assist/ [or] encourage] the harassing conduct?**
____ Yes ____ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. **Was the harassing conduct a substantial factor in causing harm to [*name of plaintiff*]?**
____ Yes ____ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. **What are [*name of plaintiff*]'s damages?**

[a. Past economic loss
[lost earnings $ ________]
[lost profits $ ________]
[medical expenses $ ________]
[other past economic loss $ ________]
Total Past Economic Damages: $ ________]

[b. Future economic loss
[lost earnings $ ________]
[lost profits $ ________]
[medical expenses $ ________]
[other future economic loss $ ________]
Total Future Economic Damages: $ ________]

[c. Past noneconomic loss, including [physical pain/mental suffering:]
$ _______]

[d. Future noneconomic loss, including [physical pain/mental suffering:]
$ ________]

TOTAL $ ________

Signed: ________________________

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Presiding Juror

Dated: ____________

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

Derived from former CACI No. VF-2507 December 2007; Revised December 2010, June 2013, December 2016, May 2020, May 2021

Directions for Use

This verdict form is based on CACI No. 2522B, *Work Environment Harassment—Conduct Directed at Others—Essential Factual Elements—Individual Defendant*.

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.

Relationships other than employer/employee can be substituted in question 1, as in element 1 of CACI No. 2521C, *Work Environment Harassment—Sexual Favoritism—Essential Factual Elements—Employer or Entity Defendant*.

If specificity is not required, users do not have to itemize all the damages listed in question 8 and do not have to categorize "economic" and "noneconomic" damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional depending on the circumstances.

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*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

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VF-2507C. Work Environment Harassment—Sexual Favoritism—Individual Defendant (Gov. Code, §§ 12923, 12940(j))

We answer the questions submitted to us as follows:

1. **Was [*name of plaintiff*] [an employee of/a person providing services under a contract with/an unpaid intern with/a volunteer with] [*name of employer*]?**
   ____ 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. **Was there sexual favoritism in the work environment?**
   ____ 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. **Was the sexual favoritism severe or pervasive?**
   ____ 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. **Would a reasonable [*describe member of protected group, e.g., woman*] in [*name of plaintiff*]'s circumstances have considered the work environment to be hostile, intimidating, offensive, oppressive, or abusive?**
   ____ 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*] consider the work environment to be hostile, intimidating, offensive, oppressive, or abusive because of the sexual favoritism?**
   ____ 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. **Did [*name of defendant*] [participate in/assist/ [or] encourage] the sexual favoritism?**

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____ Yes ____ No

If your answer to question 6 is yes, then answer question 7. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

7. Was the sexual favoritism a substantial factor in causing harm to [*name of plaintiff*]?
____ Yes ____ No

If your answer to question 7 is yes, then answer question 8. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

8. What are [*name of plaintiff*]'s damages?

[a. Past economic loss
[lost earnings $ ________]
[lost profits $ ________]
[medical expenses $ ________]
[other past economic loss $ ________]
Total Past Economic Damages: $ ________]

[b. Future economic loss
[lost earnings $ ________]
[lost profits $ ________]
[medical expenses $ ________]
[other future economic loss $ ________]
Total Future Economic Damages: $ ________]

[c. Past noneconomic loss, including [physical pain/mental suffering:]
$ ________]

[d. Future noneconomic loss, including [physical pain/mental suffering:]
$ ________]

TOTAL $ ________

Signed: ________________________
Presiding Juror

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Dated: ___________

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

Derived from former CACI No. VF-2507 December 2007; Revised December 2010, December 2014, December 2016, May 2020, May 2021

Directions for Use

This verdict form is based on CACI No. 2522C, *Work Environment Harassment—Sexual Favoritism—Essential Factual Elements—Individual Defendant*.

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.

Relationships other than employer/employee can be substituted in question 1, as in element 1 in CACI No. 2521C. Depending on the facts of the case, other factual scenarios for employer liability can be substituted in questions 6 and 7, as in element 6 of the instruction.

If specificity is not required, users do not have to itemize all the damages listed in question 8 and do not have to categorize "economic" and "noneconomic" damages, especially if it is not a Proposition 51 case. The breakdown of damages is optional; depending on the circumstances.

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*.

If the jury is being given the discretion under Civil Code section 3288 to award prejudgment interest (see *Bullis v. Security Pac. Nat'l Bank* (1978) 21 Cal.3d 801, 814 [148 Cal.Rptr. 22, 582 P.2d 109]), give CACI No. 3935, *Prejudgment Interest*. This verdict form may need to be augmented for the jury to make any factual findings that are required in order to calculate the amount of prejudgment interest.

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2600. Violation of CFRA Rights—Essential Factual Elements

[*Name of plaintiff*] claims that [*name of defendant*] [refused to grant [him/her/*nonbinary pronoun*] [family care/medical] leave] [refused to return [him/her/*nonbinary pronoun*] to the same or a comparable job when [his/her/*nonbinary pronoun*] [family care/medical] leave ended] [*other violation of CFRA rights*]. To establish this claim, [*name of plaintiff*] must prove all of the following:

1. **That [*name of plaintiff*] was eligible for [family care/medical] leave;**

2. **That [*name of plaintiff*] [requested/took] leave [*insert one of the following:*]**

   [for the birth of [*name of plaintiff*]'s child or bonding with the child;]

   [for the placement of a child with [*name of plaintiff*] for adoption or foster care;]

   [to care for [*name of plaintiff*]'s [child/parent/spouse/domestic partner /grandparent/grandchild/sibling] who had a serious health condition;]

   [for [*name of plaintiff*]'s own serious health condition that made [him/her/*nonbinary pronoun*] unable to perform the functions of [his/her/*nonbinary pronoun*] job with [*name of defendant*];]

   [for [*specify qualifying military exigency related to covered active duty or call to covered active duty of a spouse, domestic partner, child, or parent, e.g., [name of plaintiff]'s spouse's upcoming military deployment on short notice*];]

3. **That [*name of plaintiff*] provided reasonable notice to [*name of defendant*] of [his/her/*nonbinary pronoun*] need for [family care/medical] leave, including its expected timing and length. [If [*name of defendant*] notified [his/her/*nonbinary pronoun*/its] employees that 30 days' advance notice was required before the leave was to begin, then [*name of plaintiff*] must show that [he/she/*nonbinary pronoun*] gave that notice or, if 30 days' notice was not reasonably possible under the circumstances, that [he/she/*nonbinary pronoun*] gave notice as soon as possible];**

4. **That [*name of defendant*] [refused to grant [*name of plaintiff*]'s request for [family care/medical] leave/refused to return [*name of plaintiff*] to the same or a comparable job when [his/her/*nonbinary pronoun*] [family care/medical] leave ended/*other violation of CFRA rights*];**

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

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

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New September 2003; Revised October 2008, May 2021

Directions for Use

This instruction is intended for use when an employee claims violation of the CFRA (Gov. Code, § 12945.1 et seq.). In addition to a qualifying employer's refusal to grant CFRA leave, CFRA violations include failure to provide benefits as required by CFRA and loss of seniority.

The second-to-last bracketed option in element 2 does not include leave taken for disability on account of pregnancy, childbirth, or related medical conditions. (Gov. Code, § 12945.2(b)(4)(C).) If there is a dispute concerning the existence of a "serious health condition," the court must instruct the jury as to the meaning of this term. (See Gov. Code, § 12945.2~~(c)(8)~~(b)(12).) If there is no dispute concerning the relevant individual's condition qualifying as a "serious health condition," it is appropriate for the judge to instruct the jury that the condition qualifies as a "serious health condition."

The last bracketed option in element 2 requires a qualifying exigency for military family leave related to the covered active duty or call to covered active duty of the employee's spouse, domestic partner, child, or parent in the Armed Forces of the United States. That phrase is defined in the Unemployment Insurance Code. (See Unemployment Ins. Code, § 3302.2.)

Give the bracketed sentence under element 3 only if the facts involve an expected birth, placement for adoption, or planned medical treatment, and there is evidence that the employer required 30 days' advance notice of leave. (See Cal. Code Regs., tit. 2, § 11091(a)(2).)

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Sources and Authority

- California Family Rights Act. Government Code section 12945.2.

- "Employer" Defined. Government Code section 12945.2(b)(3).

- "Serious Health Condition" Defined. Government Code section 12945.2(b)(12).

- "~~The CFRA entitles eligible employees to take up to 12 unpaid workweeks in a 12-month period for family care and medical leave to care for their children, parents, or spouses, or to recover from their own serious health condition.~~ An employee who takes CFRA leave is guaranteed that taking such leave will not result in a loss of job security or other adverse employment actions. Upon an employee's timely return from CFRA leave, an employer must generally restore the employee to the same or a comparable position. An employer is not required to reinstate an employee who cannot perform her job duties after the expiration of a protected medical leave." (*Rogers v. County of Los Angeles* (2011) 198 Cal.App.4th 480, 487 [130 Cal.Rptr.3d 350], footnote and internal citations omitted, superseded on other grounds by statute.)

- "A CFRA interference claim ' "consists of the following elements: (1) the employee's entitlement to CFRA leave rights; and (2) the employer's interference with or denial of those rights." ' " (*Soria v. Univision Radio Los Angeles, Inc.* (2016) 5 Cal.App.5th 570, 601 [210 Cal.Rptr.3d 59].)

- "[C]ourts have distinguished between two theories of recovery under the CFRA and the FMLA. 'Interference' claims prevent employers from wrongly interfering with employees' approved leaves of absence, and 'retaliation' or 'discrimination' claims prevent employers from terminating or otherwise taking action against employees because they exercise those rights." (*Richey v. AutoNation, Inc.* (2015) 60 Cal.4th 909, 920 [182 Cal. Rptr. 3d 644, 341 P.3d 438].)

- "An interference claim under CFRA does not invoke the burden shifting analysis of the *McDonnell Douglas* test. Rather, such a claim requires only that the employer deny the employee's entitlement to CFRA-qualifying leave. A CFRA interference claim 'consists of the following elements: (1) the employee's entitlement to CFRA leave rights; and (2) the employer's interference with or denial of those rights.' " (*Moore v. Regents of University of California* (2016) 248 Cal.App.4th 216, 250 [206 Cal.Rptr.3d 841], internal citations omitted.)

- "The right to reinstatement is unwaivable but not unlimited." (*Richey, supra,* 60 Cal.4th at p. 919.)

- "It is not enough that [plaintiff's] mother had a serious health condition. [Plaintiff's] participation to provide care for her mother had to be 'warranted' during a 'period of treatment or supervision ... .' " (*Pang v. Beverly Hospital, Inc.* (2000) 79 Cal.App.4th 986, 995 [94 Cal.Rptr.2d 643], internal citation and footnote omitted.)

- "[T]he relevant inquiry is whether a serious health condition made [plaintiff] unable to do her job at defendant's hospital, not her ability to do her essential job functions 'generally' … ." (*Lonicki v. Sutter Health Central* (2008) 43 Cal.4th 201, 214 [74 Cal.Rptr.3d 570, 180 P.3d 321].)

Secondary Sources

8 Witkin, Summary of California Law (11th ed. 2017) Constitutional Law, §§ 1060, 1061

Chin et al., California Practice Guide: Employment Litigation, Ch. 12-A, *Overview Of Key Statutes,* ¶ 12:32 (The Rutter Group)

Chin et al., California Practice Guide: Employment Litigation, Ch. 12-B*, Family And Medical Leave Act (FMLA)/California Family Rights Act (CFRA),* ¶¶ 12:146, 12:390, 12:421, 12:857, 12:1201, 12:1300 (The Rutter Group)

1 Wrongful Employment Termination Practice (Cont.Ed.Bar 2d ed.) Other Employee Rights Statutes, §§ 4.18–4.20

1 Wilcox, California Employment Law, Ch. 8, *Leaves of Absence*, §§ 8.25[2], 8.30[1], [2], 8.31[2], 8.32 (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 115, *Civil Rights: Employment Discrimination*, § 115.32[6][a], [b] (Matthew Bender)

California Civil Practice: Employment Litigation § 5:40 (Thomson Reuters)

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2601. Eligibility

To show that [he/she/*nonbinary pronoun*] was eligible for [family care/medical] leave, [*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 defendant*] employed 50 or more employees within 75 miles of [*name of plaintiff*]'s workplace;**~~**That [*name of defendant*] directly employed five or more employees for a wage or salary;]**

3. **That at the time [*name of plaintiff*] [requested/began] leave, [he/she/*nonbinary pronoun*] had more than 12 months of service with [*name of defendant*] and had worked at least 1,250 hours for [*name of defendant*] during the previous 12 months; and**

4. **That at the time [*name of plaintiff*] [requested/began] leave [*name of plaintiff*] had taken no more than 12 weeks of family care or medical leave in the 12-month period [*define period*].**

New September 2003; Revised June 2011, May 2021

The CFRA applies to employers who directly employ five or more employees (and to the state and any political or civil subdivision of the state and cities of any size). (Gov. Code, § 12945.2(b)(3).) Include element 2 only if there is a factual dispute about the number of people the defendant directly employed for a wage or salary.

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Sources and Authority

- Right to Family Care and Medical Leave. Government Code section 12945.2(a).
- ~~"Employer" Defined. Government Code section 12945.2(c)(2).~~
- ~~Limitation on Scope. Government Code section 12945.2(b).~~

Secondary Sources

Chin et al., California Practice Guide: Employment Litigation, Ch. 12-A, *Overview of Key Leave Laws*, ¶ 12:32 (The Rutter Group)

Chin et al., California Practice Guide: Employment Litigation, Ch. 12-B, *Family and Medical Leave Act (FMLA)/California Family Rights Act (CFRA)*, ¶¶, 12:87, 12:125, 12:390, 12:421, 12:1201, 12:1300 (The Rutter Group)

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11 California Forms of Pleading and Practice, Ch. 115, *Civil Rights: Employment Discrimination*, § 115.32[6][c] (Matthew Bender)

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2602. Reasonable Notice by Employee of Need for CFRA Leave

For notice of the need for leave to be reasonable, [*name of plaintiff*] must make [*name of defendant*] aware that [he/she/*nonbinary pronoun*] needs [family care/medical] leave, when the leave will begin, and how long it is expected to last. The notice can be verbal or in writing and does not need to mention the law. An employer cannot require disclosure of any medical diagnosis, but should ask for information necessary to decide whether the employee is entitled to leave.

New September 2003; Revised May 2021

Sources and Authority

- Reasonable Notice Required. Government Code section 12945.2~~(h)~~(g).
- Additional Requirements. Government Code section 12945.2(h)–(j).
- CFRA Notice Requirements. ~~Title 2~~ California Code of Regulations, title 2, section 11091.
- "In enacting CFRA 'the Legislature expressly delegated to [California's Fair Employment and Housing] Commission the task of "adopt[ing] a regulation specifying the elements of a reasonable request" for CFRA leave.' The regulation adopted by the commission provides, in part, to request CFRA leave an employee 'shall provide at least verbal notice sufficient to make the employer aware that the employee needs CFRA leave, and the anticipated timing and duration of the leave. The employee need not expressly assert rights under CFRA or FMLA, or even mention CFRA or FMLA, to meet the notice requirement; however, the employee must state the reason the leave is needed, such as, for example, the expected birth of a child or for medical treatment. … The employer should inquire further of the employee if necessary to determine whether the employee is requesting CFRA leave and to obtain necessary information concerning the leave (i.e., commencement date, expected duration, and other permissible information).' The regulation further provides, 'Under all circumstances, it is the employer's responsibility to designate leave, paid or unpaid, as CFRA or CFRA/FMLA qualifying, based on information provided by the employee … , and to give notice of the designation to the employee.' " (*Soria v. Univision Radio Los Angeles, Inc.* (2016) 5 Cal.App.5th 570, 602–603 [210 Cal.Rptr.3d 59], quoting Cal. Code Regs., tit. 2, § 11091(a)(1), internal citations omitted.)
- "The employee must 'provide at least verbal notice sufficient to make the employer aware that the employee needs CFRA-qualifying leave, and the anticipated timing and duration of the leave. The employer in turn is charged with responding to the leave request "as soon as practicable and in any event no later than ten calendar days after receiving the request.' " (*Olofsson v. Mission Linen Supply* (2012) 211 Cal.App.4th 1236, 1241 [150 Cal.Rptr.3d 446], internal citations omitted.)
- "[Cal. Code Regs., tit. 2, § 11091(a)(1)] appears to presume the existence of circumstances in which an employee is able to provide an employer with notice of the need for leave. Indeed, the regulation permits employers to 'require that employees provide at least 30 days' advance notice before CFRA

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leave is to begin *if the need for the leave is foreseeable* based on an expected birth, placement for adoption or foster care, or planned medical treatment for a serious health condition of the employee or a family member.' However, the regulations provide that this 30-day general rule is inapplicable when the need for medical leave is not foreseeable: 'If 30 days' notice is not practicable, such as because of a lack of knowledge of approximately when leave will be required to begin, a change in circumstances, or a medical emergency, *notice must be given as soon as practicable*.' Further, '[a]n employer shall not deny a CFRA leave, the need for which is an emergency or is otherwise unforeseeable, on the basis that the employee did not provide advance notice of the need for the leave, *so long as the employee provided notice to the employer as soon as practicable*.' " (*Bareno v. San Diego Community College Dist.* (2017) 7 Cal.App.5th 546, 563 [212 Cal.Rptr.3d 682], original italics; see Cal. Code Regs.. tit. 2, § 11091(a)(2) ~~(a)~~(4).)

- "When viewed as a whole, it is clear that CFRA and its implementing regulations envision a scheme in which employees are provided reasonable time within which to request leave for a qualifying purpose, and to provide the supporting certification to demonstrate that the requested leave was, in fact, for a qualifying purpose, particularly when the need for leave is not foreseeable or when circumstances have changed subsequent to an initial request for leave." (*Bareno, supra,* 7 Cal.App.5th at p. 565.)

- "[A]n employer bears a burden, under CFRA, to inquire further if an employee presents the employer with a CFRA-qualifying reason for requesting leave." (*Moore v. Regents of University of California* (2016) 248 Cal.App.4th 216, 249 [206 Cal.Rptr.3d 841].)

- "Whether notice is sufficient under CFRA is a question of fact." (*Soria, supra,* 5 Cal.App.5th at p. 603.)

- "That plaintiff called in sick was, by itself, insufficient to put [defendant] on notice that he needed CFRA leave for a serious health condition." (*Avila v. Continental Airlines, Inc.* (2008) 165 Cal.App.4th 1237, 1255 [82 Cal.Rptr.3d 440].)

- "The regulations thus expressly contemplate that an employee may be out on CFRA-protected leave *prior* to providing medical certification regarding that leave." (*Bareno, supra,* 7 Cal.App.5th at p. 568, original italics; see Cal. Code Regs., tit. 2, § 11091(b)(3).)

- "CFRA establishes that a certification issued by an employee's health provider is sufficient if it includes '[t]he date on which the serious health condition commenced'; '[t]he probable duration of the condition'; and '[a] statement that, due to the serious health condition, the employee is unable to perform the function of his or her position.' " (*Bareno, supra,* 7 Cal.App.5th at pp. 569–570.)

- "[A]n employee need not share his or her medical condition with the employer, and a certification need not include such information to be considered sufficient: 'For medical leave for the employee's own serious health condition, this certification *need not,* but may, at the employee's option, identify the serious health condition involved.' " (*Bareno, supra,* 7 Cal.App.5th at p. 570, fn. 18, original italics.)

- "Under the CFRA regulations, the employer has a duty to respond to the leave request within 10 days,

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but clearly and for good reason the law does not specify that the response must be tantamount to approval or denial." (*Olofsson, supra,* 211 Cal.App.4th at p. 1249.)

Secondary Sources

Chin et al., California Practice Guide: Employment Litigation, Ch. 12-B, *Family And Medical Leave Act (FMLA)/California Family Rights Act (CFRA),* ¶¶ 12:852–12:853, 12:855–12:857 (The Rutter Group)

11 California Forms of Pleading and Practice, Ch. 115, *Civil Rights: Employment Discrimination*, § 115.32[6][e] (Matthew Bender)

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2603. "Comparable Job" Explained

"Comparable job" means a job that is the same or close to the employee's former job in responsibilities, duties, pay, benefits, working conditions, and schedule. It must be at the same location or a ~~nearby worksite~~ similar geographic location.

New September 2003; Revised May 2021

Directions for Use

Give this instruction only if comparable job is an issue under the plaintiff's CFRA claim.

Sources and Authority

- Comparable Position. Government Code section 12945.2~~(c)(4)~~(b)(5).

- Comparable Position. Cal. Code Regs., tit. 2, § 11087(g).

- "[W]hile we will accord great weight and respect to the [Fair Employment and Housing Commission]'s regulations that apply to the necessity for leave, along with any applicable federal FMLA regulations that the Commission incorporated by reference, we still retain ultimate responsibility for construing [CFRA]." (*Pang v. Beverly Hospital, Inc.* (2000) 79 Cal.App.4th 986, 994-995 [94 Cal.Rptr.2d 643].)

Secondary Sources

Chin et al., California Practice Guide: Employment Litigation, Ch. 12-B, *Family and Medical Leave Act (FMLA)/California Family Rights Act (CFRA)*, ¶¶ 12:1138–12:1139, 12:1150, 12:1154–12:1156 (The Rutter Group)

1 Wilcox, California Employment Law, Ch. 8, *Leaves of Absence*, § 8.30[1]–[2] (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 115, *Civil Rights: Employment Discrimination*, § 115.32[6][h] (Matthew Bender)

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2613. Affirmative Defense—Key Employee

Revoked May 2021. See California Family Rights Act (Sen. Bill 1383; Stats. 2020, ch. 86), amending, repealing, and adding Government Code section 12945.2.

[*Name of defendant*] claims that [he/she/*nonbinary pronoun*/it] was not required to return [*name of plaintiff*] to work in the same or a comparable job following [family care/medical] leave because [he/she/*nonbinary pronoun*] was employed in a highly paid, essential position. To succeed on this claim, [*name of defendant*] must prove all of the following:

> **1. That [*name of plaintiff*] was a salaried employee and among the highest paid 10 percent of [*name of defendant*]'s employees [employed within 75 miles of [his/her/*nonbinary pronoun*] workplace];**
>
> **2. That [*name of defendant*]'s refusal to return [*name of plaintiff*] to work in the same or a comparable job was necessary to prevent severe economic injury to [*name of defendant*]'s [business] operations; [and]**
>
> **3. That when [*name of defendant*] decided that [*name of plaintiff*] would not be allowed to return to [his/her/*nonbinary pronoun*] job or a comparable position, [*name of defendant*] notified [*name of plaintiff*] of that decision; [and]**
>
> **[4. That [*name of defendant*] gave [*name of plaintiff*] a reasonable opportunity to return to work after notifying [*name of plaintiff*] of [his/her/*nonbinary pronoun*/its] decision.]**

New September 2003

Directions for Use

Element 4 is applicable only when the employer notifies the employee of its decision to refuse to reinstate plaintiff after family care or medical leave has commenced.

Sources and Authority

- Limitation on Right to Reinstatement: Key Employee. Government Code section 12945.2(r).

Secondary Sources

Chin et al., California Practice Guide: Employment Litigation, Ch. 12-B, *Family and Medical Leave Act (FMLA)/California Family Rights Act (CFRA)*, ¶¶ 12:1167–12:1169, 12:1171, 12:1174 (The Rutter Group)

1 Wilcox, California Employment Law, Ch. 8, *Leaves of Absence*, § 8.30[5] (Matthew Bender)

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2620. CFRA Rights Retaliation—Essential Factual Elements (Gov. Code, § 12945.2~~(*l*)~~(k))

[*Name of plaintiff*] claims that [*name of defendant*] retaliated against [him/her/*nonbinary pronoun*] for [[requesting/taking] [family care/medical] leave/[*other protected activity*]]. To establish this claim, [*name of plaintiff*] must prove all of the following:

1. **That [*name of plaintiff*] was eligible for [family care/medical] leave;**

2. **That [*name of plaintiff*] [[requested/took] [family care/medical] leave/[*other protected activity*]];**

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

4. **That [*name of plaintiff*]'s [[request for/taking of] [family care/medical] leave/[*other protected activity*]] was a substantial motivating reason for [discharging/[*other adverse employment action*]] [him/her/*nonbinary pronoun*];**

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

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

New September 2003; Revised December 2012, June 2013, May 2018, May 2021

Directions for Use

Use this instruction in cases of alleged retaliation for an employee's exercise of rights granted by the California Family Rights Act (CFRA). (See Gov. Code, § 12945.2~~(*l*)~~(k).) The instruction assumes that the defendant is plaintiff's present or former employer, and therefore it must be modified if the defendant is a prospective employer or other person.

~~This instruction may also be given for a claim of retaliation under the New Parent Leave Act.~~ The "other protected activity" option of the opening paragraph and elements 2 and 4 could be providing information or testimony in an inquiry or a proceeding related to CFRA rights. (Gov. Code, § 12945.2(k). ~~may be used to assert what is protected from retaliation under this act. (See Gov. Code, § 12945.6(g), (h).) In element 1, use "new parent" leave instead of "family care" or "medical."~~

~~Both statutes~~ The CFRA reaches a broad range of adverse employment actions short of actual discharge. (See Gov. Code, §~~§~~ 12945.2~~(*l*)~~(k)~~, 12945.6(g)~~.) Element 3 may be modified to allege constructive discharge or adverse acts other than actual discharge. See CACI No. 2509, *"Adverse Employment Action" Explained*, and CACI No. 2510, *"Constructive Discharge" Explained*, for instructions under the Fair Employment and Housing Act that may be adapted for use with this instruction.

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Element 4 uses the term "substantial motivating reason" to express both intent and causation between the employee's exercise of a CFRA right and the adverse employment action. "Substantial motivating reason" has been held to be the appropriate standard under the discrimination prohibitions of the Fair Employment and Housing Act to address the possibility of both discriminatory and nondiscriminatory motives. (See *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 this standard applies to CFRA retaliation cases has not been addressed by the courts.

Sources and Authority

- Retaliation Prohibited Under California Family Rights Act. Government Code section 12945.2~~(l)~~(k), ~~(t)~~(q).

- ~~Retaliation Prohibited Under New Parent Leave Act. Government Code section 12945.6(g), (h).~~

- Retaliation Prohibited Under Fair Employment and Housing Act. Government Code section 12940(h).

- "The elements of a cause of action for retaliation in violation of CFRA are " '(1) the defendant was an employer covered by CFRA; (2) the plaintiff was an employee eligible to take CFRA [leave]; (3) the plaintiff exercised her right to take leave for a qualifying CFRA purpose; and (4) the plaintiff suffered an adverse employment action, such as termination, fine, or suspension, because of her exercise of her right to CFRA [leave]." ' " (*Soria v. Univision Radio Los Angeles, Inc.* (2016) 5 Cal.App.5th 570, 604 [210 Cal.Rptr.3d 59].)

- "Similar to causes of action under FEHA, the *McDonnell Douglas* burden shifting analysis applies to retaliation claims under CFRA." (*Moore v. Regents of University of California* (2016) 248 Cal.App.4th 216, 248 [206 Cal.Rptr.3d 841].)

- " 'When an adverse employment action "follows hard on the heels of protected activity, the timing often is strongly suggestive of retaliation." ' " (*Bareno v. San Diego Community College Dist.* (2017) 7 Cal.App.5th 546, 571 [212 Cal.Rptr.3d 682].)

Secondary Sources

8 Witkin, Summary of California Law (11th ed. 2017) Constitutional Law, §§ 1058–1060

Chin et al., California Practice Guide: Employment Litigation, Ch. 12-B*, Family And Medical Leave Act (FMLA)/California Family Rights Act (CFRA),* ¶¶ 12:1300, 12:1301 (The Rutter Group)

1 Wrongful Employment Termination Practice (Cont.Ed.Bar 2d ed.) Other Employee Rights Statutes, §§ 4.18–4.20

1 Wilcox, California Employment Law, Ch. 8, *Leaves of Absence*, § 8.32 (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 115, *Civil Rights: Employment Discrimination*, §

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115.37[3][c] (Matthew Bender)

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2630. Violation of New Parent Leave Act—Essential Factual Elements (Gov. Code, § 12945.6)

Revoked May 2021. See California Family Rights Act (Sen. Bill 1383; Stats. 2020, ch. 86), amending and repealing Government Code section 12945.6.

[*Name of plaintiff*] claims that [*name of defendant*] refused to [grant [him/her/*nonbinary pronoun*] parental leave/return [him/her/*nonbinary pronoun*] to the same or a comparable job when [his/her/*nonbinary pronoun*] parental leave ended]. To establish this claim, [*name of plaintiff*] must prove all of the following:

1. **That [*name of defendant*] employs at least 20 employees within 75 miles of the site where [*name of plaintiff*] worked;**

2. **That [*name of plaintiff*] worked for [*name of defendant*] for more than a year, and for at least 1,250 hours during the previous 12 months;**

3. **That [*name of plaintiff*] requested leave to bond with a new child within one year of the child's [birth/adoption/foster care placement];**

4. **That [*name of defendant*] refused to [grant [*name of plaintiff*]'s request for parental leave/return [*name of plaintiff*] to the same or a comparable job when [his/her/*nonbinary pronoun*] parental leave ended];**

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

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

[If before the leave began, [*name of defendant*] did not guarantee [*name of plaintiff*] employment in the same or a comparable position on return from the leave, then [*name of defendant*] is considered to have refused to grant [*name of plaintiff*]'s request for parental leave.]

New May 2018

Directions for Use

The New Parent Leave Act (Gov. Code, § 12945.6) extends some of the rights provided to employees by the California Family Rights Act (CFRA; Gov. Code, § 12945.2) to employees of employers with 20 or more employees. (See Gov. Code, § 12945.6(a)(1); cf. Gov. Code, § 12945.2(b) [CFRA applies to employers with 50 or more employees].). The New Parent Leave Act allows employees to take up to 12 weeks of parental leave to bond with a new child within one year of the child's birth, adoption, or foster care placement. The act also requires the employer, before the leave begins, to guarantee employment in the same or a comparable position on the termination of the leave. (Gov. Code, § 12945.6(a)(1).) The employer must maintain the employee's health care coverage during the leave. (Gov. Code, §

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~~12945.6(a)(2).)~~

~~Elements 1 and 2 set forth the eligibility requirements for employer and employee under the act. (See Gov. Code, § 12945.6(a)(1).) These elements may be omitted if there are no disputed facts over the act's applicability to the parties.~~

~~For an instruction that can be modified for use for a claim of retaliation under the New Parent Leave Act (see Gov. Code, § 12945.6(h)), see CACI No. 2620, *CFRA Rights Retaliation—Essential Factual Elements*.~~

~~Sources and Authority~~

- ~~New Parent Leave Act. Government Code section 12945.6.~~

~~Secondary Sources~~

~~8 Witkin, Summary of California Law (11th ed. 2017) Constitutional Law, §§ 1060, 1061~~

~~Chin et al., California Practice Guide: Employment Litigation, Ch. 12-A, *Overview Of Key Statutes*, ¶ 12:32 (The Rutter Group)~~

~~Chin et al., California Practice Guide: Employment Litigation, Ch. 12-B, *Family And Medical Leave Act (FMLA)/California Family Rights Act (CFRA)*, ¶¶ 12:146, 12:390, 12:421, 12:852–12:857, 12:1201, 12:1300 (The Rutter Group)~~

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

~~3 Wilcox, California Employment Law, Ch. 43, *Civil Actions Under Equal Employment Opportunity Laws*, § 43.01[10][g][i] (Matthew Bender)~~

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

~~California Civil Practice: Employment Litigation § 5:40 (Thomson Reuters)~~

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2705. Affirmative Defense to Labor Code, Unemployment Insurance Code, and Wage Order Violations—Plaintiff Was Not Defendant's Employee (Lab. Code, § ~~2750.3~~ 2775)

[*Name of defendant*] **claims that [he/she/***nonbinary pronoun***/it] is not liable for [***specify violation(s) of the Labor Code, the Unemployment Insurance Code, and/or wage order(s), e.g., failure to pay minimum wage***] because [***name of plaintiff***] was not [his/her/***nonbinary pronoun***/its] employee, but rather an independent contractor. To establish this defense, [***name of defendant***] must prove all of the following:**

a. **That [***name of plaintiff***] is under the terms of the contract and in fact free from the control and direction of [***name of defendant***] in connection with the performance of the work that [***name of plaintiff***] was hired to do;**

b. **That [***name of plaintiff***] performs work for [***name of defendant***] that is outside the usual course of [***name of defendant***]'s business; and**

c. **That [***name of plaintiff***] is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed for [***name of defendant***].**

New November 2018; Revised May 2020, May 2021

Directions for Use

This instruction may be needed if there is a dispute as to whether the defendant was the plaintiff's employer for purposes of a claim covered by the Labor Code, the Unemployment Insurance Code, or a California wage order. (Lab. Code, § ~~2750.3~~ 2775; see *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903, 913–914, & fn. 3 [232 Cal.Rptr.3d 1, 416 P.3d 1].) The defendant has the burden to prove independent contractor status. (Lab. Code, § ~~2750.3~~ 2775(b)(1); *Dynamex, supra,* 4 Cal.5th at p. 916.) This instruction may not be appropriate if the defendant claims independent contractor status based on Proposition 22 (Bus. & Prof. Code, § 7451) or one of the many exceptions listed in Labor Code sections ~~2750.3(b)–(h)~~2776–2784. For an instruction on employment status under the *Borello* test, see CACI No. 3704, *Existence of "Employee" Status Disputed.*

The rule on employment status has been that if there are disputed facts, it's for the jury to decide whether one is an employee or an independent contractor. (*Espejo v. The Copley Press, Inc.* (2017) 13 Cal.App.5th 329, 342 [221 Cal.Rptr.3d 1].) However, on undisputed facts, the court may decide that the relationship is employment as a matter of law. (*Dynamex, supra,* 4 Cal.5th at p. 963.) The court may address the three factors in any order when making this determination, and if the defendant's undisputed facts fail to prove any one of them, the inquiry ends; the plaintiff is an employee as a matter of law and the question does not reach the jury.

If, however, there is no failure of proof as to any of the three factors without resolution of disputed facts,

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the determination of whether the plaintiff was defendant's employee should be resolved by the jury using this instruction. If the court concludes based on undisputed facts that the defendant *has* proved one or more of the three factors, that factor (or factors) should be removed from the jury's consideration and the jury should only consider whether the employer has proven those factors that cannot be determined without further factfinding.

Sources and Authority

- Worker Status: Employees ~~and Independent Contractors~~. Labor Code section ~~2750.3~~ 2775.

- "The ABC test presumptively considers all workers to be employees, and permits workers to be classified as independent contractors only if the hiring business demonstrates that the worker in question satisfies each of three conditions: (a) that the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of the work and in fact; and (b) that the worker performs work that is outside the usual course of the hiring entity's business; and (c) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed." (*Dynamex, supra,* 4 Cal.5th at pp. 955–956.)

- "A business that hires any individual to provide services to it can always be said to knowingly 'suffer or permit' such an individual to work for the business. A literal application of the suffer or permit to work standard, therefore, would bring within its reach even those individuals hired by a business--including unquestionably independent plumbers, electricians, architects, sole practitioner attorneys, and the like--who provide only occasional services unrelated to a company's primary line of business and who have traditionally been viewed as working in their own independent business." (*Dynamex, supra,* 4 Cal.5th at pp. 948–949.)

- "A multifactor standard--like the economic reality standard or the *Borello* standard--that calls for consideration of all potentially relevant factual distinctions in different employment arrangements on a case-by-case, totality-of-the-circumstances basis has its advantages. A number of state courts, administrative agencies and academic commentators have observed, however, that such a wide-ranging and flexible test for evaluating whether a worker should be considered an employee or an independent contractor has significant disadvantages, particularly when applied in the wage and hour context." (*Dynamex, supra,* 4 Cal.5th at p. 954.)

- "Thus, on the one hand, when a retail store hires an outside plumber to repair a leak in a bathroom on its premises or hires an outside electrician to install a new electrical line, the services of the plumber or electrician are not part of the store's usual course of business and the store would not reasonably be seen as having suffered or permitted the plumber or electrician to provide services to it as an employee. On the other hand, when a clothing manufacturing company hires work-at-home seamstresses to make dresses from cloth and patterns supplied by the company that will thereafter be sold by the company, or when a bakery hires cake decorators to work on a regular basis on its custom-designed cakes, the workers are part of the hiring entity's usual business operation and the hiring business can reasonably be viewed as having suffered or permitted the

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workers to provide services as employees. In the latter settings, the workers' role within the hiring entity's usual business operations is more like that of an employee than that of an independent contractor.” (*Dynamex, supra,* 4 Cal.5th at pp. 959–960, internal citations omitted.)

- “A company that labels as independent contractors a class of workers who are not engaged in an independently established business in order to enable the company to obtain the economic advantages that flow from avoiding the financial obligations that a wage order imposes on employers unquestionably violates the fundamental purposes of the wage order. The fact that a company has not prohibited or prevented a worker from engaging in such a business is not sufficient to establish that the worker has independently made the decision to go into business for himself or herself.” (*Dynamex, supra,* 4 Cal.5th at p. 962.)

- “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 and, as such, must be affirmed on appeal if supported by substantial evidence. The question is one of law only if the evidence is undisputed. ‘The label placed by the parties on their relationship is not dispositive, and subterfuges are not countenanced.’ ” (*Espejo, supra,* 13 Cal.App.5th at pp. 342–343.)

- “It bears emphasis that in order to establish that a worker is an independent contractor under the ABC standard, the hiring entity is required to establish the existence of each of the three parts of the ABC standard. Furthermore, inasmuch as a hiring entity's failure to satisfy any one of the three parts itself establishes that the worker should be treated as an employee for purposes of the wage order, *a court* is free to consider the separate parts of the ABC standard in whatever order it chooses. Because in many cases it may be easier and clearer for *a court* to determine whether or not part B or part C of the ABC standard has been satisfied than for *the court* to resolve questions regarding the nature or degree of a worker's freedom from the hiring entity's control for purposes of part A of the standard, the significant advantages of the ABC standard--in terms of increased clarity and consistency--will often be best served by first considering one or both of the latter two parts of the standard in resolving the employee or independent contractor question.” (*Dynamex, supra,* 4 Cal.5th at p. 963, italics added.)

- “An entity that controls the business enterprise may be an employer even if it did not ‘directly hire, fire or supervise’ the employees. Multiple entities may be employers where they ‘control different aspects of the employment relationship.’ ‘This occurs, for example, when one entity (such as a temporary employment agency) hires and pays a worker, and another entity supervises the work.’ ‘Supervision of the work, in the specific sense of exercising control over how services are performed, is properly viewed as one of the “working conditions” … .’ ” (*Castaneda v. Ensign Group, Inc.* (2014) 229 Cal.App.4th 1015, 1019 [177 Cal.Rptr.3d 581].)

Secondary Sources

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

Chin, et al., California Practice Guide: Employment Litigation, Ch. 11-B, Coverage and Exemptions—In

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General, ¶ 11:115 et seq. (The Rutter Group)

Wilcox, California Employment Law, Ch. 250, *Employment Law: Wage and Hour Disputes*, § 250.13 (Matthew Bender)

21 California Forms of Pleading and Practice, Ch. 1, *Overview of Wage and Hour Laws*, § 1.04 (Matthew Bender)

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3050. Retaliation—Essential Factual Elements (42 U.S.C. § 1983)

[*Name of plaintiff*] claims that [*name of defendant*] retaliated against [him/her/*nonbinary pronoun*] for exercising a constitutional right. [By [*specify conduct*], [*name of plaintiff*] was exercising [his/her/*nonbinary pronoun*] constitutionally protected right of [*insert right, e.g., privacy*].] To establish retaliation, [*name of plaintiff*] must prove all of the following:

1. **[That [he/she/*nonbinary pronoun*] was engaged in a constitutionally protected activity[, which I will determine after you, the jury, decide certain facts];]**

[2. That [*name of defendant*] did not have probable cause for the [arrest/prosecution][, which I will determine after you, the jury, decide certain facts];]

23. That [*name of defendant*] [*specify alleged retaliatory conduct*];

34. That [*name of defendant*]'s acts were motivated, at least in part, by [*name of plaintiff*]'s constitutionally protected activity was a substantial or motivating factor for [*name of defendant*]'s acts;

45. That [*name of defendant*]'s acts would likely have deterred a person of ordinary firmness from engaging in that protected activity; and

56. That [*name of plaintiff*] was harmed as a result of [*name of defendant*]'s conduct.

[The law requires that the trial judge, rather than the jury, decide if [*name of plaintiff*] has proven [element 1] [and] [element 2] above.

[But before I can do so, you must decide whether [*name of plaintiff*] has proven the following:

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

[*or*]

[The court has determined that Bby [*specify conduct*], [*name of plaintiff*] was exercising [his/her/*nonbinary pronoun*] constitutionally protected right of [*insert right, e.g., privacy*].]

[*or*]

[The court has determined that [*name of defendant*] did not have probable cause for the [arrest/prosecution].]

New June 2010; Revised December 2010, Renumbered from CACI No. 3016 and Revised December 2012; Revised June 2013, May 2020, November 2020, May 2021

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Directions for Use

Give this instruction along with CACI No. 3000, *Violation of Federal Civil Rights—In General—Essential Factual Elements*, if the claimed civil rights violation is retaliation for exercising constitutionally protected rights, including exercise of free speech rights as a private citizen. For a claim by a public employee who alleges that they suffered an adverse employment action in retaliation for their speech on an issue of public concern, see CACI No. 3053, *Retaliation for Exercise of Free Speech Rights—Public Employee—Essential Factual Elements*.

The retaliation should be alleged generally in element 1 of CACI No. 3000. The constitutionally protected activity refers back to the right alleged to have been violated in element 3 of CACI No. 3000.

Element 2 applies only in retaliatory arrest and prosecution cases. Omit element 2 if the retaliation alleged is not based on an arrest or prosecution.

Whether plaintiff was engaged in a constitutionally protected activity and, if applicable, whether probable cause for arrest or prosecution was absent (or whether the no-probable-cause requirement does not apply because of an exception) will usually have been resolved by the court as a matter of law before trial. (See *Nieves v. Bartlett* (2019) __ U.S. __ [139 S.Ct. 1715, 1724, 1727, 204 L.Ed.2d 1] [requiring a plaintiff to plead and prove the absence of probable cause for arrest but stating an exception to the no-probable-cause requirement "when a plaintiff presents objective evidence that he was arrested when otherwise similarly situated individuals not engaged in the same sort of protected speech had not been"].) ~~If so, include the optional statement in the opening paragraph and omit element 1.~~ If there is a question of fact that the jury must resolve ~~with regard to the constitutionally protected activity~~, include the optional bracketed language with element 1 and/or element 2, and give the first bracketed option of the final paragraph, ~~include element 1 and give the last part of the instruction~~identifying with specificity all disputed factual issues the jury must resolve for the court to determine the contested element or elements. If the court has determined element 1 or element 2, omit the optional bracketed language of the element and instruct the jury that the element has been determined as a matter of law by giving the second and/or third optional sentence(s) in the final paragraph.

~~Element 2 only applies in retaliatory arrest and prosecution cases. Omit element 2 if the retaliation alleged is not based on an arrest or prosecution.~~ If there are contested issues of fact regarding the exception to the no-probable-cause requirement, this instruction may be augmented to include the specific factual findings necessary for the court to determine whether the exception applies.

The plaintiff must show that the defendant acted with a retaliatory motive and that the motive was a "but for" cause of the plaintiff's injury, i.e., that the retaliatory action would not have been taken absent the retaliatory motive. (See *Nieves, supra,* 139 S.Ct. at p. 1722.) A plaintiff may prove causal connection with circumstantial evidence but establishing a causal connection between a defendant's animus and a plaintiff's injury will depend on the type of retaliation case. (*Id.* at pp. 1722–1723 [distinguishing straightforward cases from more complex cases].)

If the defendant claims that the response to the plaintiff's constitutionally protected activity was prompted by a legitimate reason, the defendant may attempt to persuade the jury that the defendant would have taken the same action even in the absence of the alleged impermissible, retaliatory reason. See

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CACI No. 3055, *Rebuttal of Retaliatory Motive.* (*Id.* at p. 1727.)
There is perhaps some uncertainty with regard to the requirement in element 3 that the retaliatory act may be motivated, *in part*, by the protected activity. While the element is so stated in *Tichinin v. City of Morgan Hill* (2009) 177 Cal.App.4th 1049, 1062–1063 [99 Cal.Rptr.3d 661], the court also was of the view that the defendant may avoid liability by proving that, notwithstanding a retaliatory motive, it also had legitimate reasons for its actions and would have taken the same steps for those reasons alone. (*Id.* at pp. 1086–1087, finding persuasive *Greenwich Citizens Comm. v. Counties of Warren & Washington Indus. Dev. Agency* (2d Cir. 1996) 77 F.3d 26, 30.) Therefore, the fact that retaliation may have motivated the defendant only in part may not always be sufficient for liability. In the Ninth Circuit, there is authority for both a "but for" and a "substantial or motivating factor" standard. (Compare *Karl v. City of Mountlake Terrace* (9th Cir. 2012) 678 F.3d 1062, 1072 [defendant may show that: (1) the adverse employment action was based on protected and unprotected activities; and (2) defendant would have taken the adverse action if the proper reason alone had existed] with *Blair v. Bethel Sch. Dist.* (9th Cir. 2010) 608 F.3d 540, 543 [third element expressed as "there was a substantial causal relationship between the constitutionally protected activity and the adverse action"].)

Sources and Authority

- "Where, as here, the plaintiff claims retaliation for exercising a constitutional right, the majority of federal courts require the plaintiff to prove that (1) he or she was engaged in constitutionally protected activity, (2) the defendant's retaliatory action caused the plaintiff to suffer an injury that would likely deter a person of ordinary firmness from engaging in that protected activity, and (3) the retaliatory action was motivated, at least in part, by the plaintiff's protected activity." (*Tichinin v. City of Morgan Hill* (2009) 177 Cal.App.4th 1049, 1062–1063 [99 Cal.Rptr.3d 661], *supra,* 177 Cal.App.4th at pp. 1062–1063.)

- "[A]ctions that are otherwise proper and lawful may nevertheless be actionable if they are taken in retaliation against a person for exercising his or her constitutional rights." (*Tichinin, supra,* 177 Cal.App.4th at p. 1084.)

- "The plaintiff must show that the retaliation was a substantial or motivating factor behind the [arrest], and, if that showing is made, the defendant can prevail only by showing that the [arrest] would have been initiated without respect to retaliation." (*Nieves, supra,* 139 S.Ct. at p. 1725, internal citation omitted.)

- "To state a First Amendment retaliation claim, a plaintiff must plausibly allege 'that (1) he was engaged in a constitutionally protected activity, (2) the defendant's actions would chill a person of ordinary firmness from continuing to engage in the protected activity and (3) the protected activity was a substantial or motivating factor in the defendant's conduct.' To ultimately 'prevail on such a claim, a plaintiff must establish a "causal connection" between the government defendant's "retaliatory animus" and the plaintiff's "subsequent injury." Specifically, a plaintiff must show that the defendant's retaliatory animus was 'a "but-for" cause, meaning that the adverse action against the plaintiff would not have been taken absent the retaliatory motive.' " (*Capp v. County of San Diego* (9th Cir. 2019) 940 F.3d 1046, 1053, internal citations omitted.)

- "For a number of retaliation claims, establishing the causal connection between a defendant's

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animus and a plaintiff's injury is straightforward. Indeed, some of our cases in the public employment context 'have simply taken the evidence of the motive and the discharge as sufficient for a circumstantial demonstration that the one caused the other,' shifting the burden to the defendant to show he would have taken the challenged action even without the impermissible motive. But the consideration of causation is not so straightforward in other types of retaliation cases." *Nieves, supra,* 139 S.Ct. at pp. 1722–1723.)

- "To demonstrate retaliation in violation of the First Amendment, [the plaintiff] must ultimately prove first that [defendant] took action that 'would chill or silence a person of ordinary firmness from future First Amendment activities.' " (*Skoog v. County of Clackamas* (9th Cir. 2006) 469 F.3d 1221, 1231–1232, footnote and citation omitted.)

- "The plaintiff pressing a retaliatory arrest claim must plead and prove the absence of probable cause for the arrest." (*Nieves, supra,* 139 S.Ct. at p. 1724.)

- "[W]e conclude that the no-probable-cause requirement should not apply when a plaintiff presents objective evidence that he was arrested when otherwise similarly situated individuals not engaged in the same sort of protected speech had not been." (*Nieves, supra,* 139 S.Ct. at p. 1727.)

- "[T]he evidence of [plaintiff]'s alleged injuries, if believed, is sufficient to support a finding that the retaliatory action against him would deter a person of ordinary firmness from exercising his or her First Amendment rights. [¶] [Defendant] argues that plaintiff did not suffer any injury—i.e., [defendant]'s action did not chill [plaintiff]'s exercise of his rights—because he continued to litigate against [defendant]. However, that [plaintiff] persevered despite [defendant]'s action is not determinative. To reiterate, in the context of a claim of retaliation, the question is not whether the plaintiff was actually deterred but whether the defendant's actions would have deterred a person of ordinary firmness." (*Tichinin, supra,* 177 Cal.App.4th at p. 1082.)

- "Intent to inhibit speech, which 'is an element of the [retaliation] claim,' can be demonstrated either through direct or circumstantial evidence." (*Mendocino Envtl. Ctr. v. Mendocino County* (9th Cir. 1999) 192 F.3d 1283, 1300–1301, internal citation omitted.)

- "[Defendant] may avoid liability if he shows that a 'final decision maker's independent investigation and termination decision, responding to a biased subordinate's initial report of misconduct, . . . negate[s] any causal link' between his retaliatory motive and the adverse employment action. This is because a final decision maker's wholly independent investigation and decision establish that 'the employee's protected speech was not a but-for cause of the adverse employment action.' " (*Karl v. City of Mountlake Terrace* (9th Cir. 2012) 678 F.3d 1062, 1072–1073~~, *supra,* 678 F.3d at pp. 1072–1073~~, internal citation omitted.)

- "While the scope, severity and consequences of [their] actions are belittled by defendants, we have cautioned that 'a government act of retaliation need not be severe . . . [nor] be of a certain kind' to qualify as an adverse action." (*Marez v. Bassett* (9th Cir. 2010), 595 F.3d 1068, 1075.)

Secondary Sources

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8 Witkin, Summary of California Law (11th ed. 2017) Constitutional Law, §§ 894, 895, 978

2 Wilcox, California Employment Law, Ch. 40, *Overview of Equal Opportunity Laws*, § 40.26 (Matthew Bender)

3 Civil Rights Actions, Ch. 17, *Discrimination in Federally Assisted Programs*, ¶ 17.24B (Matthew Bender)

4 Civil Rights Actions, Ch. 21A, *Employment Discrimination Based on Race, Color, Religion, Sex, or National Origin*, ¶ 21.22(1)(f) (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 115, *Civil Rights: Employment Discrimination*, § 115.37 (Matthew Bender)

10 California Points and Authorities, Ch. 100, *Employer and Employee: Wrongful Termination and Discipline*, § 100.42 (Matthew Bender)

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3055. Rebuttal of Retaliatory Motive

[*Name of defendant***] claims that [he/she/***nonbinary pronoun***/it] [***specify alleged retaliatory conduct, e.g., arrested plaintiff***] because [***specify nonretaliatory reason for the adverse action***].**

If [*name of plaintiff***] proves that retaliation was a substantial or motivating factor for [***name of defendant***]'s [***specify alleged retaliatory conduct***], you must then consider if [***name of defendant***] would have taken the same action even in the absence of [***name of plaintiff***]'s constitutionally protected activity.**

To succeed on this defense, [*name of defendant***] must prove that [he/she/***nonbinary pronoun***/it] would have [***specify alleged retaliatory conduct, e.g., arrested plaintiff***] on the basis of [***specify the defendant's stated nonretaliatory reason for the adverse action***], regardless of retaliation for [***name of plaintiff***]'s [***specify constitutionally protected activity***].**

New May 2021

Directions for Use

This instruction sets forth a defendant's response to a plaintiff's claim of retaliation. See CACI No. 3050, *Retaliation—Essential Factual Elements*. The defendant bears the burden of proving the nonretaliatory reason for the allegedly retaliatory conduct. (See *Nieves v. Bartlett* (2019) __ U.S. __ [139 S.Ct. 1715, 1725, 204 L.Ed.2d 1].

In retaliatory arrest and prosecution cases, use this instruction only if the court has determined the absence of probable cause or that an exception to the no-probable-cause requirement applies because the plaintiff presented objective evidence that otherwise similarly situated individuals not engaged in the same sort of constitutionally protected activity were not arrested or prosecuted. (See *Nieves, supra,* 139 S.Ct. at p. 1727 [stating exception to no-probable-cause requirement when otherwise similarly situated individuals were not arrested for the same conduct].)

Sources and Authority

- "[I]f the plaintiff establishes the absence of probable cause, 'then the *Mt. Healthy* test governs: The plaintiff must show that the retaliation was a substantial or motivating factor behind the [arrest], and, if that showing is made, the defendant can prevail only by showing that the [arrest] would have been initiated without respect to retaliation.' " (*Nieves, supra,* 139 S.Ct. at p. 1725.)

Secondary Sources

4 Witkin & Epstein, California Criminal Law (4th ed. 2020) § 367

5 Witkin, Summary of California Law (11th ed. 2017) Torts, § 511

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8 Witkin, Summary of California Law (11th ed. 2017) Constitutional Law, §§ 894–895

2 Wilcox, California Employment Law, Ch. 40, *Overview of Equal Opportunity Laws*, § 40.26 (Matthew Bender)

3 Civil Rights Actions, Ch. 10, *Deprivation of Rights Under Color of State Law—Law Enforcement and Prosecution*, ¶ 10.15 (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 113, *Civil Rights: The Post-Civil War Civil Rights Statutes*, § 113.14 (Matthew Bender)

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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

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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. 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, § ~~2750.3~~ 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].)

A different test for the existence of "independent contractor" status applies to app-based rideshare and delivery drivers. (Bus. & Prof. Code, § 7451.)

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

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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

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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

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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

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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)

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3904A. Present Cash Value

[*Name of defendant*] claims that [*name of plaintiff*]'s future [economic] damages for [loss of earnings/future medical expenses/lost profits/[*insert other economic damages*]], if any, should be reduced to present cash value. This is because money received now will, through investment, grow to a larger amount in the future. Present cash value is the amount of money that, if reasonably invested today, will provide [*name of plaintiff*] with the amount of [his/her/*nonbinary pronoun*/its] future damages.

[[*Name of defendant*] must prove, through expert testimony, the present cash value of [*name of plaintiff*]'s future [economic] damages. It is up to you to decide the present cash value of [*name of plaintiff's*] future [economic] damages in light of all the evidence presented by the parties.]

[If you decide that [*name of plaintiff*]'s harm includes future [economic] damages for [loss of earnings/future medical expenses/lost profits/[*insert other economic damages*]], then you must reduce the amount of those future damages to their present cash value. You must [use the interest rate of __ percent/ [and] [*specify other stipulated information*]] as agreed to by the parties in determining the present cash value of future [economic] damages.]

New September 2003; Revised April 2008; Revised and renumbered from former CACI No. 3904 December 2010; Revised June 2013, May 2020, May 2021

Directions for Use

Give this instruction if future economic damages are sought and there is evidence from which a reduction to present value can be made. Include "economic" if future noneconomic damages are also sought. Future noneconomic damages are not reduced to present cash value because the amount that the jury is to award should already encompass the idea of today's dollars for tomorrow's loss. (See *Salgado v. County of L.A.* (1998) 19 Cal.4th 629, 646–647 [80 Cal.Rptr.2d 46, 967 P.2d 585]; CACI No. 3905A, *Physical Pain, Mental Suffering, and Emotional Distress (Noneconomic Damage)*.)

The defendant bears the burden of presenting expert evidence of an appropriate present value calculation, including the appropriate discount rate, to enable the fact finder to make a rational determination on the issue. (*Lewis v. Ukran* (2019) 36 Cal.App.5th 886, 896 [248 Cal.Rptr.3d 839].) Unless there is a stipulation, expert testimony is required to accurately establish present values for future economic losses. (*Id.*) Give the last bracketed paragraph if there has been a stipulation as to the interest rate to use or any other facts related to present cash value, and omit the second paragraph to account for the parties' stipulation.

The parties may stipulate to use present-value tables to assist the jury in making its determination of present cash value. Tables, worksheets, and an instruction on how to use them are provided in CACI No. 3904B, *Use of Present-Value Tables*.

Sources and Authority

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- "The present value of a gross award of future damages is that sum of money prudently invested at the time of judgment which will return, over the period the future damages are incurred, the gross amount of the award. 'The concept of present value recognizes that money received after a given period is worth less than the same amount received today. This is the case in part because money received today can be used to generate additional value in the interim.' The present value of an award of future damages will vary depending on the gross amount of the award, and the timing and amount of the individual payments." (*Holt v. Regents of the University of California* (1999) 73 Cal.App.4th 871, 878 [86 Cal.Rptr.2d 752], internal citations omitted.)

- "[I]n a contested case, a party (typically a defendant) seeking to reduce an award of future damages to present value bears the burden of proving an appropriate method of doing so, including an appropriate discount rate. A party (typically a plaintiff) who seeks an upward adjustment of a future damages award to account for inflation bears the burden of proving an appropriate method of doing so, including an appropriate inflation rate. This aligns the burdens of proof with the parties' respective economic interests. A trier of fact should not reduce damages to present value, or adjust for inflation, absent such evidence or a stipulation of the parties." (*Lewis, supra,* 36 Cal.App.5th at p. 889.)

- "[W]e hold a defendant seeking reduction to present value of a sum awarded for future damages has the burden of presenting expert evidence of an appropriate present value calculation, including the appropriate discount rate, to enable the fact finder to make a rational determination on the issue." (*Lewis, supra,* 36 Cal.App.5th at p. 896.)

- "Exact actuarial computation should result in a lump-sum, present-value award which if prudently invested will provide the beneficiaries with an investment return allowing them to regularly withdraw matching support money so that, by reinvesting the surplus earnings during the earlier years of the expected support period, they may maintain the anticipated future support level throughout the period and, upon the last withdrawal, have depleted both principal and interest." (*Canavin v. Pacific Southwest Airlines* (1983) 148 Cal.App.3d 512, 521 [196 Cal.Rptr. 82].)

- "[I]t is not a violation of the plaintiff's jury trial right for the court to submit only the issue of the gross amount of future economic damages to the jury, with the timing of periodic payments—and hence their present value—to be set by the court in the exercise of its sound discretion." (*Salgado, supra,* 19 Cal.4th at p. 649, internal citation omitted.)

- "Neither party introduced any evidence of compounding or discounting factors, including how to calculate an appropriate rate of return throughout the relevant years. Under such circumstances, the 'jury would have been put to sheer speculation in determining ... "the present sum of money which ... will pay to the plaintiff ... the equivalent of his [future economic] loss ... . " ' " (*Schiernbeck v. Haight* (1992) 7 Cal.App.4th 869, 877 [9 Cal.Rptr.2d 716], internal citations omitted.)

Secondary Sources

6 Witkin, Summary of California Law (11th ed. 2017) Torts, § 1719

California Tort Damages (Cont.Ed.Bar) Bodily Injury, § 1.96

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4 Levy et al., California Torts, Ch. 52, *Medical Expenses and Economic Loss*, §§ 52.21–52.22 (Matthew Bender)

15 California Forms of Pleading and Practice, Ch. 177, *Damages*, § 177.46 (Matthew Bender)

1 California Civil Practice: Torts § 5:22 (Thomson Reuters)

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4302. Termination for Failure to Pay Rent—Essential Factual Elements

[*Name of plaintiff*] claims that [*name of defendant*] [and [*name of subtenant*], a subtenant of [*name of defendant*],] no longer [has/have] the right to occupy the property because [*name of defendant*] has failed to pay the rent. To establish this claim, [*name of plaintiff*] must prove all of the following:

1. **That [*name of plaintiff*] [owns/leases] the property;**

2. **That [*name of plaintiff*] [rented/subleased] the property to [*name of defendant*];**

3. **That under the [lease/rental agreement/sublease], [*name of defendant*] was required to pay rent in the amount of $[*specify amount*] per [*specify period, e.g., month*];**

4. **That [*name of plaintiff*] properly gave [*name of defendant*] three days' written notice to pay the rent or vacate the property;**

5. **That as of [*date of three-day notice*], at least the amount stated in the three-day notice was due;**

6. **That [*name of defendant*] did not pay the amount stated in the notice within three days after [service/receipt] of the notice; and**

7. **That [*name of defendant*] [or subtenant [*name of subtenant*]] is still occupying the property.**

New August 2007; Revised June 2011, December 2011, December 2013, May 2021

Directions for Use

Modify this instruction as necessary for rent due on a residential tenancy between March 1, 2020, and June 30, 2021, including, but not limited to, substitution of the term "fifteen business days" wherever the term "three days" appears in the essential factual elements. (See COVID-19 Tenant Relief Act, Code Civ. Proc., § 1179.01 et seq.; Stats. 2021, ch. 2 (Sen. Bill 91), Code Civ. Proc., § 1179.02.)

Include the bracketed references to a subtenancy in the opening paragraph and in element 7 if persons other than the tenant-defendant are occupying the premises.

If the plaintiff is the landlord or owner, select "owns" in element 1, "rented" in element 2, and either "lease" or "rental agreement" in element 3. Commercial documents are usually called "leases" while residential documents are often called "rental agreements." Select the term that is used on the written document. If the plaintiff is a tenant seeking to recover possession from a

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subtenant, select "leases" in element 1, "subleased" in element 2, and "sublease" in element 3. (Code Civ. Proc., § 1161(3).)

Defective service may be waived if defendant admits receipt of notice. (See *Valov v. Tank* (1985) 168 Cal.App.3d 867, 876 [214 Cal.Rptr. 546].) However, if the fact of service is contested, compliance with the statutory requirements must be shown. (*Palm Property Investments, LLC v. Yadegar* (2011) 194 Cal.App.4th 1419, 1425 [123 Cal.Rptr.3d 816].) Therefore, this instruction does not provide an option for the jury to determine whether or not defective service was waived if there was actual receipt.

If a commercial lease requires service by a particular method, actual receipt by the tenant will not cure the landlord's failure to comply with the service requirements of the lease. (*Culver Center Partners East #1, L.P. v. Baja Fresh Westlake Village, Inc.* (2010) 185 Cal.App.4th 744, 752 [110 Cal.Rptr.3d 833].) Whether the same rule applies to a residential lease that specifies a method of service has not yet been decided.

If the lease specifies a time period for notice other than the three-day period, substitute that time period in elements 4, 5, and 6, provided that it is not less than three days.

There is a conflict in the case law with respect to when the three-day period begins if substituted service is used. Compare *Davidson v. Quinn* (1982) 138 Cal.App.3d Supp. 9, 14 [188 Cal.Rptr. 421] [tenant must be given three days to pay, so period does not begin until actual notice is received] with *Walters v. Meyers* (1990) 226 Cal.App.3d Supp. 15, 19–20 [277 Cal.Rptr. 316] [notice is effective when posted and mailed]. This conflict is accounted for in element 6.

See CACI No. 4303, *Sufficiency and Service of Notice of Termination for Failure to Pay Rent*, for an instruction regarding proper notice.

Sources and Authority

- Unlawful Detainer for Tenant's Default in Rent Payments. Code of Civil Procedure section 1161(2).

- COVID-19 Tenant Relief Act. Code of Civil Procedure section 1179.01 et seq.

- Senate Bill 91 (Stats. 2021, ch. 2). Code of Civil Procedure section 1179.02 et seq.

- Tenant Protection Act of 2019. Civil Code section 1946.2.

- Conversion to Civil Action if Possession No Longer at Issue. Civil Code section 1952.3(a).

- "[M]ere failure of a tenant to quit the premises during the three-day notice period does not necessarily justify an unlawful detainer action. If a tenant vacates the premises and surrenders possession to the landlord prior to the complaint being filed, then no action for unlawful detainer will lie even though the premises were not surrendered during the notice

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period. This is true because the purpose of an unlawful detainer action is to recover possession of the premises for the landlord. Since an action in unlawful detainer involves a forfeiture of the tenant's right to possession, one of the matters that must be pleaded and proved for unlawful detainer is that the tenant remains in possession of the premises. Obviously this cannot be established where the tenant has surrendered the premises to landlord prior to the filing of the complaint. In such a situation the landlord's remedy is an action for damages and rent." (*Briggs v. Electronic Memories & Magnetics Corp.* (1975) 53 Cal.App.3d 900, 905–906 [126 Cal.Rptr. 34], footnote and internal citations omitted.)

- "Proper service on the lessee of a valid three-day notice to pay rent or quit is an essential prerequisite to a judgment declaring a lessor's right to possession under section 1161, subdivision 2. A lessor must allege and prove proper service of the requisite notice. Absent evidence the requisite notice was properly served pursuant to section 1162, no judgment for possession can be obtained." (*Liebovich v. Shahrokhkhany* (1997) 56 Cal.App.4th 511, 513 [65 Cal.Rptr.2d 457], internal citations omitted.)

- "Section 1162 does not authorize service of a three-day notice to pay rent or quit by mail delivery alone, certified or otherwise. It provides for service by: personal delivery; leaving a copy with a person of suitable age and discretion at the renter's residence or usual place of business *and* sending a copy through the mail to the tenant's *residence*; or posting *and* delivery of a copy to a person there residing, if one can be found, *and* sending a copy through the mail. Strict compliance with the statute is required." (*Liebovich, supra,* 56 Cal.App.4th at p. 516, original italics, internal citations omitted.)

- "In the cases discussed … , a finding of proper service turned on a party's acknowledgment or admission the notice in question was in fact received. In the present case, defendant denied, in his answer and at trial, that he had ever received the three-day notice. Because there was no admission of receipt in this case, service by certified mail did not establish or amount to personal delivery. Further, there was no evidence of compliance with any of the three methods of service of a three-day notice to pay rent or quit provided in [Code of Civil Procedure] section 1162. Therefore, the judgment must be reversed." (*Liebovich, supra,* 56 Cal.App.4th at p. 518.)

- "[Code of Civil Procedure section 1162 specifies] three ways in which service of the three-day notice may be effected on a residential tenant: … . As explained in *Liebovich, supra,* … , '[w]hen the fact of service is contested, compliance with one of these methods must be shown or the judgment must be reversed.' " (*Palm Property Investments, LLC, supra,* 194 Cal.App.4th at p. 1425.)

- "If the tenant gives up possession of the property after the commencement of an unlawful detainer proceeding, the action becomes an ordinary one for damages." (*Fish Construction Co. v. Moselle Coach Works, Inc.* (1983) 148 Cal.App.3d 654, 658 [196 Cal.Rptr. 174].)

Secondary Sources

12 Witkin, Summary of California Law (11th ed. 2017) Real Property, §§ 753, 756, 758

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1 California Landlord-Tenant Practice (Cont.Ed.Bar 2d ed.) §§ 8.35–8.45

1 California Eviction Defense Manual (Cont.Ed.Bar 2d ed.) §§ 5.2, 6.17–6.37

Friedman et al., California Practice Guide: Landlord-Tenant, Ch. 5-G, *Eviction Controls*, ¶¶ 5:224.3, 5:277.1 et seq. (The Rutter Group)

Friedman et al., California Practice Guide: Landlord-Tenant, Ch. 7-C, *Bases For Terminating Tenancy*, ¶ 7:96 (The Rutter Group)

7 California Real Estate Law and Practice, Ch. 210, *Unlawful Detainer*, §§ 210.21, 210.22 (Matthew Bender)

Matthew Bender Practice Guide: California Landlord-Tenant Litigation, Ch. 5, *Unlawful Detainer*, 5.07

29 California Forms of Pleading and Practice, Ch. 333, *Landlord and Tenant: Eviction Actions*, § 333.10 (Matthew Bender)

Miller & Starr, California Real Estate 4th, § 19:200 (Thomson Reuters)

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4303. Sufficiency and Service of Notice of Termination for Failure to Pay Rent

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[*Name of plaintiff*] contends that [he/she/*nonbinary pronoun*/it] properly gave [*name of defendant*] three days' notice to pay the rent or vacate the property. To prove that the notice contained the required information and was properly given, [*name of plaintiff*] must prove all of the following:

1. **That the notice informed [*name of defendant*] in writing that [he/she/*nonbinary pronoun*/it] must pay the amount due within three days or vacate the property;**

2. **That the notice stated [no more than/a reasonable estimate of] the amount due, and the name, telephone number, and address of the person to whom the amount should be paid, and**

   [*Use if payment was to be made personally***:**

   the usual days and hours that the person would be available to receive the payment; and]

   [*or: Use if payment was to be made into a bank account:*

   the number of an account in a bank located within five miles of the rental property into which the payment could be made, and the name and street address of the bank; and]

   [*or: Use if an electronic funds transfer procedure had been previously established:*

   that payment could be made by electronic funds transfer; and]

3. **That the notice was given to [*name of defendant*] at least three days before [*insert date on which action was filed*].**

[The three-day notice period excludes Saturdays, Sundays, and judicial holidays, but otherwise begins the day after the notice to pay the rent or vacate the property was given to [*name of defendant*].]

Notice was properly given if [*select one or more of the following manners of service:***]**

[the notice was delivered to [*name of defendant*] personally[./; or]]

[[*name of defendant*] was not at [home or work/the commercial rental property], and the notice was left with a responsible person at [[*name of defendant*]'s residence or place of work/the commercial property], and a copy was also mailed in an envelope addressed to [*name of defendant*] at [[his/her/*nonbinary pronoun*] residence/the commercial property]. In this case, notice is considered given on the date the second notice was [received by [*name of defendant*]/placed in the mail][./; or]]

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[*for a residential tenancy:*

[*name of defendant*]'s place of residence and work could not be discovered, or a responsible person could not be found at either place, and (1) the notice was posted on the property in a place where it would easily be noticed, (2) a copy was given to a person living there if someone could be found, and (3) a copy was also mailed to the address of the rented property in an envelope addressed to [*name of defendant*]. In this case, notice is considered given on the date the second notice was [received by [*name of defendant*]/placed in the mail].]

[*or for a commercial tenancy:*

at the time of attempted service, a responsible person could not be found at the commercial rental property through the exercise of reasonable diligence, and (1) the notice was posted on the property in a place where it would easily be noticed, and (2) a copy was also mailed to the address of the commercial property in an envelope addressed to [*name of defendant*]. In this case, notice is considered given on the date the second notice was [received by [*name of defendant*]/placed in the mail].]

[A notice stating a reasonable estimate of the amount of rent due that is within 20 percent of the amount actually due is reasonable unless [*name of defendant*] proves that it was not reasonable. In determining the reasonableness of the estimate, you may consider whether calculating the amount of rent required information primarily within the knowledge of [*name of defendant*] and whether [*name of defendant*] accurately furnished that information to [*name of plaintiff*].]

New August 2007; Revised December 2010; June 2011, December 2011, November 2019, May 2020, May 2021

Directions for Use

Modify this instruction as necessary for rent due on a residential tenancy between March 1, 2020, and June 30, 2021, including, but not limited to, substitution of the term "fifteen business days" wherever the term "three days" appears in the essential factual elements. (See COVID-19 Tenant Relief Act, Code Civ. Proc., § 1179.01 et seq.; Stats. 2021, ch. 2 (Sen. Bill 91), Code Civ. Proc., §§ 1179.02, 1179.03, 1179.04.)

Use the reasonable-estimate option in the first sentence of element 2 and include the final paragraph only in cases involving commercial leases. (Code Civ. Proc., § 1161.1(a); see also Code Civ. Proc., § 1161.1(e) [presumption that if amount found to be due is within 20 percent of amount stated in notice, then estimate was reasonable].)

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In element 2, select the applicable manner in which the notice specifies that payment is to be made; directly to the landlord, into a bank account, or by electronic funds transfer. (Code Civ. Proc., § 1161(2).)

Select the manner of service used: personal service, substituted service by leaving the notice at the defendant's home or place of work or at the commercial rental property, or substituted service by posting on the property. (See Code Civ. Proc., § 1162.)

There is a conflict in the case law with respect to when the three-day period begins if substituted service is used. Compare *Davidson v. Quinn* (1982) 138 Cal.App.3d Supp. 9, 14 [188 Cal.Rptr. 421] [tenant must be given three days to pay, so period does not begin until actual notice is received] with *Walters v. Meyers* (1990) 226 Cal.App.3d Supp. 15, 19–20 [277 Cal.Rptr. 316] [notice is effective when posted and mailed]. This conflict is accounted for in the second, third, and fourth bracketed options for the manner of service.

Read the paragraph that follows the elements if any of the three days of the notice period fell on a Saturday, Sunday, or judicial holiday. (See Code Civ. Proc., § 1161(2).) Judicial holidays are shown on the judicial branch website, www.courts.ca.gov/holidays.htm.

If a lease specifies a time period for giving notice other than the three-day period, substitute that time period for three days throughout, provided that it is not less than three days.

Defective service may be waived if defendant admits receipt of notice. (See *Valov v. Tank* (1985) 168 Cal.App.3d 867, 876 [214 Cal.Rptr. 546].) However, if the fact of service is contested, compliance with the statutory requirements must be shown. (*Palm Property Investments, LLC v. Yadegar* (2011) 194 Cal.App.4th 1419, 1425 [123 Cal.Rptr.3d 816].) Therefore, this instruction does not provide an option for the jury to determine whether or not defective service was waived if there was actual receipt.

If a commercial lease requires service by a particular method, actual receipt by the tenant will not cure the landlord's failure to comply with the service requirements of the lease. (*Culver Center Partners East #1, L.P. v. Baja Fresh Westlake Village, Inc.* (2010) 185 Cal.App.4th 744, 752 [110 Cal.Rptr.3d 833].) Whether the same rule applies to a residential lease that specifies a method of service has not yet been decided.

The Tenant Protection Act of 2019 and/or local ordinances may impose additional notice requirements for the termination of a rental agreement. (See Civ. Code, § 1946.2(a) ["just cause" requirement for termination of certain residential tenancies], (b) ["just cause" defined].) This instruction should be modified accordingly if applicable.

Sources and Authority

- Conclusive Presumption of Receipt of Rent Sent to Address Provided in Notice. Code of Civil Procedure section 1161(2).

- COVID-19 Tenant Relief Act. Code of Civil Procedure section 1179.01 et seq.

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- Senate Bill 91 (Stats. 2021, ch. 2). Code of Civil Procedure section 1179.02 et seq.

- Commercial Tenancy: Estimate of Rent Due in Notice. Code of Civil Procedure 1161.1.

- Manner of Service of Notice. Code of Civil Procedure section 1162.

- Tenant Protection Act of 2019. Civil Code section 1946.2.

- " '[P]roper service on the lessee of a valid three-day notice to pay rent or quit is an essential prerequisite to a judgment declaring a lessor's right to possession under section 1161, subdivision 2. [Citations.]' [Citation.] 'A lessor must allege and prove proper service of the requisite notice. [Citations.] Absent evidence the requisite notice was properly served pursuant to section 1162, no judgment for possession can be obtained. [Citations.]' " (*Borsuk v. Appellate Division of Superior Court* (2015) 242 Cal.App.4th 607, 611 [195 Cal.Rptr.3d 581].)

- "A three-day notice must contain 'the amount which is due.' A notice which demands rent in excess of the amount due does not satisfy this requirement. This rule ensures that a landlord will not be entitled to regain possession in an unlawful detainer action unless the tenant has had the opportunity to pay the delinquent rent." (*Bevill v. Zoura* (1994) 27 Cal.App.4th 694, 697 [32 Cal.Rptr.2d 635], internal citations and footnote omitted.)

- "As compared to service of summons, by which the court acquires personal jurisdiction, service of the three-day notice is merely an element of an unlawful detainer cause of action that must be alleged and proven for the landlord to acquire possession." (*Borsuk, supra,* 242 Cal.App.4th at pp. 612–613.)

- "[W]e do not agree that a proper notice may not include anything other than technical rent. It is true that subdivision 2 of Code of Civil Procedure section 1161 relates to a default in the payment of rent. However, the subdivision refers to the 'lease or agreement under which the property is held' and requires the notice state 'the amount which is due.' The language is not 'the amount of rent which is due' or 'the rent which is due.' We think the statutory language is sufficiently broad to encompass any sums due under the lease or agreement under which the property is held." (*Canal-Randolph Anaheim, Inc. v. Wilkoski* (1978) 78 Cal.App.3d 477, 492 [144 Cal.Rptr. 474].)

- "[T]he service and notice provisions in the unlawful detainer statutes and [Code of Civil Procedure] section 1013 are mutually exclusive, and thus, section 1013 does not extend the notice periods that are a prerequisite to filing an unlawful detainer action." (*Losornio v. Motta* (1998) 67 Cal.App.4th 110, 112 [78 Cal.Rptr.2d 799].)

- "Section 1162 does not authorize service of a three-day notice to pay rent or quit by mail delivery alone, certified or otherwise. It provides for service by: personal delivery; leaving a copy with a person of suitable age and discretion at the renter's residence or usual place of business and sending a copy through the mail to the tenant's *residence*; or posting *and*

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delivery of a copy to a person there residing, if one can be found, *and* sending a copy through the mail. Strict compliance with the statute is required." (*Liebovich v. Shahrokhkhany* (1997) 56 Cal.App.4th 511, 516 [65 Cal.Rptr.2d 457], original italics, internal citation omitted.)

- "We … hold that service made in accordance with section 1162, subdivision 3, as applied to section 1161, subdivision 2, must be effected in such a manner as will give a tenant the three days of written notice required by the Legislature in which he may cure his default in the payment of rent." (*Davidson, supra,* 138 Cal.App.3d Supp. at p. 14.)

- "We … hold that service of the three-day notice by posting and mailing is effective on the date the notice is posted and mailed." (*Walters, supra,* 226 Cal.App.3d Supp. at p. 20.)

- "An unlawful detainer action based on failure to pay rent must be preceded by a three-day notice to the tenant to pay rent or quit the premises. Failure to state the exact amount of rent due in the notice is fatal to the subsequent unlawful detainer action." (*Lynch & Freytag v. Cooper* (1990) 218 Cal.App.3d 603, 606, fn. 2 [267 Cal.Rptr. 189], internal citations omitted.)

- "[D]efendant admitted in his answer that he 'ultimately received [the relevant] notice' but 'affirmatively allege[d] that he was not properly and legally served' with a valid notice. We find that, under the circumstances of this case, the defendant waived any defect in the challenged service of the notice under section 1162, subdivision 1." (*Valov, supra,* 168 Cal.App.3d at p. 876.)

- "In the cases discussed … , a finding of proper service turned on a party's acknowledgment or admission the notice in question was in fact received. In the present case, defendant denied, in his answer and at trial, that he had ever received the three-day notice. Because there was no admission of receipt in this case, service by certified mail did not establish or amount to personal delivery. Further, there was no evidence of compliance with any of the three methods of service of a three-day notice to pay rent or quit provided in section 1162. Therefore, the judgment must be reversed." (*Liebovich, supra,* 56 Cal.App.4th at p. 518.)

- "[Code of Civil Procedure section 1162 specifies] three ways in which service of the three-day notice may be effected on a residential tenant: … . As explained in *Liebovich, supra,* … , '[w]hen the fact of service is contested, compliance with one of these methods must be shown or the judgment must be reversed.' " (*Palm Property Investments, LLC, supra,* 194 Cal.App.4th at p. 1425.)

- "In commercial leases the landlord and commercial tenant may lawfully agree to notice procedures that differ from those provided in the statutory provisions governing unlawful detainer." (*Culver Center Partners East #1, L.P., supra,* 185 Cal.App.4th at p.750.)

- "[E]ven if some policy rationale might support such a waiver/forfeiture [by actual receipt] rule in the residential lease context, there is no basis to apply it in the commercial context where matters of service and waiver are prescribed in the lease itself. Nothing in the parties' lease suggests actual receipt of a notice to quit results in the waiver or forfeiture of [tenant]'s

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right to service accomplished in the manner prescribed. To the contrary, the lease specifically provides, 'No covenant, term or condition, or breach' of the lease 'shall be deemed waived except if expressly waived in a written instrument executed by the waiving party.' Although [tenant's agent] acted on the notice to quit by attempting to deliver the rent check, neither her fortuitous receipt of the notice nor her actions in response to it constitutes an express waiver of the notice provisions in the lease." (*Culver Center Partners East #1, L.P., supra,* 185 Cal.App.4th at p. 752, internal citation omitted.)

Secondary Sources

12 Witkin, Summary of California Law (11th ed. 2017) Real Property, §§ 753, 755–758, 760

1 California Landlord-Tenant Practice (Cont.Ed.Bar 2d ed.) §§ 8.26–8.68

1 California Eviction Defense Manual (Cont.Ed.Bar 2d ed.) §§ 5.2, 6.10–6.30, Ch. 8

Friedman et al., California Practice Guide: Landlord-Tenant, Ch. 5-G, *Eviction Controls*, ¶¶ 5:224.3, 5:277.1 et seq. (The Rutter Group)

Friedman et al., California Practice Guide: Landlord-Tenant, Ch. 7-C, *Bases For Terminating Tenancy*, ¶¶ 7:98.10, 7:327 (The Rutter Group)

7 California Real Estate Law and Practice, Ch. 200, *Termination: Causes and Procedures*, § 200.21 (Matthew Bender)

7 California Real Estate Law and Practice, Ch. 210, *Unlawful Detainer*, §§ 210.21, 210.22 (Matthew Bender)

Matthew Bender Practice Guide: California Landlord-Tenant Litigation, Ch. 5, *Unlawful Detainer*, 5.11, 5.12

29 California Forms of Pleading and Practice, Ch. 332, *Landlord and Tenant: The Tenancy*, § 332.28 (Matthew Bender)

29 California Forms of Pleading and Practice, Ch. 333, *Landlord and Tenant: Eviction Actions*, § 333.11 (Matthew Bender)

23 California Points and Authorities, Ch. 236, *Unlawful Detainer*, §§ 236.13, 236.13A (Matthew Bender)

Miller & Starr, California Real Estate 4th, §§ 34:183-34:187 (Thomson Reuters)

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4308. Termination for Nuisance or Unlawful Use—Essential Factual Elements (Code Civ. Proc., § 1161(4))

[*Name of plaintiff*] **claims that** [*name of defendant*] **[and [***name of subtenant***], a subtenant of [***name of defendant***],] no longer [has/have] the right to occupy the property because [***name of defendant***] has [created a nuisance on the property/ [or] used the property for an illegal purpose]. To establish this claim, [***name of plaintiff***] must prove all of the following:**

1. **That [***name of plaintiff***] [owns/leases] the property;**
2. **That [***name of plaintiff***] [rented/subleased] the property to [***name of defendant***];**
3. **That [***name of defendant***] [***include one or both of the following:***]**

   created a nuisance on the property by [*specify conduct constituting nuisance***];**

   [or]

   used the property for an illegal purpose by [*specify illegal activity***];**
4. **That [***name of plaintiff***] properly gave [***name of defendant***] [and [***name of subtenant***]] three days' written notice to vacate the property; and**
5. **That [***name of defendant***] [or subtenant [***name of subtenant***]] is still occupying the property.**

[A "nuisance" is anything that [[is harmful to health]/ [or] [is indecent or offensive to the senses of an ordinary person with normal sensibilities]/ [or] [is an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property]/ [or] [unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway]/[or] [is [a/an] [fire hazard/*specify other potentially dangerous condition***] to the property]].]**

New December 2010; Revised June 2011, December 2011, May 2020, November 2020, May 2021

Directions for Use

Include the bracketed references to a subtenancy in the opening paragraph and in elements 4 and 5 if persons other than the tenant-defendant are in occupancy of the premises.

If the plaintiff is the landlord or owner, select "owns" in element 1, and "rented" in element 2.

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If the plaintiff is a tenant seeking to recover possession from a subtenant, include the bracketed language on subtenancy in the opening paragraph and in element 4, "leases" in element 1, and "subleased" in element 2. (Code Civ. Proc., § 1161(3).)

Include the optional last paragraph defining a nuisance if there is a factual dispute and the jury will determine whether the defendant's conduct constituted a nuisance. Omit any bracketed definitional options that are not at issue in the case. For additional authorities on nuisance, see the Sources and Authority to CACI No. 2020, *Public Nuisance—Essential Factual Elements*, and CACI No. 2021, *Private Nuisance—Essential Factual Elements*. Certain conduct or statutory violations that constitute or create a rebuttable presumption of a nuisance are set forth in Code of Civil Procedure section 1161(4). If applicable, insert the appropriate ground in element 3. (See also Health & Saf. Code, § 17922 [adopting various uniform housing and building codes].)

If the grounds for termination involve assigning, subletting, or committing waste in violation of a condition or covenant of the lease, give CACI No. 4304, *Termination for Violation of Terms of Lease/Agreement—Essential Factual Elements*. (See Code Civ. Proc., § 1161(4).)

Defective service may be waived if defendant admits timely receipt of notice. (See *Valov v. Tank* (1985) 168 Cal.App.3d 867, 876 [214 Cal.Rptr. 546].) However, if the fact of service is contested, compliance with the statutory requirements must be shown. (*Palm Property Investments, LLC v. Yadegar* (2011) 194 Cal.App.4th 1419, 1425 [123 Cal.Rptr.3d 816].) Therefore, this instruction does not provide an option for the jury to determine whether or not defective service was waived if there was actual receipt.

If a commercial lease requires service by a particular method, actual receipt by the tenant will not cure the landlord's failure to comply with the service requirements of the lease. (*Culver Center Partners East #1, L.P. v. Baja Fresh Westlake Village, Inc.* (2010) 185 Cal.App.4th 744, 752 [110 Cal.Rptr.3d 833].) Whether the same rule applies to a residential lease that specifies a method of service has not yet been decided.

If the lease specifies a time period for notice other than the three-day period, substitute that time period in element 4.

For nuisance or unlawful use, the landlord is entitled to possession on service of a three-day notice to quit; no opportunity to cure by performance is required. (Code Civ. Proc., § 1161(4).)

The Tenant Protection Act of 2019, local law, and/or federal law may impose additional requirements for the termination of a rental agreement based on nuisance or illegal activity. (See Civ. Code, § 1946.2(a) ["just cause" requirement for termination of certain residential tenancies], (b) ["just cause" defined], (b)(1)(C) [nuisance is "just cause"], (b)(1)(I) [unlawful purpose is "just cause"].) For example, if the property in question is subject to a local rent control or rent stabilization ordinance, the ordinance may provide further definitions or conditions under which a landlord has just cause to evict a tenant for nuisance or unlawful use of the property. This instruction should be modified accordingly if applicable.

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See CACI No. 4309, *Sufficiency and Service of Notice of Termination for Nuisance or Unlawful Use*, for an instruction on proper written notice.

See also CACI No. 312, *Substantial Performance*.

Sources and Authority

- Unlawful Detainer Based on Tenant Conduct. Code of Civil Procedure section 1161(4).
- Tenant Protection Act of 2019. Civil Code section 1946.2.
- "Nuisance" Defined. Civil Code section 3479.
- "Plaintiff argues, however, that he should be allowed to amend his complaint so as to bring his action under section 1161, subdivision 4. The notice thereunder required need not be framed in the alternative. However, plaintiff has at no time, either by his three days' notice or in any of his pleadings, suggested that defendant had assigned the lease or sublet the property, or had committed waste contrary to the conditions or covenants of the lease, or maintained a nuisance on the premises, or had used the property for an unlawful purpose. Plaintiff had three opportunities to state a cause of action; if he was of the belief that facts existed which brought his case under 1161, subdivision 4, it would have been a simple matter to allege such facts, but this he did not do." (*Hinman v. Wagnon* (1959) 172 Cal.App.2d 24, 29 [341 P.2d 749].)
- "The basic concept underlying the law of nuisance is that one should use one's own property so as not to injure the property of another. An action for private nuisance is designed to redress a substantial and unreasonable invasion of one's interest in the free use and enjoyment of one's property. ' "The invasion may be intentional and unreasonable. It may be unintentional but caused by negligent or reckless conduct; or it may result from an abnormally dangerous activity for which there is strict liability. On any of these bases the defendant may be liable. On the other hand, the invasion may be intentional but reasonable; or it may be entirely accidental and not fall within any of the categories mentioned above." ' Determination whether something, not deemed a nuisance per se, is a nuisance in fact in a particular instance, is a question for the trier of fact." (*Hellman v. La Cumbre Golf & Country Club* (1992) 6 Cal.App.4th 1224, 1230–1231 [8 Cal.Rptr.2d 293], internal citations omitted.)
- "Proper service on the lessee of a valid three-day notice to pay rent or quit is an essential prerequisite to a judgment declaring a lessor's right to possession under section 1161, subdivision 2. A lessor must allege and prove proper service of the requisite notice. Absent evidence the requisite notice was properly served pursuant to section 1162, no judgment for possession can be obtained." (*Liebovich v. Shahrokhkhany* (1997) 56 Cal.App.4th 511, 513 [65 Cal.Rptr.2d 457], internal citations omitted.)
- "Section 1162 does not authorize service of a three-day notice to pay rent or quit by mail delivery alone, certified or otherwise. It provides for service by: personal delivery; leaving a

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copy with a person of suitable age and discretion at the renter's residence or usual place of business *and* sending a copy through the mail to the tenant's *residence*; or posting *and* delivery of a copy to a person there residing, if one can be found, *and* sending a copy through the mail. Strict compliance with the statute is required." (*Liebovich, supra,* 56 Cal.App.4th at p. 516, original italics, internal citations omitted.)

- "In the cases discussed … , a finding of proper service turned on a party's acknowledgment or admission the notice in question was in fact received. In the present case, defendant denied, in his answer and at trial, that he had ever received the three-day notice. Because there was no admission of receipt in this case, service by certified mail did not establish or amount to personal delivery. Further, there was no evidence of compliance with any of the three methods of service of a three-day notice to pay rent or quit provided in [Code of Civil Procedure] section 1162. Therefore, the judgment must be reversed." (*Liebovich, supra,* 56 Cal.App.4th at p. 518.)

- "[Code of Civil Procedure section 1162 specifies] three ways in which service of the three-day notice may be effected on a residential tenant: … . As explained in *Liebovich, supra,* … , '[w]hen the fact of service is contested, compliance with one of these methods must be shown or the judgment must be reversed.' " (*Palm Property Investments, LLC, supra,* 194 Cal.App.4th at p. 1425.)

Secondary Sources

12 Witkin, Summary of California Law (11th ed. 2017) Real Property, §§ 701, 759

1 California Landlord-Tenant Practice (Cont.Ed.Bar 2d ed.) §§ 8.55, 8.58, 8.59

1 California Eviction Defense Manual (Cont.Ed.Bar 2d ed.) §§ 6.46, 6.48, 6.49

Friedman et al., California Practice Guide: Landlord-Tenant, Ch. 7-C, *Bases For Terminating Tenancy*, ¶ 7:136 et seq. (The Rutter Group)

7 California Real Estate Law and Practice, Ch. 200, *Termination: Causes and Procedures*, § 200.21 (Matthew Bender)

7 California Real Estate Law and Practice, Ch. 200, *Termination of Tenancies*, § 200.38 (Matthew Bender)

Matthew Bender Practice Guide: California Landlord-Tenant Litigation, Ch. 4, *Termination of Tenancy*, 4.23

29 California Forms of Pleading and Practice, Ch. 332, *Landlord and Tenant: The Tenancy*, § 332.28 (Matthew Bender)

29 California Forms of Pleading and Practice, Ch. 333, *Landlord and Tenant: Eviction Actions*, § 333.10 (Matthew Bender)

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23 California Points and Authorities, Ch. 236, *Unlawful Detainer*, § 236.11 (Matthew Bender)

Miller & Starr California Real Estate 4th, § 34:181 (Thomson Reuters)

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4329. Affirmative Defense—Failure to Provide Reasonable Accommodation

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[*Name of defendant*] claims that [*name of plaintiff*] is not entitled to evict [him/her/*nonbinary pronoun*] because [*name of plaintiff*] violated fair housing laws by refusing to provide [[*name of defendant*]/a member of [*name of defendant*]'s household] [a] reasonable accommodation[s] for [his/her/*nonbinary pronoun*] disability as necessary to afford [him/her/*nonbinary pronoun*] an equal opportunity to use and enjoy [a/an] [*specify nature of dwelling or public and common use area at issue, e.g., the apartment building's mail room*].

To establish this defense, [*name of defendant*] must prove all of the following:

1. **That [[*name of defendant*]/a member of [*name of defendant*]'s household] has a disability;**

2. **That [*name of plaintiff*] knew of, or should have known of, [[*name of defendant*]/the member of [*name of defendant*]'s household]'s disability;**

3. **[That [[*name of defendant*]/a member of [*name of defendant*]'s household/an authorized representative of [*name of defendant*]] requested [an] accommodation[s] on behalf of [himself/herself/*nonbinary pronoun/name of defendant*] [or] [another household member with a disability]];**

4. **That [an] accommodation[s] [was/were] necessary to afford [[*name of defendant*]/a member of [*name of defendant*]'s household] an equal opportunity to use and enjoy the [*specify nature of dwelling or public and common use area at issue, e.g., the apartment building's mail room*]; and**

5. **[That [*name of plaintiff*] failed to provide the reasonable accommodation[s]]**

   [or]

   [That [*name of plaintiff*] failed to engage in the interactive process to try to accommodate the disability].

New May 2021

Directions for Use

An individual with a disability may raise failure to provide a reasonable accommodation as an affirmative defense to an unlawful detainer action. (Cal. Code Regs., tit. 2, § 12176(c)(8)(A).) The individual with a disability seeking a reasonable accommodation must make a request for an accommodation. (Cal. Code Regs., tit. 2, § 12176(c)(1).) Such a request may be made by the individual with a disability, a family member, or someone authorized by the individual with a disability to act on the individual's behalf. (Cal. Code Regs., tit. 2, § 12176(c)(2).)

A reasonable accommodation request that is made during a pending unlawful detainer action is subject to

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the same regulations that govern reasonable accommodation requests made at any other time. (Cal. Code Regs., tit. 2, § 12176(c)(8).)

Sources and Authority

- Disability Discrimination Prohibited Under Fair Employment and Housing Act. Government Code section 12940(a).
- "Medical Condition" Defined. Government Code section 12926(i).
- "Mental Disability" Defined. Government Code section 12926(j).
- "Physical Disability" Defined. Government Code section 12926(m).
- Association With Disabled Person Protected. Government Code section 12926(o).
- Reasonable Accommodations. California Code of Regulations, title 2, section 12176(a), (c).
- Reasonable Accommodation Requests in Unlawful Detainer Actions. Cal. Code Regs., tit. 2, § 12176(c)(8).

Secondary Sources

8 Witkin, Summary of California Law (11th ed. 2017) Constitutional Law, §§ 977, 1062–1064

3 California Real Estate Law and Practice, Ch. 63, *Duties and Liabilities of Brokers*, § 63.121 (Matthew Bender)

11 California Forms of Pleading and Practice, Ch. 115, *Civil Rights: Employment Discrimination*, §§ 115.22, 115.35, 115.92 (Matthew Bender)

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4560. Recovery of Payments to Unlicensed Contractor—Essential Factual Elements (Bus. & Prof. Code, § 7031(b))

[*Name of plaintiff*] claims that [*name of defendant*] did not have a valid contractor's license during all times when [*name of defendant*] was [performing services/supervising construction] for [*name of plaintiff*]. To establish this claim and recover all compensation paid for these services, [*name of plaintiff*] must prove all of the following:

1. **That [*name of plaintiff*] [[engaged/hired]/ [or] contracted with] [*name of defendant*] to perform services for [*name of plaintiff*];**

2. **That a valid contractor's license was required to perform these services; and**

3. **That [*name of plaintiff*] paid [*name of defendant*] for services that [*name of defendant*] performed.**

[[*Name of plaintiff*] is not entitled to recover all compensation paid if [*name of defendant*] proves that at all times while [performing/supervising] these services, [he/she/*nonbinary pronoun*/it] had a valid contractor's license as required by law.]

New June 2016; Revised November 2020, May 2021

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Directions for Use

Give this instruction in a case in which the plaintiff seeks to recover money paid to an unlicensed contractor for service performed for which a license is required. (Bus. & Prof. Code, § 7031(b).) Modify the instruction if the plaintiff claims the defendant did not perform services or supervise construction, but instead agreed to be solely responsible for completion of construction services. (See *Vallejo Development Co. v. Beck Development Co.* (1994) 24 Cal.App.4th 929, 940 [29 Cal.Rptr.2d 669].) ~~It may also be modified for use if~~ For a case brought by a licensed contractor or an allegedly unlicensed contractor ~~brings a claim~~ for payment for services performed, give CACI No. 4562, *Payment for Construction Services Rendered—Essential Factual Elements*. (See Bus. & Prof. Code, § 7031(a), (e).)

The burden of proof to establish licensure or proper licensure is on the licensee. Proof must be made by producing a verified certificate of licensure from the Contractors~~'~~ State License Board. When licensure or proper licensure is controverted, the burden of proof to establish licensure or proper licensure is on the contractor. (Bus. & Prof. Code, § 7031(d).) ~~Modification to the optional paragraph may be required if substantial compliance with the licensing laws is alleged. (See Bus. & Prof. Code, § 7031(e).)~~ Omit the final bracketed paragraph if the issue of licensure is not contested.

A corporation qualifies for a contractor's license through a responsible managing officer (RMO) or responsible managing employee (RME) who is qualified for the same license classification as the classification being applied for. (Bus & Prof. Code~~,~~ § 7068(b)(3).) The plaintiff may attack a contractor's license by going behind the face of the license and proving that a required RMO or RME is a sham. The

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burden of proof remains with the contractor to prove a bona fide RMO or RME. (*Buzgheia v. Leasco Sierra Grove* (1997) 60 Cal.App.4th 374, 385−387 [70 Cal.Rptr.2d 427].) Whether an RMO or RME is a sham can be a question of fact. (*Jeff Tracy, Inc. v. City of Pico Rivera* (2015) 240 Cal.App.4th 510, 518 [192 Cal.Rptr.3d 600].)

Sources and Authority

- Action to Recover Compensation Paid to Unlicensed Contractor. Business and Professions Code section 7031(b).
- Proof of Licensure. Business and Professions Code section 7031(d).
- "Contractor" Defined. Business and Professions Code section 7026.
- "The purpose of the licensing law is to protect the public from incompetence and dishonesty in those who provide building and construction services. The licensing requirements provide minimal assurance that all persons offering such services in California have the requisite skill and character, understand applicable local laws and codes, and know the rudiments of administering a contracting business." (*Hydrotech Systems, Ltd. v. Oasis Waterpark* (1991) 52 Cal.3d 988, 995 [277 Cal.Rptr. 517, 803 P.2d 370], internal citations omitted.)
- "Because of the strength and clarity of this policy, it is well settled that section 7031 applies despite injustice to the unlicensed contractor. 'Section 7031 represents a legislative determination that the importance of deterring unlicensed persons from engaging in the contracting business *outweighs any harshness between the parties,* and that such deterrence can best be realized by denying violators the right to maintain any action for compensation in the courts of this state. [Citation.] . . .' " (*Hydrotech Systems, Ltd., supra,* 52 Cal.3d at p. 995, original italics.)
- "The current legislative requirement that a contractor plaintiff must, in addition to proving the traditional elements of a contract claim, also prove that it was duly licensed at all times during the performance of the contract does not change this historical right to a jury trial." (*Jeff Tracy, Inc., supra,* 240 Cal.App.4th at p. 518, fn. 2.)
- "[T]he courts may not resort to equitable considerations in defiance of section 7031." (*Lewis & Queen v. N. M. Ball Sons* (1957) 48 Cal.2d 141, 152 [308 P.2d 713].)
- "In 2001, the Legislature complemented the shield created by subdivision (a) of section 7031 by adding a sword that allows persons who utilize unlicensed contractors to recover compensation paid to the contractor for performing unlicensed work. Section 7031(b) provides that 'a person who utilizes the services of an unlicensed contractor may bring an action in any court of competent jurisdiction in this state to recover all compensation paid to the unlicensed contractor for performance of any act or contract' unless the substantial compliance doctrine applies." (*White v. Cridlebaugh* (2009) 178 Cal.App.4th 506, 519 [100 Cal.Rptr.3d 434], internal citation omitted.)
- "It appears section 7031(b) was designed to treat persons who have utilized unlicensed contractors

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consistently, regardless of whether they have paid the contractor for the unlicensed work. In short, those who have not paid are protected from being sued for payment and those who have paid may recover all compensation delivered. Thus, unlicensed contractors are not able to avoid the full measure of the CSLL's civil penalties by (1) requiring prepayment before undertaking the next increment of unlicensed work or (2) retaining progress payments relating to completed phases of the construction." (*White, supra,* 178 Cal.App.4th at p. 520.)

- "In most cases, a contractor can establish valid licensure by simply producing 'a verified certificate of licensure from the Contractors' State License Board which establishes that the individual or entity bringing the action was duly licensed in the proper classification of contractors at all times during the performance of any act or contract covered by the action.' [Contractor] concedes that if this was the only evidence at issue, 'then—perhaps—the issue could be decided by the court without a jury.' But as [contractor] points out, the City was challenging [contractor]'s license by going behind the face of the license to prove that [license holder] was a sham RME or RMO." (*Jeff Tracy, Inc., supra,* 240 Cal.App.4th at p. 518.)

- "[T]he determination of whether [contractor] held a valid class A license involved questions of fact. '[W]here there is a conflict in the evidence from which either conclusion could be reached as to the status of the parties, the question must be submitted to the jury. [Citations.] This rule is clearly applicable to cases revolving around the disputed right of a party to bring suit under the provisions of Business and Professions Code section 7031.' " (*Jeff Tracy, Inc., supra,* 240 Cal.App.4th at p. 518.)

- "We conclude the authorization of recovery of '*all* compensation paid to the unlicensed contractor for performance of any act or contract' means that unlicensed contractors are required to return all compensation received without reductions or offsets for the value of material or services provided." (*White, supra,* 178 Cal.App.4th at pp. 520−521, original italics, internal citation omitted.)

- "[A]n unlicensed contractor is subject to forfeiture even if the other contracting party was aware of the contractor's lack of a license, and the other party's bad faith or unjust enrichment cannot be asserted by the contractor as a defense to forfeiture." (*Judicial Council of California v. Jacobs Facilities, Inc.* (2015) 239 Cal.App.4th 882, 896 [191 Cal.Rptr.3d 714].)

- "Nothing in section 7031 either limits its application to a particular class of homeowners or excludes protection of 'sophisticated' persons. Reading that limitation into the statute would be inconsistent with its purpose of ' "deterring unlicensed persons from engaging in the contracting business." ' " (*Phoenix Mechanical Pipeline, Inc. v. Space Exploration Technologies Corp.* (2017) 12 Cal.App.5th 842, 849 [219 Cal.Rptr.3d 775].)

- "By entering into the agreements to 'improve the Property' and to be '*solely responsible* for completion of' infrastructure improvements—including graded building pads, storm drains, sanitary systems, streets, sidewalks, curbs, gutters, utilities, street lighting, and traffic signals—[the plaintiff] was clearly contracting to provide construction services in exchange for cash payments by [the defendants]. The mere execution of such a contract is an act 'in the capacity of a

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contractor,' and an unlicensed person is barred by section 7031, subdivision (a), from bringing claims based on the contract. [¶] ... [¶] … Section 7026 plainly states that both the person who provides construction services himself and one who does so 'through others' qualifies as a 'contractor.' The California courts have also long held that those who enter into construction contracts must be licensed, even when they themselves do not do the actual work under the contract." (*Vallejo Development Co., supra,* 24 Cal.App.4th at p. 940–941, original italics.)

- "[Contractor] has not alleged one contract, but rather a series of agreements for each separate task that it was asked to perform. It may therefore seek compensation under those alleged agreements that apply to tasks for which no license was required." (*Phoenix Mechanical Pipeline, Inc., supra,* 12 Cal.App.5th at p. 853.)

- "Section 7031, subdivision (e) states an exception to the license requirement of subdivision (a). Subdivision (e) provides in part: '[T]he court may determine that there has been substantial compliance with licensure requirements under this section if it is shown at an evidentiary hearing that the person who engaged in the business or acted in the capacity of a contractor (1) had been duly licensed as a contractor in this state prior to the performance of the act or contract, (2) acted reasonably and in good faith to maintain proper licensure, and (3) acted promptly and in good faith to remedy the failure to comply with the licensure requirements upon learning of the failure.' " (*C. W. Johnson & Sons, Inc. v. Carpenter* (2020) 53 Cal.App.5th 165, 169 [265 Cal.Rptr.3d 895].)

- "[I]t is clear that the disgorgement provided in section 7031(b) is a penalty. It deprives the contractor of any compensation for labor and materials used in the construction while allowing the plaintiff to retain the benefits of that construction. And, because the plaintiff may bring a section 7031(b) disgorgement action regardless of any fault in the construction by the unlicensed contractor, it falls within the Supreme Court's definition of a penalty: 'a recovery " 'without reference to the actual damage sustained.' " ' Accordingly, we hold that [Code Civ. Proc., §] 340, subdivision (a), the one-year statute of limitations, applies to disgorgement claims brought under section 7031(b)." (*Eisenberg Village of Los Angeles Jewish Home for the Aging v. Suffolk Construction Company, Inc.* (2020) 53 Cal.App.5th 1201, 1212 [268 Cal.Rptr.3d 334], internal citation and footnote omitted.)

- "[W]e hold that the discovery rule does not apply to section 7031(b) claims. Thus, the ordinary rule of accrual applies, i.e., the claim accrues ' "when the cause of action is complete with all of its elements." ' In the case of a section 7031(b) claim, the cause of action is complete when an unlicensed contractor completes or ceases performance of the act or contract at issue." (*Eisenberg Village of Los Angeles Jewish Home for the Aging, supra,* 53 Cal.App.5th at pp. 1214–1215, internal citation omitted.)

Secondary Sources

1 Witkin, Summary of California Law (11th ed. 2017) Contracts, § 491

12 California Real Estate Law and Practice, Ch. 430, *Licensing of Contractors*, § 430.70 (Matthew

Bender)

10 California Forms of Pleading and Practice, Ch. 104, *Building Contracts*, § 104.83 (Matthew Bender)

5 California Points and Authorities, Ch. 50A, *Contracts: Performance, Breach, and Defenses*, § 50A.52 et seq. (Matthew Bender)

29 California Legal Forms, Ch. 88, *Licensing of Contractors*, § 88.18 (Matthew Bender)

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4561. Damages—All Payments Made to Unlicensed Contractor

A person who pays money ~~under a contract~~ to an unlicensed contractor may recover all compensation paid to the unlicensed contractor ~~under the contract~~.

If you decide that [*name of plaintiff*] has proved that [he/she/*nonbinary pronoun*/it] paid money to [*name of defendant*] for services ~~under the contract~~ and that [*name of defendant*] has failed to prove that [he/she/*nonbinary pronoun*/it] was licensed at all times during performance, then [*name of plaintiff*] is entitled to the return of all amounts paid, not just the amounts paid while [*name of defendant*] was unlicensed. The fact that [*name of plaintiff*] may have received some or all of the benefits of [*name of defendant*]'s performance does not affect [his/her/*nonbinary pronoun*/its] right to the return of all amounts paid.

New June 2016; Revised May 2021

Directions for Use

Give this instruction to clarify that the plaintiff is entitled to recover all compensation paid to the unlicensed defendant regardless of any seeming injustice to the contractor. (See *Hydrotech Systems, Ltd. v. Oasis Waterpark* (1991) 52 Cal.3d 988, 995 [277 Cal.Rptr. 517, 803 P.2d 370].)

Give CACI No. 4562, *Payment for Construction Services Rendered—Essential Factual Elements*, ~~It may be modified for use~~ if an allegedly unlicensed contractor brings a claim for payment for services performed. (See Bus. & Prof. Code, § 7031(a), (e).)

Sources and Authority

- Recovery of All Compensation Paid to Unlicensed Contractor. Business and Professions Code section 7031(b).

- "Because of the strength and clarity of this policy, it is well settled that section 7031 applies despite injustice to the unlicensed contractor. 'Section 7031 represents a legislative determination that the importance of deterring unlicensed persons from engaging in the contracting business *outweighs any harshness between the parties,* and that such deterrence can best be realized by denying violators the right to maintain any action for compensation in the courts of this state. [Citation.] . . .' " (*Hydrotech Systems, Ltd., supra,* 52 Cal.3d at p. 995, original italics.)

- "[T]he courts may not resort to equitable considerations in defiance of section 7031." (*Lewis & Queen v. N. M. Ball Sons* (1957) 48 Cal.2d 141, 152 [308 P.2d 713].)

- "[I]f a contractor is unlicensed for any period of time while delivering construction services, the contractor forfeits all compensation for the work, not merely compensation for the period when the contractor was unlicensed." (*Judicial Council of California v. Jacobs Facilities, Inc.* (2015) 239 Cal.App.4th 882, 896 [191 Cal.Rptr.3d 714].)

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- "We conclude the authorization of recovery of '*all* compensation paid to the unlicensed contractor for performance of any act or contract' means that unlicensed contractors are required to return all compensation received without reductions or offsets for the value of material or services provided." (*White v. Cridlebaugh* (2009) 178 Cal.App.4th 506, 520−521 [100 Cal.Rptr.3d 434], original italics, internal citation omitted.)

Secondary Sources

1 Witkin, Summary of California Law (11th ed. 2017) Contracts, § 491

12 California Real Estate Law and Practice, Ch. 430, *Licensing of Contractors*, § 430.70 (Matthew Bender)

10 California Forms of Pleading and Practice, Ch. 104, *Building Contracts*, § 104.83 (Matthew Bender)

5 California Points and Authorities, Ch. 50A, *Contracts: Performance, Breach, and Defenses*, § 50A.52 et seq. (Matthew Bender)

29 California Legal Forms, Ch. 88, *Licensing of Contractors*, § 88.18 (Matthew Bender)

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4562. Payment for Construction Services Rendered—Essential Factual Elements (Bus. & Prof. Code, § 7031(a), (e))

[*Name of plaintiff*] claims that [*name of defendant*] owes [*name of plaintiff*] money for construction services rendered. To establish this claim, [*name of plaintiff*] must prove all of the following:

1. **That [*name of defendant*] [[engaged/hired]/ [or] contracted with] [*name of plaintiff*] to [*specify contractor services*];**

2. **That [*name of plaintiff*] had at all times during the performance of construction services a valid contractor's license;**

3. **That [*name of plaintiff*] performed these service[s];**

4. **That [*name of defendant*] has not paid [*name of plaintiff*] for the construction services that [*name of plaintiff*] provided; and**

5. **The amount of money [*name of defendant*] owes [*name of plaintiff*] for the construction services provided.**

New May 2021

Directions for Use

Give this instruction in a case in which the plaintiff-contractor seeks to recover compensation owed for services performed for which a license is required. (Bus. & Prof. Code, § 7031(a).)

For element 2, licensure requirements may be satisfied by substantial compliance with the licensure requirements. (Bus. & Prof. Code, § 7031(e).) If the court has determined the defendant's substantial compliance, modify element 2 accordingly, and instruct the jury that the court has made the determination.

When licensure or proper licensure is controverted, the burden of proof to establish licensure or proper licensure is on the contractor. (Bus. & Prof. Code, § 7031(d).) Proof must be made by producing a verified certificate of licensure from the Contractors State License Board.

For a case involving recovery of payment for services provided by an allegedly unlicensed contractor, give CACI No. 4560, *Recovery of Payments to Unlicensed Contractor—Essential Factual Elements*.

Sources and Authority

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- Proof of Licensure. Business and Professions Code section 7031(d).

- "Contractor" Defined. Business and Professions Code section 7026.

- "[Contractor] has not alleged one contract, but rather a series of agreements for each separate task that it was asked to perform. It may therefore seek compensation under those alleged agreements that apply to tasks for which no license was required." (*Phoenix Mechanical Pipeline, Inc. v. Space Exploration Technologies Corp.* (2017) 12 Cal.App.5th 842, 853 [219 Cal.Rptr.3d 775].)

- "Section 7031, subdivision (e) states an exception to the license requirement of subdivision (a). Subdivision (e) provides in part: '[T]he court may determine that there has been substantial compliance with licensure requirements under this section if it is shown at an evidentiary hearing that the person who engaged in the business or acted in the capacity of a contractor (1) had been duly licensed as a contractor in this state prior to the performance of the act or contract, (2) acted reasonably and in good faith to maintain proper licensure, and (3) acted promptly and in good faith to remedy the failure to comply with the licensure requirements upon learning of the failure.' " (*C. W. Johnson & Sons, Inc. v. Carpenter* (2020) 53 Cal.App.5th 165, 169 [265 Cal.Rptr.3d 895].)

Secondary Sources

1 Witkin, Summary of California Law (11th ed. 2017) Contracts, § 491

California Civil Practice: Real Property Litigation §§ 10:26–10:38 (Thomson Reuters)

12 California Real Estate Law and Practice, Ch. 430, *Licensing of Contractors*, § 430.70 (Matthew Bender)

10 California Forms of Pleading and Practice, Ch. 104, *Building Contracts*, § 104.83 (Matthew Bender)

5 California Points and Authorities, Ch. 50A, *Contracts: Performance, Breach, and Defenses*, § 50A.52 et seq. (Matthew Bender)

29 California Legal Forms, Ch. 88, *Licensing of Contractors*, § 88.18 (Matthew Bender)

Miller & Starr, California Real Estate 4th §§ 32:68–32:84

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Instruction	Commenter	Comment	Committee Response
440. *Negligent Use of Nondeadly Force by Law Enforcement Officer in Arrest or Other Seizure—Essential Factual Elements (Revise)*	Matthew Biren, Attorney, Biren Law Group Los Angeles	I think that the changes to this instruction are good as they clarify and simplify the instruction.	No response required.
	Shelley Bullen, LMFT Chico	"It appears to be an incomplete edit throughout the writing. If you take out the phrase, 'with ,reasonable force to prevent escape' on page 4, then it would follow to take the same phrase out on the top of page 5 especially if you are taking out 'peace officer.' "	The committee believes that the revisions are supported by law, and that the instruction properly includes preventing escape where appropriate.
	California Lawyers Association, Litigation Section, Civil Jury Instructions Committee by Reuben A. Ginsburg, Chair, Sacramento	We agree with the proposed revisions to the instruction.	No response required.
		We suggest adding clear authority for the statement in the Directions for Use, and the title, that this instruction can be given if the defendant is any law enforcement officer. Penal Code section 830 et seq. do not appear to support the distinction between this instruction, stated to apply to any law enforcement officer, and CACI No. 441, applicable only to peace officers.	The committee has revised the Directions for Use to express more clearly the potential issue created by Penal Code section 835a's use of the term "peace officer."
		Although it is beyond the scope of this Invitation to Comment, we suggest adding language to the Directions for Use explaining when to include the optional sentence in the first paragraph of the instruction. We suggest, "Include the bracketed sentence in the first paragraph of the instruction if there is evidence the person being arrested or detained used force to resist."	For consistency with CACI No. 1305A, the committee has added a use note similar to the one suggested.
	Bruce Greenlee, Attorney	What is the authority for the new sentence added to the Directions for Use (DforU)?	See committee response to the

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Instruction	Commenter	Comment	Committee Response
	Richmond		California Lawyers Association's comment, above.
		In the last optional paragraph (and also in the paragraph preceding the factors) it really isn't necessary to specify the type of officer. You could just say "an officer" as you do in the last sentence.	The committee has revised the paragraphs as suggested by the commenter.
702. *Waiver of Right-Of-Way (Revise)*	Matthew Biren, Attorney, Biren Law Group Los Angeles	I think that the changes to this instruction are good as they clarify and simplify the instruction.	No response required.
	Shelley Bullen, LMFT Chico	I do not see why the waiver of right away is even being changed. It's a waste of time.	The committee believes the revision improves clarity and resolves a potential for confusion that existed with the bracketed options in the prior version.
	Consumer Attorneys of California, by Jacqueline Serna, Deputy Legislative Director	This instruction essentially streamlines the original CACI 702, which refers to "another" driver/pedestrian. The change clarifies the intent of the statute. However, both codes suffer from ambiguity as to what constitutes, "reasonably believes." The instruction draws on two cases to define "reasonable belief," but neither has been incorporated into the instruction itself. To clarify, it may be helpful to add the following language. PROPOSED ADDITIONAL LANGUAGE IN RED: "Reasonable belief" requires a showing that the person with the right of way has conducted himself/herself/binary identifier in such a definite manner sufficient to entitle the other person to assume that the right of way has been	This comment is beyond the scope of the invitation to comment. The committee will consider the suggestion in a future release cycle.

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Instruction	Commenter	Comment	Committee Response
		surrendered to him/her/binary identifier." (Based on language from Hopkins v. Tye (1959) Cal.App.2d 431.	
	Bruce Greenlee, Attorney Richmond	What is the authority for the proposed change? I think that most people would consider "another person" to refer to a pedestrian, not a driver. Hence, it appears that the instruction no longer applies to waiver of right-of-way between two vehicles. Is that the intent? If so, something to that effect should be noted in the DforU. And maybe the title should be changed to something like "*Waiver of Right-of-Way between Vehicle and Pedestrian*."	The committee believes that the instruction accurately states the law and is supported by the cases in the Sources and Authority. The committee also does not share the commenter's view that "another person" would be understood by jurors to refer only to a pedestrian if the situation involved a driver's waiver of the right-of-way to another driver or a pedestrian's waiver of the right-of-way to a driver.
		The instruction would now apply to waiver of right-of-way between two pedestrians. I doubt that there is such a thing.	The committee does not believe the instruction needs to be revised further to eliminate the remote possibility that a case involving a pedestrian's waiver of right-of-way to another pedestrian

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Instruction	Commenter	Comment	Committee Response
			would reach a jury. The committee, however, has refined the instruction as suggested by the Orange County Bar Association, below.
	Orange County Bar Association by Larisa M. Dinsmoor, President	The changes to the instruction are not based on any law so it is presumed the changes are proposed for purposes of clarity and understanding. The instruction as proposed does not achieve the above purposes. It is recommended that the instruction change . . . [to]: **A [driver/pedestrian] who has the right-of-way may give up that right and let another person go first. If the other person reasonably believes that the [driver/pedestrian] has given up the right-of-way, then the other person may go first.**	For improved clarity, the committee has revised the instruction as suggested.
1010. *Affirmative Defense—Recreation Immunity—Exceptions (Revise)*	Association of Southern California Defense Counsel (ASCDC), by Steven S. Fleischman, Attorney, Horvitz & Levy LLP Burbank	On February 10, 2021, the California Supreme Court granted review in *Hoffmann v. Young* (2020) 56 Cal.App.5th 1021, review granted Feb. 10, 2021, S266003. Although the Supreme Court exercised its discretion to allow the divided *Hoffmann* decision to remain citable, it is no longer binding and has no precedential effect; instead, it can be cited for “potentially persuasive value only.” (Cal. Rules of Court, rule 8.1115(e)(1).) Given the grant of review, ASCDC urges the Committee to delete the two proposed citations to *Hoffmann*, and the statements that are supported by the citations to *Hoffmann*, in the Directions for Use and Sources and Authorities.	In light of the California Supreme Court’s granting review in *Hoffmann v. Young*, the committee agrees that the proposed citations and the changes to the Directions for Use and Sources and Authority based on *Hoffmann* are not prudent. The committee will reconsider the instruction once the *Hoffmann* case has been resolved.

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Instruction	Commenter	Comment	Committee Response
		With respect to the proposed change to the penultimate paragraph of CACI No. 1010, ASCDC agrees that this change is supported by existing case law. Toward that end, CACI may wish to consider adding citations to *Jackson v. Pacific Gas & Elec. Co.* (2001) 94 Cal.App.4th 1110, 1116 and *Pacific Gas & Electric Co. v. Superior Court* (2017) 10 Cal.App.5th 563, 588 in the Sources and Authorities to support this proposed change.	The committee has chosen to add a single case as authority for the change. The committee declines to add additional cases on the same point. CACI's Sources and Authority is not meant to be a compendium of all cases supporting an instruction.
	Matthew Biren, Attorney, Biren Law Group Los Angeles	I think that the changes to this instruction are good as they clarify and simplify the instruction.	No response required.
	Shelley Bullen, LMFT Chico	"I do not agree with taking out language 'for recreational purpose' unless it is taken out everywhere. It leaves to many gray areas. Is it charged for recreational purposes, then only invited for any reason. It[']s confusing to not have consistency in language. One must look at the section before taking out the language at all."	The case law and statute do not support the deletion proposed by the commenter.
		"I agree with being liable for your children's invitation on page 13."	See the committee's response to ASCDC's comment, above.
	California Lawyers Association, Litigation Section, Civil Jury	The California Supreme Court granted a petition for review in *Hoffman v. Young* (2000) 56 Cal.App.5th 1021, so the opinion is not binding authority. (Cal. Rules of Court, rule 8.1115(e)(1).) We would delete from the proposed revisions language for which *Hoffman* is the only authority, including the new	See the committee's response to ASCDC's comment, above.

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Instruction	Commenter	Comment	Committee Response
	Instructions Committee by Reuben A. Ginsburg, Chair, Sacramento	language in the Directions for Use and citation to *Hoffman*, and the last bullet point in the Sources and Authority.	
		We agree with the deletion of "for the recreational purpose" from the instruction and with the new language in the Sources and Authority and citation to *Calhoon v. Lewis* (2000) 38 Cal.App.4th supporting this change.	No response required.
	Consumer Attorneys of California, by Jacqueline Serna, Deputy Legislative Director	The elimination of the language "for the recreational purpose" at the end of Option Three is helpful for Plaintiffs, since it means that permission to enter the property does not have to be directly tied to a recreational purpose. However, Option Two risks creating an ambiguity. It states, "a charge or fee was paid to [*name of defendant*/the owner] for permission to enter the property for a recreational purpose." This is from the original statute, but in light of the change to Option Three, it means that so long the defendant, OR the owner of the property who MAY NOT for some reason be a defendant was paid a fee or charge for permission to entry, the actual defendant is not immune. PROPOSED ADDITIONAL LANGUAGE IN RED: To maintain consistency through the options, Option Three should state: "Defendant/the owner expressly invited Plaintiff to enter the property."	As noted above, the committee is deferring the proposed change to the Directions for Use on the issue of who may offer an invitation. The committee will reconsider the issue in a future release.
	Bruce Greenlee, Attorney Richmond	I agree that all of the changes are required by *Hoffman v. Young*. *Hoffman v. Young* is not yet final (time extended to March 8). I hold out hope that it will be depublished. While I think the result is correct, the dicta criticizing CACI No. 1010 is unfortunate in my opinion. [Footnote omitted.]	See the committee's response to ASCDC's comment, above.
1305. *Battery by Peace Officer—Essential Factual Elements (Renumber as 1305A, Retitle, and Revise)*	Bruce Greenlee, Attorney Richmond	It is not necessary to revoke this instruction. CACI often has revised and renumbered an instruction to an A instruction in order to add a related B instruction. Just renumber to 1305A, change the title, and make the other edits to limit the instruction to nondeadly force.	As suggested, the committee recommends renumbering CACI No. 1305 to No. 1305A, and revising the instruction as proposed in the draft

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Instruction	Commenter	Comment	Committee Response
			that was circulated for public comment as CACI No. 1305A, with additional changes discussed below.
1305A. *Battery by Law Enforcement Officer (Nondeadly Force)—Essential Factual Elements (Revisions made in 1305 after renumbering as 1305A)*	California Lawyers Association, Litigation Section, Civil Jury Instructions Committee by Reuben A. Ginsburg, Chair, Sacramento	We believe the sentence "Even if the officer is mistaken . . . unreasonable force" in the second paragraph of the instruction should be optional, in brackets, as in CACI No. 440, and language should be added to the Directions for Use stating to include this sentence if there is evidence the person being arrested or detained was using force to resist.	For consistency, the committee has added brackets to the sentence, and a use note in the Directions for Use.
		We would add an optional factor (d) to the instruction as it is in CACI No. 440: "[(d) [*Name of defendant*]'s tactical conduct and decisions before using force on [*name of plaintiff*].]" We find support for this factor in Penal Code section 835a, subdivision (d). which suggests, without expressly stating, that whether tactical repositioning or other de-escalation tactics were available is a factor to consider in deciding whether the force was reasonable. Also supporting this change are Penal Code section 835a, subdivision (a)(3) (declaration of legislative intent to "ensure that officers use force consistent with law and agency policies") and Government Code section 7286, subdivision (b)(1) (requires law enforcement agencies to maintain a policy including "A requirement that officers utilize deescalation techniques, crisis intervention tactics, and other alternatives to force when feasible").	The committee has added a use note to the Directions for Use that the factors are not exclusive. Because there is no direct authority for adding factor (d) in the context of a battery claim, the committee declines to make the suggested change to the factors.
		We would delete the optional final paragraph of the instruction. We find the first sentence duplicative of prior language to the effect that an officer may use reasonable force to overcome resistance: "[A/An [insert type of officer may use reasonable force to [arrest/detain/ [,/or] prevent the escape of/[,/or] overcome the resistance of] . . ."; "(c) Whether [*name of plaintiff*] was actively resisting . . . ."	The committee disagrees because retreat and the use of force to overcome resistance are distinct, and the language of

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Instruction	Commenter	Comment	Committee Response
		The second sentence introduces a double negative that may be difficult for the jury to understand: An officer does not have to retreat; tactical repositioning is not retreat. We believe the point is that whether tactical repositioning or other de-escalation tactics were available is a factor to consider in deciding whether the force was reasonable, as stated above. We suggest adding this as factor (d), as stated, and deleting this second sentence. The third sentence seems to invoke the affirmative defense stated in CACI No. 1304. We would delete the third sentence, delete the final paragraph in the Directions for Use, and add language to the Directions for Use stating to give CACI No. 1304 if the defendant claims to have acted in self-defense.	the final paragraph is supported by Penal Code section 835a, subd. (d).
		We suggest adding clear authority for the statement in the Directions for Use, and the title, that this instruction can be given if the defendant is any law enforcement officer. Penal Code section 830 et seq. do not appear to support the distinction between this instruction, stated to apply to any "law enforcement officer," and CACI No. 1305B, stated to apply only to "peace officers."	The committee has revised the Directions for Use to express more clearly the potential issue created by Penal Code section 835a's use of the term "peace officer."
		We suggest adding language to the Directions for Use explaining that the *Graham* factors are not exclusive and that additional factors can be added: "Factors (a), (b), and (c) are often referred to as the '*Graham* factors.' (See *Graham v. Connor* (1989) 490 U.S. 386, 396 [109 S.Ct. 1865, 104 L.Ed.2d 443].) The Graham factors are not exclusive (see *Glenn v. Wash. County* (9th Cir. 2011) 673 F.3d 864, 872); additional factors may be added if appropriate to the facts of the case."	The committee has added a use note to the Directions for Use as suggested.
	Bruce Greenlee, Attorney Richmond	DforU third paragraph, first sentence: Doesn't this sentence require a citation? The sentence seems to be a statement of law that needs authority. I'm guessing that the et seq. cite to the Penal Code will tell us who qualifies as a peace officer, not that qualification under the Penal Code is not required.	The committee has revised the Directions for Use to express more clearly the potential issue created by Penal Code section

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Instruction	Commenter	Comment	Committee Response
			835a's use of the term "peace officer."
		Same paragraph, last sentence: delete the last word. No need to repeat "force" in the sentence.	The committee has deleted the final "force" in the sentence.
	Tony Sain, Attorney Manning & Kass, Ellrod, Ramirez, Trester, LLP Los Angeles	The CACI 1305A and 1305B references regarding "conduct leading up to" the use of force is too vague. The Council should consider instead "conduct playing a causal role in" or "conduct that is a substantial factor cause of" the use of force. The *Hayes* cases make it clear that for officer pre-force conduct to be actionable, it must form part of the chain of causation that results in the use of force: such as the plainclothes detective who scares the plaintiff in the dead of night by knocking on a car window, provoking a car chase that result in the suspect hiding his wallet under his seat – a furtive movement that prompts the plainclothes detective to fire. Just because conduct precedes the use of force (leading up to) does NOT mean that such conduct is an actionable part of the use of force. There must be causation (also referenced as provocation). [Trial brief omitted.]	The committee disagrees. Penal Code section 835a, subd. (e)(3), provides the following definition: " 'Totality of the circumstances' means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force." The committee believes that "conduct leading up to" is sufficiently clear and supported by the statute.
		The definition of totality of the circumstances is far too prejudicial: it should stop after "to do so."	The committee disagrees. The definition is taken from Penal Code section 835a, and the committee believes

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Instruction	Commenter	Comment	Committee Response
			that it accurately states the law.
1305B. *Battery by Peace Officer (Deadly Force)—Essential Factual Elements (New)*	Bruce Greenlee, Attorney Richmond	The instruction is well done.	No response required.
		It is not necessary to use Roman numerals for factors since letters have not yet been used. Change (i) to (a) etc.	As explained in the User Guide, CACI uses letters for factors to be considered by the jury. This instruction uses lowercase roman numerals because the three items are required, and the essential factual elements of the claim are already numbered using arabic numerals. The committee prefers to use lowercase roman numerals for the three statutory conditions.
		In the optional paragraph following the factors, I don't think it is necessary to include the "if an objectively reasonable officer" language. That simply restates the otherwise applicable rules. It should be enough just to say that danger only to the victim does justify the use of deadly force.	The committee disagrees. Penal Code section 835a, subd. (c)(2), includes the phrase. The committee includes it to make clear that the danger to others must be

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Instruction	Commenter	Comment	Committee Response
			considered objectively.
		I would move the definition of "deadly force" up to follow the elements.	Consistent with the related negligence instruction (CACI No. 441), the committee prefers to give the separate definitions toward the end of the instruction.
		Next-to-last paragraph: The last sentence becomes unmanageable if the language on disability is included. End this sentence after "to do so" and present the "and whether" as an optional additional sentence.	The committee has revised the paragraph as suggested, and has added a use note to the Directions for Use about when to include the optional sentence.
		DforU, second paragraph first sentence: same issue with regard to authority. Penal Code 835a does not address who qualifies as a peace officer under the statute.	The committee has revised the Directions for Use to express more clearly the potential issue created by Penal Code section 835a's use of the term "peace officer."
	California Lawyers Association, Litigation Section,	We believe this instruction should begin by stating the nature of the plaintiff's claim, as in the second sentence, rather than the defendant's potential justification. Accordingly, we would move the first sentence to the beginning	The introduction to this new instruction is consistent with the related negligence

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Instruction	Commenter	Comment	Committee Response
	Civil Jury Instructions Committee by Reuben A. Ginsburg, Chair, Sacramento	of the second paragraph, which discusses the defendant's potential justification for using deadly force.	instruction (CACI No. 441), which is beyond the scope of the invitation to comment. The committee will consider the suggestion for both instructions in a future release cycle.
		The essence of the claim is that the defendant's use of deadly force was unlawful. We would add the word "unlawfully" to the second sentence: "[*Name of plaintiff*] claims that [*name of defendant*] [harmed/killed] [him/her/*nonbinary pronoun*/name of decedent] by unlawfully using deadly force . . . ."	The committee disagrees. Penal Code section 835a does not use the term suggested ("unlawfully"). A plaintiff must prove, among other things, that the use of deadly force was not necessary to defend human life (element 3), not that the defendant did something not permitted by law, i.e., unlawfully.
		The second sentence seems to limit the claim to use of deadly force in an arrest or detention, or to prevent escape or overcome resistance incident to an arrest or detention. The plaintiff would be required to show that the plaintiff was being arrested or detained. But deadly force may be used against persons other than arrestees or detainees, and Penal Code section 835a applies in those situations too because it applies to use of deadly force "upon another person." (Pen. Code, § 835a, subd. (c)(1).) So we would delete the words "to	The committee agrees that under Penal Code section 835a, a plaintiff does not need to show that the incident involved an arrest or detention or

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Instruction	Commenter	Comment	Committee Response
		arrest/detain/ [,/or] prevent escape of/ [,/or] overcome resistance to] [him/her/*nonbinary pronoun*/*name of decedent*.]”	escape or resistance to establish a battery claim involving deadly force, and has revised the sentence.
		Element 2 states that the defendant used deadly force to arrest or detain the plaintiff, but Penal Code section 835a is not so limited, as stated above. The plaintiff should not have to prove that the plaintiff was being arrested or detained. We would modify element 2 (as in CACI No. 441): “2. That [*name of defendant*] used deadly force ~~to [arrest/detain/ [,/or] prevent the escape of/ [,/or] overcome the resistance of]~~ on [*name of plaintiff*/*decedent*]”	The committee agrees, and has revised element 2 as suggested.
		The duty to make reasonable efforts to identify oneself as a peace officer and warn that deadly force will be used applies only “Where feasible.” (Pen. Code, § 835a, subd. (c)(1)(B).) Yet condition iii does not include this qualifier. We suggest modifying condition iii: “If practical under the circumstances, [Name of defendant] made reasonable efforts to identify [himself/herself/nonbinary pronoun] as a peace officer and to warn that deadly force would be used . . . .”	The committee has added the suggested qualifying language to condition iii.
		We believe the words “resources and techniques” in the penultimate paragraph of the instruction could be clearer. We would modify this sentence: “. . . used tactical repositioning or other deescalation techniques ~~other available resources and techniques~~ as [an] alternative[s] to deadly force, ...”	Because “resources and techniques” is used in Penal Code section 835a, subd. (a)(2), and is arguably broader than the language suggested,

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Instruction	Commenter	Comment	Committee Response
			the committee declines to make this change.
		The last paragraph of the instruction seems cumbersome and difficult for jurors to understand. We would modify the first sentence for greater clarity, as shown below. We would delete the reference to self-defense because CACI No. 1304 covers self-defense and should be given if self-defense is at issue; we see no need to include the right to self-defense in this instruction. Moreover, stating that an officer can use "objectively reasonable force" without stating that the use of deadly force is limited to the circumstances stated above may be misleading. We believe the discussion of retreat in the second sentence is duplicative of the previous paragraph and should be deleted. Accordingly, we would modify this paragraph: "[A peace officer who makes or attempts to make an arrest does not have to ~~need not~~ retreat or stop because the person being arrested resists or threatens to resist ~~desist from efforts by reason of the resistance or threatened resistance and shall not lost the right to self-defense by use of objectively reasonable force to effect the arrest or to prevent escape or to overcome resistance~~. ~~Retreat does not mean tactical reposition or other deescalation tactics. A peace officer does, however, have a duty to use reasonable tactical repositionaing or other de-escalation tactics.~~]"	The committee has revised the final bracketed paragraph to state the issues more clearly.
		The reference to "two options" in the first sentence of the third paragraph of the Directions for Use could be clarified by beginning that paragraph with the words "In the second paragraph of the instruction."	The committee has added additional information to the Directions for Use to make the paragraph at issue more apparent to users.
	Orange County Bar Association by Larisa M. Dinsmoor, President	Amended Penal Code section 835a became effective January 1, 2020. The statute specifically refers to "peace officers" and accordingly, does not include all law enforcement officers. The statutory definition of "peace officer" as used by 835a is contained in Penal Code section 830 et. seq.	The committee has revised the Directions for Use to express more clearly the potential issue created

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Instruction	Commenter	Comment	Committee Response
			by Penal Code section 835a's use of the term "peace officer.
		This newly proposed instruction appropriately tracks the language of 835a except as to alternative condition iii. which is for use in the case of the apprehension of a fleeing person for a felony. Condition iii. as proposed, merely requires the jury find that the officer "*...made reasonable efforts to identify [himself/herself/nonbinary pronoun] as a peace officer and to warn that deadly force would be used, unless the officer had objectively reasonable grounds to believe the person is aware of those facts.*" Section 835a(c)(1)(B) however states "…**Where feasible**, a peace officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts." By the express language of this subsection, the Legislature has provided for three possible situations by which the officer may comply with the statutory mandate. These three lawful alternative situations are: 1) Where it is neither feasible for the officer to identify themself nor has objectively reasonable grounds for believing that the person is aware of the requisite facts; or, 2) Where the officer made reasonable efforts to identify themself as a peace officer and warned that deadly force would be used; or 3) The officer did not make reasonable efforts to identify themself as a peace officer and did not warn that deadly force would be used but the officer had objectively reasonable grounds to believe the person was aware of those facts. Accordingly, Condition iii. should be modified to meet the language of 835a(c)(1)(B) and provide an instructional element option for each of the above-mentioned possible scenarios for use in a specific factual setting.	The committee has added language to condition iii that more closely tracks Penal Code section 835a, stating that the duty to make reasonable efforts to identify oneself as a peace officer and to warn that deadly force will be used applies only "where feasible." (Pen. Code, § 835a, subd. (c)(1)(B).) Because the revised language fairly states the language of the statute, the committee does not agree that the instruction needs to go further and state three possible factual scenarios, especially in an already complex jury instruction.
	Tony Sain, Attorney	The CACI 1305A and 1305B references regarding "conduct leading up to" the use of force is too vague. The Council should consider instead "conduct playing a causal role in" or "conduct that is a substantial factor cause of" the	See committee response to comment

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Instruction	Commenter	Comment	Committee Response
	Manning & Kass, Ellrod, Ramirez, Trester, LLP Los Angeles	use of force. The *Hayes* cases make it clear that for officer pre-force conduct to be actionable, it must form part of the chain of causation that results in the use of force: such as the plainclothes detective who scares the plaintiff in the dead of night by knocking on a car window, provoking a car chase that result in the suspect hiding his wallet under his seat – a furtive movement that prompts the plainclothes detective to fire. Just because conduct precedes the use of force (leading up to) does NOT mean that such conduct is an actionable part of the use of force. There must be causation (also referenced as provocation). [Trial brief omitted.]	to CACI No. 1305A, above.
		The definition of totality of the circumstances is far too prejudicial: it should stop after "to do so."	See committee response to comment to CACI No. 1305A, above.
VF-1303. *Battery by Peace Officer (Renumber as VF-1303A, Retitle and Revise)*	Bruce Greenlee, Attorney Richmond	Again, not necessary to revoke. Just revise and renumber to VF-1303A.	As suggested, the committee recommends renumbering CACI No. VF-1303, and revising the verdict form as proposed in the draft that was circulated for public comment as CACI No. VF-1305A.

Instruction	Commenter	Comment	Committee Response
VF-1303A. *Battery by Law Enforcement Officer (Nondeadly Force) (Revisions made in renumbered VF-1303)*	Shelley Bullen, LMFT Chico	"Question 1 of an officer intentionally touching a person they were arresting should be deleted or changed, as it[']s realistic an officer ([defendant]) touches a suspected offender of a crime as hand cuffing, pat down, [etc.] Perhaps adding that the course of arrest is appropriate. It leaves too much for speculation and gray area in its current language. So it would disqualify many people at question 1 when it should not."	The committee disagrees. To prove a claim for battery, a plaintiff must prove an intentional touching. The element is supported by case law.

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Instruction	Commenter	Comment	Committee Response
VF-1303B. *Battery by Peace Officer (Deadly Force) (New)*	California Lawyers Association, Litigation Section, Civil Jury Instructions Committee by Reuben A. Ginsburg, Chair, Sacramento	We would modify question 2 for the same reasons stated above relating to CACI No. 1305B: “Did [name of defendant] use deadly force that was not necessary in defense of human life ~~in [arresting/preventing the escape of/overcoming the resistance of]~~ on [*name of plaintiff/decedent*]?”	The committee agrees and has revised element 2 to require that the deadly force was used *on* the individual.

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Instruction	Commenter	Comment	Committee Response
2303. *Affirmative Defense—Insurance Policy Exclusion*	California Lawyers Association, Litigation Section, Civil Jury Instructions Committee by Reuben A. Ginsburg, Chair, Sacramento	We agree with the first proposed revisions to the Directions for Use.	No response required.
		CACI No. 2306 only applies to first party insurance cases, as stated in the second paragraph of the Directions for Use for that instruction. We recommend modifying the second paragraph of the Directions for Use for this instruction to note this limitation: "If a first party loss policy is involved, ~~U~~use CACI No. 2306 . . . ."	The committee has added additional information to the Directions for Use.
	Bruce Greenlee, Attorney Richmond	It would be nice to see something in either the DforU or the SandA that would explain why the additions are proposed.	The committee disagrees with the commenter's suggestion to add either to the Directions for Use or to the Sources and Authority. The committee has not changed the substance of the instruction. Based on a proposal from a member of the bar, the committee recommends expanding the use note relating to bracketed information that CACI users must provide and adding a cross-reference to a related instruction that may be helpful to users.

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Instruction	Commenter	Comment	Committee Response
VF-2506A. *Work Environment Harassment—Conduct Directed at Plaintiff—Employer or Entity Defendant (Revise)*	California Lawyers Association, Litigation Section, Civil Jury Instructions Committee by Reuben A. Ginsburg, Chair, Sacramento	We agree with the proposed revision. We note that this instruction does not include "an applicant," as in Government Code section 12940, subdivision (j)(1). Because this language should be qualified in the instruction (e.g., "an applicant for employment"), we suggest adding language to the Directions for Use stating that the statute also protects applicants and that the instruction should be modified to state the kind of applicant if applicable. We suggest the same for CACI No. 2521A, the instruction on which this verdict form is based.	Because the comment applies to the jury instruction on which this verdict form is based, the comment is beyond the scope of the invitation to comment. The comment will be considered in the next release cycle.
VF-2506B. *Work Environment Harassment—Conduct Directed at Others—Employer or Entity Defendant (Revise)*	California Lawyers Association, Litigation Section, Civil Jury Instructions Committee by Reuben A. Ginsburg, Chair, Sacramento	We agree with the proposed revision. We note that this instruction does not include "an applicant," as in Government Code section 12940, subdivision (j)(1). Because this language should be qualified in the instruction (e.g., "an applicant for employment"), we suggest adding language to the Directions for Use stating that the statute also protects applicants and that the instruction should be modified to state the kind of applicant if applicable. We suggest the same for CACI No. 2521B, the instruction on which this verdict form is based.	See committee response to CACI No. VF-2506A.
VF-2506C. *Work Environment Harassment—Sexual Favoritism—Employer or Entity Defendant (Revise)*	California Lawyers Association, Litigation Section, Civil Jury Instructions Committee by Reuben A. Ginsburg, Chair, Sacramento	We agree with the proposed revision. We note that this instruction does not include "an applicant," as in Government Code section 12940, subdivision (j)(1). Because this language should be qualified in the instruction (e.g., "an applicant for employment"), we suggest adding language to the Directions for Use stating that the statute also protects applicants and that the instruction should be modified to state the kind of applicant if applicable. We suggest the same for CACI No. 2521C, the instruction on which this verdict form is based.	See committee response to CACI No. VF-2506A.

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Instruction	Commenter	Comment	Committee Response
VF-2507A. *Work Environment Harassment—Conduct Directed at Plaintiff—Individual Defendant (Revise)*	California Lawyers Association, Litigation Section, Civil Jury Instructions Committee by Reuben A. Ginsburg, Chair, Sacramento	We agree with the proposed revision. We note that this instruction does not include “an applicant,” as in Government Code section 12940, subdivision (j)(1). Because this language should be qualified in the instruction (e.g., “an applicant for employment”), we suggest adding language to the Directions for Use stating that the statute also protects applicants and that the instruction should be modified to state the kind of applicant if applicable. We suggest the same for CACI No. 2522A, the instruction on which this verdict form is based.	See committee response to CACI No. VF-2506A.
VF-2507B. *Work Environment Harassment—Conduct Directed at Others—Individual Defendant (Revise)*	California Lawyers Association, Litigation Section, Civil Jury Instructions Committee by Reuben A. Ginsburg, Chair, Sacramento	We agree with the proposed revision. We note that this instruction does not include “an applicant,” as in Government Code section 12940, subdivision (j)(1). Because this language should be qualified in the instruction (e.g., “an applicant for employment”), we suggest adding language to the Directions for Use stating that the statute also protects applicants and that the instruction should be modified to state the kind of applicant if applicable. We suggest the same for CACI No. 2522B, the instruction on which this verdict form is based.	See committee response to CACI No. VF-2506A.
VF-2507C. *Work Environment Harassment—Sexual Favoritism—Individual Defendant (Revise)*	California Lawyers Association, Litigation Section, Civil Jury Instructions Committee by Reuben A. Ginsburg, Chair, Sacramento	We agree with the proposed revision. We note that this instruction does not include “an applicant,” as in Government Code section 12940, subdivision (j)(1). Because this language should be qualified in the instruction (e.g., “an applicant for employment”), we suggest adding language to the Directions for Use stating that the statute also protects applicants and that the instruction should be modified to state the kind of applicant if applicable. We suggest the same for CACI No. 2522C, the instruction on which this verdict form is based.	See committee response to CACI No. VF-2506A.

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Instruction	Commenter	Comment	Committee Response
2600. *Violation of CFRA Rights—Essential Factual Elements (Revise)*	Consumer Attorneys of California, by Jacqueline Serna, Deputy Legislative Director	On Page 52 [of the Invitation to Comment]: the following language is being stricken: ~~"The CFRA entitles eligible employees to take up to 12 unpaid workweeks in a 12-month period for family care and medical leave to care for their children, parents, or spouses, or to recover from their own serious health condition."~~ Comment: The proposed revisions delete the length of time of CFRA leave and it is not mentioned anywhere else. Without spelling out the length of CFRA leave, this deletion may cause some confusion to jurors. We recommend not deleting this language to avoid confusion.	The committee recommends deleting this single sentence, which is a direct quote from *Rogers v. County of Los Angeles* from the Sources and Authority. Keeping the sentence for the purpose of stating the length of time of CFRA leave would not accurately state the scope of the leave allowed under the expanded CFRA. In addition, the length of CFRA leave is not at issue in CACI No. 2600, so there is no risk of confusion to jurors. However, keeping the sentence, even noting that *Rogers* has been superseded on other grounds by statute, could be misleading to CACI users.
	California Lawyers Association,	We agree with the proposed revisions to the instruction, Directions for Use, and Sources and Authority.	No response required.

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Instruction	Commenter	Comment	Committee Response
	Litigation Section, Civil Jury Instructions Committee by Reuben A. Ginsburg, Chair, Sacramento	We suggest adding to the Directions for Use language noting that "parent-in-law" is defined in the definitions (Gov. Code, § 12945.2, subd. (b)(11)), but is not included in the list of persons for whom family care leave can be taken (*id*., 12945.2, subd. (b)(4)(B).) If the court finds that the legislative intent was to include parents-in-law, the instruction can be modified.	The committee is tracking proposed legislation that may resolve this issue. The committee will consider the suggestion in a future release cycle.
	Bruce Greenlee, Attorney Richmond	The additional ground under element 2: I had a hard time following the language. I finally realized that it refers to military deployment. I think that the problem can be fixed by including the word "military" with "covered active duty" (although the DforU does explain it).	To improve clarity, the committee has added "military" to the bracketed information in element 2—even though the CFRA does not use the term "military."
		Same: I also find the "e.g." problematic. As drafted, the element would simply say that the employee requested leave "for [the employee's] spouse's deployment." Don't you have to say more about why the deployment is an exigency for the employee? For example, that s/he must stay home to provide childcare that the spouse was previously providing. (Again, the word "military" would help to clarify "deployment.")	To improve clarity with respect to the example given, the committee has added language to the bracketed example.
2613. *Affirmative Defense—Key Employee (Revoke)*	Bruce Greenlee, Attorney Richmond	I assume that the Legislature removed this defense. In such a case, it is helpful to put the authority along with "Revoked May 2021" as a "see."	The committee has added a reference in the revoked instruction to the relevant legislative history.
2620. *CFRA Rights Retaliation—*	California Lawyers Association,	We agree with the proposed revisions, but we would modify the second paragraph of the Directions for Use to include "an inquiry." Government Code section 12945.2, subdivision (k)(2) refers to "any inquiry or proceeding related	The committee has revised the Directions for Use as suggested,

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Instruction	Commenter	Comment	Committee Response
Essential Factual Elements (Revise DforU)	Litigation Section, Civil Jury Instructions Committee by Reuben A. Ginsburg, Chair, Sacramento	to rights guaranteed under this section." An inquiry may be more informal than or otherwise differ from a "proceeding." "The 'other protected activity' option of the opening paragraph and elements 2 and 4 could be providing information or testimony in an inquiry or a proceeding related to CFRA rights. (Gov. Code, § 12945.2(k))."	adding "an inquiry" to the sentence referenced.
2630. *Violation of New Parent Leave Act—Essential Factual Elements (Revoke)*	Bruce Greenlee, Attorney Richmond	It would be helpful to provide some indication of why this instruction is proposed to be revoked, assuming that it is in response to some authority. If it's just because the committee decided that the instruction was ill advised or flawed, then I suppose silence is appropriate.	The committee has added a reference in the revoked instruction to the relevant legislative history.
2705. *Affirmative Defense to Labor Code, Unemployment Insurance Code, and Wage Order Violations—Plaintiff Was Not Defendant's Employee (Revise DforU)*	California Lawyers Association, Litigation Section, Civil Jury Instructions Committee by Reuben A. Ginsburg, Chair, Sacramento	We agree with the proposed revisions, but we believe it would be helpful to specify subdivision (b)(1) in citing Labor Code section 2775(b) in the second sentence of the second paragraph of the Directions for Use because subdivision (b)(1) is the specific authority for the statement.	The committee has added the specific subdivision, (b)(1), to the Direction for Use.
3050. *Retaliation—Essential*	California Lawyers Association, Litigation Section,	We believe the language "a substantial or motivating factor" in element 3 requires some explanation. Just as "substantial factor" (CACI No. 430) and "substantial motivating reason" (CACI No. 2507) are explained in CACI, we believe the jury requires an explanation of "a substantial or motivating factor."	The committee agrees that a jury's understanding of this phrasing would benefit

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Factual Elements	Civil Jury Instructions Committee by Reuben A. Ginsburg, Chair, Sacramento		from explanation, but the language is based on the Supreme Court's decision in *Nieves v. Bartlett* (2019) __ U.S. __ [139 S.Ct. 1715, 1725, 204 L.Ed.2d 1]. The committee will monitor cases in this area to see how the issue develops.
		We believe the sixth paragraph in the Directions for Use misstates the required causation. We would modify this paragraph to better describe the required causation: "The plaintiff must show that the defendant acted with a retaliatory motive and that the defendant's retaliatory motive ~~plaintiff's injury~~ was a 'but-for' cause of the plaintiff's injury, *i.e.*, that the retaliatory action would not have been taken without ~~absent~~ the retaliatory motive. (See *Nieves, supra,* 139 S.Ct. at p. 1722.)"	The committee has revised the sentence referenced in the Directions for Use to address the inadvertent misstatement concerning causation.
		Although it is beyond the scope of the Invitation to Comment, we believe the language "ordinary firmness" in element 5 is arcane and unhelpful. We would change "a person of ordinary firmness" to "an ordinary person."	The comment is beyond the scope of the invitation to comment. The committee will consider the suggestion in a future release cycle.
	Bruce Greenlee, Attorney Richmond	Element 4: "Substantial or motivating": According to Nieves, as noted in the DforU, causation must be "but for." So element 4 should reflect Nieves: "that the retaliatory action would not have been taken absent the retaliatory motive."	The committee has added a direct quote from *Nieves* to the

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Instruction	Commenter	Comment	Committee Response
		Even absent Nieves, "substantial or motivating" would not be right. The "or" connotes that "substantial" and "motivating" are two separate requirements, only one of which needs to be met. No authority is presented (and I know of none) that would support such an iteration of the causation requirement. Even for FEHA under *Harris v. City of Santa Monica*, the requirement is for a "substantial motivating" reason (no "or"). (Of course, one can argue that if it is motivating, it must also be substantial; there is no such thing as an insubstantial motivating reason.)	Sources and Authority as authority for the phrasing "substantial or motivating" in element 4. The committee is aware that this phrasing is unique, but it is the language that the United States Supreme Court has provided for this variety of retaliation under section 1983. The committee will monitor cases in this area to see how the issue develops.
		DforU: currently 4th short paragraph on Element 2: I would move this paragraph up to precede the currently third long paragraph on what to do based on whether fact-finding is needed. I think that it is best to say when element 2 is needed first, and then discuss the mechanics of how to deal with fact finding.	The committee has relocated the single-sentence paragraph concerning element 2 in the Direction for Use as suggested.
		DforU: current 5th paragraph: I don't think that this paragraph is really needed. It seems repetitious of the current third paragraph.	The committee agrees in part. The committee has revised the paragraph by deleting the first sentence and moving the final sentence regarding the no-probable-cause

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			requirement to the paragraph referenced by the commenter (formerly the 5th paragraph). Because the issues are complex, the committee believes that the Directions for Use would not be improved by deleting the paragraph in its entirety.
	Orange County Bar Association by Larisa M. Dinsmoor, President	Under "Directions for Use," at what would become the sixth paragraph, first sentence, the paraphrase of Nieves is inaccurate, as a plaintiff's injury is not the "but for" cause of a defendant's motive. The causal connection to be established is between the defendant's animus and the plaintiff's injury. It is suggested the sentence be revised, perhaps, as follows: "The plaintiff must show that the defendant acted with a retaliatory motive, and that such motive was the "but for" cause of the plaintiff's injury, i.e., that absent the retaliatory motive, the retaliatory action would not have been taken."	See the committee response to the California Lawyers Association's comment, above.
		Under "Sources and Authority," due to proposed deletions, at the first item, *Tichinin* requires reference to its full citation, as does *Karl*, at what would become the tenth item.	The committee has converted these two short cites in the Sources and Authority to full citations.
3055. *Rebuttal of Retaliatory Motive (New)*	California Lawyers Association,	This proposed new instruction states an affirmative defense, so we believe the title should indicate this consistent with other affirmative defense instructions.	The new instruction states a rebuttal on which the defendant

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	Litigation Section, Civil Jury Instructions Committee by Reuben A. Ginsburg, Chair, Sacramento	We suggest: "Affirmative Defense—Causation: Rebuttal of Retaliatory Motive."	bears the burden. The committee recommends against changing the title of the instruction as suggested.
		The second and third paragraphs seem duplicative. We would modify the second paragraph as follows and delete the third: "Even ~~If~~ if [*name of plaintiff*] proves that retaliation was a substantial or motivating reason for [*name of defendant*]'s [*specify alleged retaliatory conduct*], ~~you must then consider if~~ [*name of defendant*] is not responsible for [*name of plaintiff*]'s harm if [*name of defendant*] proves that [*name of defendant*] would have taken the same action even in the absence of [*name of plaintiff*]'s constitutionally protected activity."	The committee disagrees. Although there is some overlap in the two paragraphs, the second paragraph generally states that it's possible for a defendant to rebut a plaintiff's claim of retaliation. The third paragraph sets out the requirements of a successful rebuttal: a legitimate, nonretaliatory reason articulated by the defendant for the action, and that the same action would have been taken without respect to retaliation.
		We would delete the third paragraph of the instruction as unnecessary and to avoid using the language "stated nonretaliatory reason for the adverse action," which may be difficult for the jury to understand.	The committee agrees in part. The committee understands the cases to require a defendant

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Instruction	Commenter	Comment	Committee Response
			to claim that the response to the plaintiff's constitutionally protected activity was prompted by a legitimate, nonretaliatory reason. Because "stated nonretaliatory reason for the adverse action" may be difficult for a jury to understand, the committee has revised the third paragraph to use brackets for this information to be specified.
		We would modify the first paragraph of the Directions for Use for greater clarity and because we believe there is no reason to focus on the need to prove "a nonretaliatory reason," which we view as the means, when what is really needed is to prove the result, that the defendant would have taken the same action even without plaintiff's protected activity. "This instruction sets forth a ~~defendant's response~~ defense to a plaintiff's claim of retaliation. See CACI No. 3050, *Retaliation—Essential Factual Elements*. The defendant bears the burden of proving the defense ~~non-retaliatory reason for the allegedly retaliatory conduct~~."	The committee is not aware of authority that this instruction is an "affirmative defense," but the defendant does bear the burden of showing that the response to the plaintiff's constitutionally protected activity was prompted by a legitimate, nonretaliatory reason, and that the defendant

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			would have taken the action anyway.
	Bruce Greenlee, Attorney Richmond	Do not hyphenate "non-retaliatory." Prefixes don't take hyphens unless omitting the hyphen creates a different word.	For consistency with other CACI instructions, the committee has removed the hyphen from nonretaliatory (except where it is part of a direct quote).
		The basis of this instruction is problematic primarily because of the uncited statement in the first paragraph of the DforU, that the defendant bears the burden of proof on a nonretaliatory reason. This sentence is contra to the *McDonnell Douglas* test. Under *McDonnell Douglas*, once the plaintiff makes a prima facie case of an improper motive, the defense has the burden of *coming forward with evidence* of a legitimate reason for the action. But the burden of proof remains with the plaintiff to disprove that the defense's purported reason was the actual reason (i.e., that it is in fact a pretext for a discriminatory or retaliatory act).	The committee disagrees. The *McDonnell Douglas* test does not apply in this context. As the United States Supreme Court has stated, the *Mt. Healthy* test governs, and the committee believes that this instruction accurately states that test.
		The burden of proof is a different issue from what the causation standard is, although "but for" can apply to both. Again, here the instruction uses "substantial or motivating" as the standard for causation (without authority), and then gives the defense the burden of proving a "but for" (would have happened anyway). But as noted in my comments to 3050, *Nieves* says that causation is "but for," which means that the plaintiff must prove that the act would not have happened anyway.	The committee disagrees. As the quotation in the Sources and Authority evidences, there is binding authority from the United States Supreme Court on the

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Instruction	Commenter	Comment	Committee Response
			causation standard. As noted above in the committee response to CACI No. 3050, the committee is aware that this phrasing is unusual. The committee also reads *Nieves* to say that the defendant must show that the retaliatory action would have happened anyway.
		The instruction also conflates the separate issues of pretext and mixed motive. In a mixed-motive case, there are two actual reasons for the challenged action, one discriminatory, the other legitimate. For example, the employee is an abrasive woman who doesn't play well with others. There's a mixed motive: prohibited gender discrimination and legitimate performance issues. In a pretext case, the employer's stated reason is bogus; to disguise the real reason, which was wholly discriminatory. This instruction would work for a mixed-motive case if there was any authority for giving the defense the burden of proof of "but for" (we would have fired her anyway) in a 1983 mixed-motive case. Under FEHA and *Harris*, if the jury accepts the plaintiff's discriminatory reason, the defense then does have the burden of proving that it would have fired the employee anyway for the legitimate reason. But no authority is provided that the same shifting of the burden of proof applies under a 1983 retaliation claim. And the DforU suggests that the defense must prove nonpretext and that the instruction may be used for that purpose, which is not the law.	The committee disagrees. The commenter's reference to FEHA, *Harris*, and issues of mixed-motives and pretext—employment law standards and concepts—are not applicable in this context.

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Instruction	Commenter	Comment	Committee Response
	Orange County Bar Association by Larisa M. Dinsmoor, President	At the first paragraph of the proposed Instruction, second line, it is suggested "of" following "because" be deleted as it is unnecessary and would be, in some instances, grammatically incorrect.	The committee agrees, and has deleted "of" from the first sentence.
		At the second paragraph, first line, it is suggested "reason" be replaced with "factor" to be consistent with the proposed changes to Instruction 3050, and avoid any possible confusion for the jury which use of a different term might cause.	For consistency and to avoid possible confusion, the committee has changed *reason* to *factor*.
		At the third paragraph, second line, it is suggested "for" be replaced with "based upon" or some other word or phrase that makes clear, for example, a plaintiff was not arrested for defendant's stated reason, but based upon or owing to defendant's stated reason.	For improved clarity, the committee has revised the sentence to use "on the basis of."
		Under "Directions for Use," at the second paragraph, fourth line, while *Nieves* dealt with the issue of protected speech, as this is a paraphrase of the case, it is suggested the reference to "protected speech" be replaced with "constitutionally protected activity" to make the direction more broadly applicable and of greater assistance to users.	The committee has changed "protected speech" to "constitutionally protected activity" as suggested.
3904A. *Present Cash Value*	Bruce Greenlee, Attorney Richmond	The new sentence proposed to be added to the opening paragraph is a good one.	No response required.
4302. *Termination for Failure to Pay Rent—Essential Factual Elements (Revise DforU)*	California Apartment Association, by Heidi Palutke, Education, Policy and Compliance Counsel	CAA agrees that revisions are necessary to CACI No. 4302, but the proposed revisions are insufficient for two reasons. First, the Directions for Use refer to "rent due on a residential tenancy between March 1, 2020 and January 31, 2021" as the unpaid rent to which the necessary modification would apply. SB 91 extended this "covered time period" to June 30, 2021. Code of Civil Procedure §1179.02(a).	The committee has revised the Directions for Use to cover the recent extension of the "covered time period" resulting from the enactment of SB 91,

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			urgency legislation that became effective when signed by the Governor on Friday, January 29, 2021.
		Second, the proposed instruction does not state how it is necessary to modify the instruction when the unlawful detainer action is based on non-payment of COVID-19 rental debt. The COVID-19 Tenant Relief Act (CTRA) requires that the landlord serve a 15-day notice for rent due during the covered period. Unlike the standard three-day notice to pay rent or quit, the CTRA 15-Day Notice offers the tenant three alternatives. The tenant can pay or quit – as with the three-day notice – or the tenant may preserve, at least temporarily, the tenancy by returning the Declaration of COVID-19 Related Financial Distress (and documentation if required) with 15 days. Code Civ. Proc., §1179.03.	The committee considered revising the instruction and the Directions for Use to more comprehensively state how the instruction needs to be modified to address the CTRA, but the committee decided against attempting to do so because the law in this area continues to change, e.g., the enactment of SB 91 after these instructions posted for public comment. See also the committee response to Superior Court of Los Angeles County's comment, below.
		CAA recommends that the Judicial Council provide an alternate instruction for use when the unlawful detainer action is based on the tenant's failure to pay the rent between March 1, 2020, and June 30, 2021. CAA recommends two variations of this instruction – one for use prior to July 1, 2021, and one for use on or after July 1, 2021. CTRA requires a tenant who has qualified for	The committee considered revising the instruction and the Directions for Use to more comprehensively

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		eviction protections by providing the declaration of COVID-19-related financial distress (and documentation if required) to pay by June 30, 2021, 25% of the rental payments due between September 1, 2020, and June 30, 2021, to be permanently protected against eviction for non-payment of any remaining balance due for the covered period. Code Civ. Proc., §1179.03(g). Proposed Language for Alternate Instruction: **Termination for Failure to Pay Rent – Essential Factual Elements – COVID-19 Tenant Relief Act – Rent Due Between March 1, 2020, and June 30, 2021** [*Name of plaintiff*] claims that [*name of defendant*] [and [*name of subtenant*], a subtenant of [*name of defendant*],] no longer [*has/have*] the right to occupy the property because [*name of defendant*] has failed to pay the rent. To establish this claim, [*name of plaintiff*] must prove all of the following: 1. That [*name of plaintiff*] [*owns/leases*] the property; 2. That [*name of plaintiff*] [*rented/subleased*] the property to [*name of defendant*]; 3. That under the [*lease/rental agreement/sublease*], [*name of defendant*] was required to pay rent in the amount of $[*specify amount*] per [*specify period, e.g., month*]; 4. That [*name of plaintiff*] properly gave [*name of defendant*] fifteen-days' written notice to pay the rent, return the declaration of COVID-19-related financial distress [and documentation supporting the claim that the tenant has suffered COVID-19-related financial distress] [*use if the landlord properly alleged the tenant is a high-income tenant in the notice*], or vacate the property;	state how the instruction needs to be modified to address the CTRA, but the committee decided against attempting to do so because the law in this area continues to change. The committee will consider the commenter's proposed language for an alternative instruction in the next release cycle.

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Instruction	Commenter	Comment	Committee Response
		5. That as of [*date of fifteen-day notice*], at least the amount stated in the fifteen-day notice was due; 6. That [*name of defendant*] did not pay the amount stated in the notice within fifteen days after [*service/receipt*] of the notice; 7. That [*name of defendant*] did not deliver a signed declaration of COVID-19-related financial distress to the landlord within fifteen days after [*service/receipt*] of the notice; 8. That [*name of defendant*] did not deliver documentation supporting the claim that the tenant has suffered COVID-19-related financial distress to the landlord within fifteen days after [*service/receipt*] of the notice. [*Use if the landlord properly alleged the tenant is a high-income tenant in the notice*]; 8. That [*name of defendant*] [*or subtenant* [*name of subtenant*]] is still occupying the property. [Alternative to 6 and 7 for actions filed on or after July 1, 2021] That [*name of defendant*] delivered a signed declaration of COVID-19-related financial distress (and documentation if required for high-income tenant) to the landlord within fifteen days after [*service/receipt*] of the notice but did not pay by June 30, 2021, 25 percent of each rental payment due between September 1, 2020, and June 30, 2021, demanded in the notice[s].	
	California Lawyers Association, Litigation Section, Civil Jury Instructions	We agree with the proposed revisions, but recent legislation extends the time period when the mandatory notice requirements apply to June 30, 2021, so “June 30, 2021” should replace “January 31, 2021” in the Directions for Use.	The committee has revised the Directions for Use to cover the recent extension of the “covered time period” resulting from the

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Instruction	Commenter	Comment	Committee Response
	Committee by Reuben A. Ginsburg, Chair, Sacramento		enactment of SB 91, urgency legislation that became effective when signed by the Governor on Friday, January 29, 2021.
	Orange County Bar Association by Larisa M. Dinsmoor, President	The Directions for Use instructions should be modified in the first paragraph to: (1) change the dates as effective for rents due "between March 1, 2020 and June 30, 2021" [See CCP §1179.02(a)]	The committee has revised the Directions for Use to cover the recent extension of the "covered time period" resulting from the enactment of SB 91, urgency legislation that became effective when signed by the Governor on Friday, January 29, 2021.
		And (2) change the citation for the COVID-19 Tenant Relief Act of 2020 to "Code of Civil Procedure §1179.01 *et seq*" since more than the two subparagraphs are relevant and the full cite is later correctly made in the "Sources and Authority" section.	The committee has expanded the citation in the Directions for Use as noted above in the committee response to the comment of Superior Court of Los Angeles County and as suggested by the OCBA.
	Superior Court of Los Angeles	"Directions for Use	The committee has revised the Directions

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Instruction	Commenter	Comment	Committee Response
	County, by Bryan Borys	The proposal is to add a Direction for Use to modify the instruction as necessary for rent due on a residential tenancy between March 1, 2020 and January 31, 2021. [The Los Angeles Superior Court (LASC)] recommends that the Direction for Use instead be revised to cover the period of March 1, 2020 and June 30, 2021 and to add to the reference list a citation to SB 91 which expanded the covered time period and the transition time period of AB 3088 to June 30, 2021."	for Use to cover the recent extension of the "covered time period" resulting from the enactment of SB 91, urgency legislation that became effective when signed by the Governor on Friday, January 29, 2021.
		"LASC also recommends that the Direction for Use specifically include a substitution of the term 'fifteen business days' wherever the term 'three days' appears in the essential elements for any case involving a failure to pay COVID rental debt, i.e., rent that came due between 3/1/20 and 6/30/21. The revised direction for use would read as follows: 'Modify this instruction as necessary for rent due on a residential tenancy between March 1, 2020, and June 30, 2021, including substitution of the term 'fifteen business days' wherever the term 'three days' appears in the essential elements. (See COVID-19 Tenant Relief Act of 2020, Code Civ. Proc., § 1179.03(b), (c); SB 91, Code Civ. Proc., § 1179.02.)' "	For the reasons stated above relating to changes in unlawful detainer law, the committee has concerns about trying to specify how the instruction should be modified. Despite these reservations, committee has revised the Directions for Use to note that the instruction should be modified to use fifteen business days instead of three days.
		"Sources and Authority LASC recommends adding a cite to SB 91 (CCP 1179.02 et seq.) to the cited authorities. The revised cite would read as follows: 'COVID-19 Tenant Relief Act of 2020. Code of Civil Procedure section 1179.01 et seq.	The committee has added the new legislation to the Sources and Authority as suggested.

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Instruction	Commenter	Comment	Committee Response
		SB 91. Code of Civil Procedure section 1179.02 et seq.' "	
4303. *Sufficiency and Service of Notice of Termination for Failure to Pay Rent (Revise DforU)*	California Apartment Association, by Heidi Palutke, Education, Policy and Compliance Counsel	CAA agrees that revisions are necessary to CACI No. 4303, but the proposed revisions are insufficient for the same reasons as CACI No. 4302. First, the Directions for Use refer to "rent due on a residential tenancy between March 1, 2020 and January 31, 2021" as the unpaid rent to which the necessary modification would apply. SB 91 extended this "covered time period" to June 30, 2021. Code Civ. Proc., §1179.02(a).	The committee has revised the Directions for Use to cover the recent extension of the "covered time period" resulting from the enactment of SB 91, urgency legislation that became effective when signed by the Governor on Friday, January 29, 2021.
		Second, the proposed instruction does not state how it is necessary to modify the instruction when the notice of termination at issue is based on non-payment of COVID-19 rental debt. CTRA requires 15-Day Notice to include specific statutory text in 12-point type. The required text depends on when the rent was due and when the notice was served. The notice text in subdivision (b) of Section 1170.03 of the Code of Civil Procedure is required to be served for rent that came due between March 1, 2020, to August 31, 2020. However, for rent that came due between September 1, 2020, subdivision (c) of Section 1170.03 of the Code of Civil Procedure requires two distinct notices depending on when the notice was served. One version of the text is required for notices served prior to February 1, 2021, and different text is required for notices served on or after February 1, 2021. Code Civ. Proc., §1179.03(c)(4)&(5). CTRA also requires this statutory notice text to be provided in Spanish, Tagalog, Chinese, Korean, or Vietnamese if the rental agreement was required by law to be provided in that language. Code Civ. Proc., §1179.03(d).	The committee considered revising the instruction and the Directions for Use to more comprehensively state how the instruction needs to be modified to address the CTRA, but the committee decided against attempting to do so because the law in this area continues to change, e.g., the enactment of SB 91 after this instruction posted for public comment. See also the committee response to the Superior Court of

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Instruction	Commenter	Comment	Committee Response
			Los Angeles County's comment, below.
		CTRA also allows a landlord to require "high income" tenants to provide documentation to support the Declaration of COVID-19 Related Financial Distress. Specific allegations and disclosures must be made for the documentation requirement in the notice to be effective. Code Civ. Proc., §1179.02.5(c).	No response required.
		CAA recommends that the Judicial Council provide an alternate instruction for use when the notice of termination is based on the tenant's failure to pay rent between March 1, 2020, and June 30, 2021. The proposed instruction omits the provisions applicable to commercial tenancies, since CTRA's protections only apply to residential tenants. Proposed Language for Alternate Instruction: **Sufficiency and Service of Notice of Termination for Failure to Pay Rent – COVID-19 Tenant Relief Act – Rent Due Between March 1, 2020, and June 30, 2021** [*Name of plaintiff*] contends that [he/she/*nonbinary pronoun*/it] properly gave [*name of defendant*] 15-days' notice to pay the rent or vacate the property. To prove that the notice contained the required information and was properly given, [*name of plaintiff*] must prove all of the following: 1. That the notice informed [*name of defendant*] in writing that [he/she/*nonbinary pronoun*/it] must pay the amount due within fifteen days, return the included Declaration of COVID-19 Related Financial Distress (and documentation if required), or vacate the property; 2. That the notice stated no more than the amount due, and the name, telephone number, and address of the person to whom the amount should be paid, and	The committee considered revising the instruction and the Directions for Use to more comprehensively state how the instruction needs to be modified to address the CTRA, but the committee decided against attempting to do so because the law in this area continues to change. The committee, however, will consider the commenter's proposed language for an alternative instruction in the next release cycle.

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Instruction	Commenter	Comment	Committee Response
		[*Use if payment was to be made personally*: the usual days and hours that the person would be available to receive the payment; and] [*or*: *Use if payment was to be made into a bank account*: the number of an account in a bank located within five miles of the rental property into which the payment could be made, and the name and street address of the bank; and] [or: Use if an electronic funds transfer procedure had been previously established: that payment could be made by electronic funds transfer; and] 3. That the notice included a Declaration of COVID-19 Related Financial Distress in 12-point font in English or in Spanish, Tagalog, Chinese, Korean, or Vietnamese if the contract or agreement was negotiated in that language. 4. That the notice included the statutory text required by Code of Civil Procedure Section 1179.03. 5. The notice included the notice required by Code of Civil Procedure Section 1179.02.5(d) [*Use if plaintiff has evidence defendant was a high-income tenant, and plaintiff required defendant to provide documentation to support the claim that the tenant has suffered COVID-19-related financial distress by landlord properly alleging the tenant is a high-income tenant in the notice.*] 6. That the notice was given to [*name of defendant*] at least 15 days before [*insert date on which action was filed*].	

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Instruction	Commenter	Comment	Committee Response
		[The fifteen-day notice period excludes Saturdays, Sundays, and judicial holidays, but otherwise begins the day after the notice to pay the rent or vacate the property was given to [*name of defendant*].] Notice was properly given if [*select one or more of the following manners of service*:] [the notice was delivered to [*name of defendant*] personally[./; or]] [[*name of defendant*] was not at [home or work], and the notice was left with a responsible person at [[*name of defendant*]'s residence or place of work], and a copy was also mailed in an envelope addressed to [*name of defendant*] at [[his/her/*nonbinary pronoun*] residence]. In this case, notice is considered given on the date the second notice was [received by [*name of defendant*]/placed in the mail][./; or]] [*name of defendant*]'s place of residence and work could not be discovered, or a responsible person could not be found at either place, and (1) the notice was posted on the property in a place where it would easily be noticed, (2) a copy was given to a person living there if someone could be found, and (3) a copy was also mailed to the address of the rented property in an envelope addressed to [*name of defendant*]. In this case, notice is considered given on the date the second notice was [received by [*name of defendant*]/placed in the mail].]	
	California Lawyers Association, Litigation Section, Civil Jury Instructions Committee by Reuben A. Ginsburg, Chair, Sacramento	We agree with the proposed revisions, but recent legislation extends the time period when the mandatory notice requirements apply to June 30, 2021, so "June 30, 2021" should replace "January 31, 2021," in the Directions for Use.	The committee has revised the Directions for Use to cover the recent extension of the "covered time period" resulting from the enactment of SB 91, urgency legislation that became effective when signed by the

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Instruction	Commenter	Comment	Committee Response
			Governor on Friday, January 29, 2021.
	Orange County Bar Association by Larisa M. Dinsmoor, President	The Directions for Use instructions should be modified in the first paragraph to: (1) change the dates as effective for rents due "between March 1, 2020 and June 30, 2021" [See CCP §1179.02(a)].	The committee has revised the Directions for Use to cover the recent extension of the "covered time period" resulting from the enactment of SB 91, urgency legislation that became effective when signed by the Governor on Friday, January 29, 2021.
		And (2) change the citation for the COVID-19 Tenant Relief Act of 2020 to "Code of Civil Procedure §1179.01 *et seq*" since more than the two subparagraphs are relevant and the full cite is later correctly made in the "Sources and Authority" section.	The committee has expanded the citation in the Directions for Use as suggested by the Orange County Bar Association and as noted in the committee response to the comment of the Superior Court of Los Angeles County, below.
	Superior Court of Los Angeles County, by Bryan Borys	"Directions for Use The proposal is to add a Direction for Use to modify the instruction as necessary for rent due on a residential tenancy between March 1, 2020 and January 31, 2021.	The committee has revised the Directions for Use to cover the recent extension of the "covered time period"

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Instruction	Commenter	Comment	Committee Response
		LASC recommends that the Direction for Use instead be revised to cover the period of March 1, 2020 and June 30, 2021 and to add to the reference list a citation to SB 91 which expanded the covered time period and the transition time period of AB 3088 to June 30, 2021."	resulting from the enactment of SB 91, urgency legislation that became effective when signed by the Governor on Friday, January 29, 2021.
		"LASC also recommends that the Direction for Use specifically include a substitution of the term 'fifteen business days' wherever the term 'three days' appears in the essential elements for any case involving a failure to pay COVID rental debt, i.e., rent that came due between 3/1/20 and 6/30/21."	For the reasons stated above relating to changes in unlawful detainer law, the committee has concerns about trying to specify how the instruction should be modified. Despite these reservations, committee has revised the Directions for Use to note that the instruction should be modified to use fifteen business days instead of three days.
		"LASC also recommends that the Direction for Use include adding to the list of elements required for a sufficient notice in a COVID rental debt case proof by plaintiff that plaintiff supplied defendant with a blank form Declaration of COVID-19 Financial Distress, the mandated Notice of State Rights, separate notices to quit for failure to pay rent between 3/1/20 and 8/31/20 and between 9/1/20 and 6/30/21, and if applicable, a third notice for notice to quit served on or after 2/1/21 advising defendant of the rental assistance program.	For the reasons stated above relating to changes in unlawful detainer law, the committee has concerns about trying to specify how the Directions for Use

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Instruction	Commenter	Comment	Committee Response
		The revised direction for use would read as follows: 'Modify this instruction as necessary for rent due on a residential tenancy between March 1, 2020, and June 30, 2021, including (1) substitution of the term 'fifteen business days' wherever the term 'three days' appears in the essential elements, (2) addition of the following essential element: 'That plaintiff supplied defendant with a blank form Declaration of COVID-19 Financial Distress, the mandated Notice of State Rights, separate notices to quit for failure to pay rent between 3/1/20 and 8/31/20 and between 9/1/20 and 6/30/21, and if applicable, a third notice to quit served on or after 2/1/21 advising defendant of the rental assistance program.' (See COVID-19 Tenant Relief Act of 2020, Code Civ. Proc., § 1179.03(b), (c); SB 91, Code Civ. Proc., §§ 1179.02, 1179.03, 1179.04.)' "	should be modified. The committee appreciates the suggested language, but the committee declines to add more specific information at this time.
		"Sources and Authority LASC recommends adding a cite to SB 91 (CCP 1179.02 et seq.) to the cited authorities. The revised cite would read as follows: 'COVID-19 Tenant Relief Act of 2020. Code of Civil Procedure section 1179.01 et seq. SB 91. Code of Civil Procedure section 1179.02 et seq.' "	The committee has added the new legislation to the Sources and Authority as suggested.
4308. *Termination for Nuisance or Unlawful Use—Essential Factual Elements (Revise DforU)*	California Apartment Association, by Heidi Palutke, Education, Policy and Compliance Counsel	The proposed revisions to the directions for use of CACI No. 4308, provide the following: "If the grounds for termination involved assigning, subletting, or committing waste in violation of a condition or covenant of the lease, give CACI No. 4304, *Termination for Violation of Terms of Lease/Agreement – Essential Factual Elements*. (Code Civ. Proc., §1161(4).) CACI No. 4304 fails to address AB 1482's dual notice requirement outlined in subdivision (c) of Section 1946.2 of the Civil Code (the "Dual Notice Requirement") for just cause evictions, as defined by subdivision (b) of Section 1946.2 of the Civil Code, relating to a material breach of a lease. The Dual Notice Requirement requires an owner of residential real property subject to AB 1482 to serve a second three-day notice to quit with no opportunity to cure for material lease violations that were not cured within the initial three-notice notice.	This comment is beyond the scope of the invitation to comment. The committee will consider the comment concerning the dual notice requirement and CACI No. 4304 in a future release cycle.
	Bruce Greenlee, Attorney Richmond	DforU new paragraph: Drop the citation from the title of CACI No. 4394 in the cross reference.	The committee disagrees. The citation is not in the cross-

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Instruction	Commenter	Comment	Committee Response
			referenced title. It is a parenthetical citation. The committee, however, has added a See signal.
		SandA new excerpt: *Hellman* is not an unlawful detainer case. The law of nuisance is quite complex. Rather than adding one single nuisance case here, I would just cross refer to the private nuisance instruction, where the points from *Hellman* are covered.	The committee believes that adding to the Sources and Authority a commonly cited case on nuisance—albeit not an unlawful detainer case—will provide a starting point for further research on nuisance and factors determining nuisance. The committee notes that the existing Directions for Use already cross-reference the Sources & Authority of two nuisance instructions.
4329. *Affirmative Defense—Failure to Provide Reasonable Accommodation (New)*	California Apartment Association, by Heidi Palutke, Education, Policy and Compliance Counsel	California's fair housing regulations provide that an "individual with a disability may raise failure to provide a reasonable accommodation as an affirmative defense to an unlawful detainer action." Cal. Code Regs., tit 2 § 12176(c)(8). The proposed instructions require the defendant to prove:	The committee disagrees. In element 4, "necessary" is modified with phrasing that is taken directly from the regulation: "necessary to afford [the

Instruction	Commenter	Comment	Committee Response
		4. that such [an] accommodation[s][was/were] necessary to afford [[*name of defendant*]/a member of [*name of defendant*]'s household] an equal opportunity to use and enjoy the [*specify nature of dwelling at issue, e.g., apartment building*];" "Necessary" as used in this context does not have its ordinary meaning. California's fair housing regulations require a direct and logical connection ("nexus") between the accommodation requested and the disability, for an accommodation to be "necessary". Specifically, the regulations provide that "a requested accommodation may be denied if "there is no disability-related need for the requested accommodation (in other words, there is no nexus between the disability and the requested accommodation)." Cal. Code Regs., tit. 2, § 12179. Similarly, if the need for the disability is not obvious or known to the housing provider, the disabled person must establish it is necessary by demonstrating, the "relationship between the individuals' disability and how the requested accommodation is necessary to afford the individual with a disability equal opportunity to enjoy a dwelling or housing opportunity." Cal. Code Regs., tit. 2 (§12178(c)(2)). The instructions should guide the jury through making the determination whether the defendant has established that the accommodation is necessary. As with the disability of the defendant, the need for the accommodation may be apparent, or known by the plaintiff. If the need for the accommodation is unknown, it must be established by the defendant upon request by the plaintiff. CAA recommends the following addition to subpart 4 of proposed Instruction 4329: 4. "The relationship between [[*name of defendant*]/a member of [*name of defendant*]'s household]'s disability and the requested accommodation and how the requested accommodation[s][was/were] necessary to afford [[*name of defendant*]/a member of [*name of defendant*]'s household] an equal opportunity to enjoy the [*specify nature of dwelling or housing opportunity at issue, e.g., apartment building*];"	individual with the disability] an equal opportunity to use and enjoy [a dwelling or public or common use area]." To the extent the comment seeks additional language concerning a nexus between a disability and the accommodation requested, the committee will continue to monitor the law in this area.

Instruction	Commenter	Comment	Committee Response
		CAA also respectfully requests that the following cases be added to the Sources and Authority section of the instructions: *Bronk v. Ineichen*, 54 F.3d 425, 429 (7th Cir. 1995) (holding that accommodation is necessary if it affirmatively enhances a disabled tenant's quality of life by ameliorating the effects of the disability); *Giebeler v. M&B Assocs.*, 343 F.3d 1143, 1155 (9th Cir. 2003) (but for the accommodation the disabled person will likely be denied equal opportunity to enjoy the housing of their choice); *Auburn Woods I Homeowner's Ass'n. v. Fair Employment and Housing Commission*, 121 Cal. App. 4th 1578, 1596 (2004) (without the accommodation, a landlord's rules, policies or practices interfere with a disabled person's right to use and enjoy their dwelling.)	Because the cases suggested by the commenter do not address the provisions of the California Code of Regulations that form the basis of this new instruction, the committee declines to add these three cases to the Sources and Authority.
		Finally, CAA recommends that the Judicial Council add an instruction that covers the elements a plaintiff must prove to overcome this affirmative defense. The regulations spell out the circumstances where an accommodation can lawfully be denied. These should also be the subject of a jury instruction applicable to unlawful detainer actions. Section 12179 lists five circumstances in which an accommodation can be denied. Each of these can provide a basis for overcoming the affirmative defense. The examples raised in Section 12176(B) envision how these may apply in the unlawful detainer context – specifically the "undue financial and administrative burden" reason for denying an accommodation. Incorporation of the factors listed in Section 12179(b) would assist a jury in determining whether a landlord has or has not proven that the accommodation poses an undue financial and administrative burden.	This comment is beyond the scope of the invitation to comment. The committee will consider the possibility of adding a new instruction, as suggested, in a future release cycle.
	California Lawyers Association, Litigation Section, Civil Jury	We agree with this proposed new instruction, but we would cite authority for the second sentence in the Directions for Use: "Such a request may be made by the individual with a disability, a family member, or someone authorized by the individual with a disability to act on the individual's behalf. (Cal. Code Regs. tit. 2, § 12176(c)(2).)"	The committee has added the citation to the Directions for Use as suggested.

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Instruction	Commenter	Comment	Committee Response
	Instructions Committee by Reuben A. Ginsburg, Chair, Sacramento		
	Bruce Greenlee, Attorney Richmond	Opening paragraph: I would not capitalize "Fair Housing." I would, however, hyphenate it.	The committee agrees in part and has revised fair housing to lowercase.
		I would not use "apartment building" as an example as this defense would not apply to an entire building. Use "apartment unit."	The committee agrees in part. Under the regulation, a dwelling or a dwelling's public and common use areas may be at issue. For clarity, the committee has refined the example to specify an apartment building's mailroom.
		Element 4: I don't think you will find a single place where CACI uses "such" as a modifier. It is considered legalese, in the same manner as "said." Just say "the accommodation[s]". ("such as" or "such a," as in the DforU, are ok.)	The committee has deleted "such" from element 4.
		From the S&A, it appears that Cal. Code Regs., tit. 2, § 12176(c)(8) is the authority for the proposition that a FEHA disability accommodation violation is a defense to a UD. I would make this the first sentence of the DforU.	The committee has added a sentence and a parenthetical citation to the Directions for Use stating the basis

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Instruction	Commenter	Comment	Committee Response
			for the new instruction.
4560. *Recovery of Payments to Unlicensed Contractor—Essential Factual Evidence (Revise DforU)*	California Lawyers Association, Litigation Section, Civil Jury Instructions Committee by Reuben A. Ginsburg, Chair, Sacramento	We agree with the proposed revisions. Because this instruction states the elements of a claim, we believe the title should include "Essential Factual Elements."	As noted in the User Guide, titles to CACI instructions are directed to lawyers, and are not part of the instruction. In the event that additional information would be helpful to lawyers, the committee has revised the title of the instruction to include "Essential Factual Elements."
4561. *Damages—All Payments Made to Unlicensed Contractor (Revise)*	California Lawyers Association, Litigation Section, Civil Jury Instructions Committee by Reuben A. Ginsburg, Chair, Sacramento	We agree with the proposed revisions. We would add Business and Professions Code section 7031, subdivision (b) to the Sources and Authority because the statute provides authority for recovery of "all compensation paid to the unlicensed contractor."	The committee has added the statutory citation to the Sources and Authority.
4562. *Payment for Construction Services Rendered—Essential*	California Lawyers Association, Litigation Section, Civil Jury	We agree with this proposed new instruction, but would modify the first sentence to state more clearly the nature of the claim, which is not only that defendant has not paid for services, but that plaintiff is entitled to recover the unpaid amount: "[*Name of plaintiff*] claims that <u>[*name of plaintiff*] is entitled to</u>	The committee agrees in part. The committee has revised the first sentence to say that the defendant *owes*

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Instruction	Commenter	Comment	Committee Response
Factual Elements (Bus. & Prof. Code, § 7031(a), (e)) (New)	Instructions Committee by Reuben A. Ginsburg, Chair, Sacramento	payment for construction services that [*name of plaintiff*] provided to [*name of defendant*] ~~has not paid for [*name of plaintiff*]'s construction services~~."	*money* for construction services rendered.
		Because this instruction states the elements of a claim, we believe the title should include "Essential Factual Elements."	In the event that the suggested information would be helpful to lawyers, the committee has retitled the instruction to include "Essential Factual Elements."
	Bruce Greenlee, Attorney Richmond	I'm not sure what this instruction adds to CACI. It is only very tangentially related to B&P 7031. It's basically just a claim for damages for amounts unpaid, under either a breach of contract or quantum meruit theory, with a licensing element added.	The committee believes the new instruction is supported by law and understands that these claims are often raised by contractors in actions involving claims under Bus. & Prof. Code, § 7031.
		The instruction only seems useful if the contractor's license is at issue in the case. Otherwise, I don't think the element 2 would be needed in a straight collection case.	The instruction is intended for use when an allegedly unlicensed contractor brings a claim for money owed for construction services rendered. The Directions for Use of CACI No. 4560 had stated that the

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Instruction	Commenter	Comment	Committee Response
			instruction could be modified for that situation without saying how. The committee believes that this new instruction will be helpful to users.
		I would revise the first sentence of the DforU to add "if the contractor's licensing status is at issue in the case and depends on a factual determination" (or something like that).	The committee disagrees. The Directions for Use already address licensure, and although licensure is required (or substantial compliance with licensure requirements), licensure need not be at issue.
		Query whether all of the elements of breach of contract or quantum meruit would have to be included. At least the DforU should cross refer to those instructions.	The committee believes that the instruction fairly states the law for a claim by a contractor where there is no formal contract. The quantum meruit instructions in the Construction Law series generally assume an abandoned construction contract,

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Instruction	Commenter	Comment	Committee Response
			so cross-references to those instructions may not assist users.
	Orange County Bar Association by Larisa M. Dinsmoor, President	In order to comply with Bus.&Prof. Code §7031(e) and case holdings, the following should be inserted in the second paragraph of Directions for Use at the end of the first sentence before the code citation: "…if the contractor shows at an evidentiary hearing before the judge that (1) it was duly licensed prior to performing services, (2) it acted in good faith to maintain its licensure, and (3) it acted promptly and in good faith to remedy the failure upon learning thereof. Bus.&Prof. Code §7031(e)."	The committee believes that the Directions for Use's existing reference to subdivision (e) is sufficient.
		Also modify the citation at the Sources and Authority section to read "Phoenix Mechanical Pipeline Inc vs Space Exploration Technologies Corp (2017) 12 Cal.App. 5th 842, 853."	The committee has changed the short cite to a full citation.
All except as noted above	California Lawyers Association, Litigation Section, Civil Jury Instructions Committee by Reuben A. Ginsburg, Chair, Sacramento	Agree (702, VF-1303, VF-1303A, 2601, 2602, 2603, 2613, 2630, 3704, 3904A, 4308)	No response required.
All except as noted above	Orange County Bar Association by Larisa M. Dinsmoor, President	Agree (440, 1010, 1305, 1305A, VF-1303, VF1303A, VF-1303B, 2303, VF-2506A, VF-2506B, VF-2506C, VF-2507A, VF-2507B, VF-2507C, 2600, 2601, 2602, 2603, 2613, 2620, 2630, 2705, 3704, 3904A, 4308, 4329, 4560, 4561)	No response required.

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Item number: 06

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee action requested [Choose from drop down menu below]:
Recommend JC approval (has circulated for comment)

Rules Committee Meeting Date: 04/14/21

Title of proposal: Unlawful Detainers: Forms to Further Implement Senate Bill 91

Proposed rules, forms, or standards *(include amend/revise/adopt/approve):*
Revise forms UD-101, UD-105, and UD-120

Committee or other entity submitting the proposal:
Civil and Small Claims Advisory Committee

Staff contact (name, phone and e-mail): Anne M. Ronan, 415-865-8933, anne.ronan@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by Rules Committee date: Nov 2, 2021
Project description from annual agenda: The enactment of the Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020 (Assem. Bill 3088) changes the practice and procedures relating to all residential unlawful detainer actions from now until January 31, 2021, and for a longer period for actions based on unpaid rent due at any time between March 1, 2020, and January 31, 2021. The new law raises the jurisdictional limit of small claims cases for recovery of unpaid rents due during that period. New forms or rules will be developed as appropriate to implement this bill. Additional forms or further revisions may be required if additional legislation is enacted before January 1, 2021 year relating to unlawful detainers as legislators have indicated is likely.

If requesting July 1 or out of cycle, explain:
Law went into effect Jan. 28, 2021, and forms were originally revised effective mid-February. They were went out for public comment after council approval, and these further revisions are recommended in light of comments received.

Additional Information: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

Information for JC Staff regarding form translations:

- *List any amended forms in this proposal that have already been translated:* none
- *List any new forms that require translation by statute or that you will request to be translated:* UD-101 and UD-105, requesting translation

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688
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REPORT TO THE JUDICIAL COUNCIL

Item No.: 21-105
For business meeting on: May 22, 2021

Title
Unlawful Detainers: Forms to Further Implement Senate Bill 91

Rules, Forms, Standards, or Statutes Affected
Revise forms UD-101, UD-105, and UD-120

Recommended by
Civil and Small Claims Advisory Committee
Hon. Ann I. Jones, Chair

Agenda Item Type
Action Required

Effective Date
May 24, 2021

Date of Report
April 8, 2021

Contact
Anne M. Ronan, 415-865-8933
anne.ronan@jud.ca.gov

Executive Summary

The Civil and Small Claims Advisory Committee recommends revisions of three unlawful detainer forms to further implement Senate Bill 91 (Stats. 2021, ch. 2), urgency legislation that became effective on Friday, January 29, 2021. The council previously revised and adopted these forms (a mandatory form with supplemental allegations, the answer form, and a form with newly required verifications) on an expedited basis, prior to being circulated for public comment, to ensure the unlawful detainer forms conformed to the provisions of the new law as soon as possible. The committee is now recommending further revisions based on comments received, so that the forms will more fully and correctly reflect the provisions of SB 91.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective May 24, 2021, revise the following forms:

- *Plaintiff's Mandatory Cover Sheet and Supplemental Allegations—Unlawful Detainer* (form UD-101);
- *Answer—Unlawful Detainer* (form UD-105); and

- *Verification by Landlord Regarding Rental Assistance—Unlawful Detainer* (form UD-120).

The proposed revised forms are attached at pages 10–19.

Relevant Previous Council Action

Assembly Bill 3088 (Stats. 2020; ch. 37), which includes the COVID-19 Tenant Relief Act of 2020, was enacted as urgency legislation on August 30, 2020, and put in place new provisions that went into effect immediately addressing unlawful detainer actions during the COVID-19 pandemic. (See Link A.) The bill provided, among other things, certain protections against the termination of residential tenancies for failure to pay rent due from March 1, 2020, through January 31, 2021. In order for courts to determine whether judgments may issue on unlawful detainer cases in light of these new protections, and protections provided by federal law, plaintiffs need to provide information beyond the allegations contained in *Complaint—Unlawful Detainer* (form UD-100) or previously included in individually drafted complaints. For that reason, the council adopted *Plaintiff's Mandatory Cover Sheet and Supplemental Allegations—Unlawful Detainer* (form UD-101), effective October 5, 2020, which includes allegations as to the various facts that a court needs to know to properly apply the provisions in AB 3088. The council also revised *Answer–Unlawful Detainer* (form UD-105) to aid defendants in responding to the allegations in new form UD-101 and raising defenses potentially available under AB 3088. Because there was not time to circulate the revised answer form prior to the October 5 effective date, the form was circulated for public comment after the council approved it, and was further revised in December 2020 in response to the comments received.

Because Senate Bill 91 (see Link B), along with recent federal action, extended the time frame for most tenant protections to June 30, 2021, and beyond; placed some new strictures on landlords (which raise corresponding new defenses for tenants); and requires additional verifications by plaintiffs in certain unlawful detainer actions, the council further revised forms UD-101 and UD-105 and adopted a new verification form (form UD-120), effective February 15, 2021.[1] Because those forms were approved and adopted without public comment, they were circulated for comments after the council action.

Analysis/Rationale

Required verifications

Among other changes to the law, SB 91 added new provisions to the Health and Safety Code, beginning at section 50897, establishing a new rental assistance program to administer federal rental assistance funds. Landlords of tenants from eligible households can apply for rental assistance in the form of payment to the landlord for 80 percent of the unpaid rental debt accumulated from April 1, 2020, through March 31, 2021. As a condition for receiving the funds, a landlord must waive the right to file an unlawful detainer action based on any remaining rental

[1] More recently, Assembly Bill 81 (Stats. 2021; ch. 5; see Link C) was enacted as "clean-up" legislation which makes mostly minor modifications to statutes enacted or amended by SB 91. That law did not make any substantive changes to the points addressed by the form revision or comments.

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arrears for the time period for which the payment is made. (Health & Saf. Code, § 50897.1(d)(2).)

The law provides that "the court shall not enter a judgment in favor of the landlord" in any unlawful detainer action seeking possession of residential rental property based on nonpayment of rent or any other financial obligation under the lease without express verification that the landlord has not received rental assistance or other financial assistance, nor has any applications pending for such assistance, either corresponding to the amount demanded in the notice underlying the complaint, or for any amount accruing after the date of that notice. The statute breaks this out into four separate statements that must be verified. (Health & Saf. Code, § 50897.3(e)(2).)

This obligation is not limited by date of the tenancy or by date of the unpaid rent: it applies to judgments in all residential unlawful detainer actions for nonpayment of rent that are pending now or brought in the future. No judgment is to be entered in such cases without a landlord's verification under penalty of perjury of all the statements set out in the new Health and Safety Code provision. While such cases are currently limited in light of the protections in AB 3088 and SB 91, they do exist. Tenants who cannot, or have not, provided a declaration of COVID-19–related financial distress can still be evicted for nonpayment of rent. And such cases will become more common as of July 2021.

The *Verification by Landlord Regarding Rental Assistance—Unlawful Detainer* (form UD-120) is a recitation of the verifications required by the statue before judgment can be entered in certain cases. It was adopted as a mandatory form, with instructions that it must be filed with requests for default judgment in actions based on nonpayment of residential rent. This is to ensure that a plaintiff can easily provide the required verification, and also ensure that a verification filed with the court meets the statutory requirements.[2] In order to ensure that plaintiffs know that this verification is required for certain unlawful detainer judgments, information about this requirement has been added to the instructions at the beginning of form UD-101.

In light of comments received on this issue, the committee is now recommending that an item for the verifications be added directly to form UD-101, as new item 12. As commenters pointed out, because the verified statements that the plaintiff has not received rental assistance and does not have a pending application for such assistance are now an essential element of plaintiff's cause of action, with no judgment available unless the statements are made, due process requires that defendants receive notice of the statements as part of the complaint and have the opportunity to prepare a defense on this point. In addition to including the required statements in the allegations required with the complaint, an item has been added to the answer, allowing a defendant to assert that the plaintiff *has* received such rental assistance (and so may not obtain an unlawful detainer judgment), as new item 3m(8) in form UD-105.

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[2] In light of comments received, the recommended revisions include clarification to the instruction on this form, to note that it can be used in situations other than requests for entry of default, as appropriate.

Other revisions

The other primary change to unlawful detainer procedures under SB 91 was the extension of AB 3088's "covered period"—the period in which landlords may not bring such actions based on nonpayment of rent due after March 1, 2020, if a declaration of financial distress has been provided by the tenant. The end date was moved from January 31, 2021, to June 30, 2021. (Code Civ. Proc., § 1179.02(a), and see also 1179.02(i) [transition time period]) The changes in the related time frames previously required several minor but significant revisions to both forms UD-101 and UD-105, primarily in the dates included in instructions for various items. This proposal does not recommend any further revisions regarding these changes.[3]

Senate Bill 91 also added some new strictures on landlords. New Civil Code section 1942.9 prohibits a landlord from charging late fees for COVID-19–related rental debt (i.e., money due between March 1, 2020, and June 30, 2021) to a tenant who has provided a declaration of COVID-19–related financial distress. In addition, the landlord cannot increase fees for services being charged to such a tenant, or charge for services previously provided for free. The checklist of defenses on the answer form approved in February include defenses for violations of those new provisions, violation of which would affect, at a minimum, the amount of money claimed in the unlawful detainer action (form UD-105 at item 3m(6).) As part of the revisions recommended here, that item has been reorganized and a reference to the documentation required of high-income tenants has been added.

New Code of Civil Procedure section 1179.04.5[4] prohibits a landlord, for a tenancy that exists during the covered time period, from either applying the security deposit toward back rent or applying any rental payment made to COVID-19–related rental debt "other than the prospective month's rent." A defense based on this new provision was added to the answer form in February (form UD-105 at item 3r), but with an incorrect date limitation placed on it. The language of item 3r has been corrected and clarified in the recommended revisions.

This proposal would also further revise the answer form to reflect SB 91's provision that assistance under the state rental assistance program is, for purposes of protection against housing discrimination provided under the California Fair Employment and Housing Act (FEHA), deemed a "source of income" under that law. For that reason, a cross-reference to FEHA has been added to the item for retaliatory eviction (on form UD-105 at item 3*l*) and to a new item has been added as to the checklist of defenses, asserting that a plaintiff has refused to accept funds from a third party (item 3s). An affirmative defense under FEHA based on a plaintiff's failure to provide a reasonable accommodation has also been added, to conform to recent regulation issued

[3] The dates in the items referencing federal tenant protections in forms UD-101 and UD-105 were omitted when the forms were previously revised to conform to SB 91. The dates were removed from those items (form UD-101 at item 4; form UD-105 at items 3p and q) in anticipation that the dates might change again. Recently, the Centers for Disease Control and Prevention (CDC) extended the protections of its *Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19* (CDC Order) through June 30, 2021. (See Link D.) The committee is not recommending adding date limiters to the federal items at this time.

[4] This section was enacted as *Civil Code* section 1179.04.5 in SB 91 but moved to the correct code in AB 81.

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by the Department of Fair Employment and Housing. (See 2 C.C.R. 12176(8)(A).) (See discussion in Comments section below.)

Policy implications

The COVID-19 pandemic presents an unprecedented crisis that threatens the lives, health, and safety of all Californians. In AB 3088 and SB 91, the Legislature has enacted policies balancing protections for tenants—who are facing the loss of housing and potentially homelessness as a result of financial losses or expenditures related to the pandemic—with the rights of property owners who also have financial interests at stake. It is important that the forms reflect current law correctly and as completely as possible because the complexities of the provisions may place unrepresented parties at a disadvantage if clear forms are not provided for their use.

Comments

The new and revised forms were circulated for comments for a two-week special cycle following approval by the council. Comments were received from seven legal services and public advocacy groups (“Tenant Advocates”),[5] the California Apartment Association, two state legislators (Senator Thomas Umberg and Assembly Member Mark Stone), one commissioner (from Superior Court of Santa Clara County,[6] and the Civil Training and Analyst Group (“TAG Team”) of Superior Court of Orange County. Few indicated formal positions on the changes, but all agreed that the revisions made by the council were needed, and appreciated the speed with which they were approved, but most requested further revisions to the forms.

Most of the comments addressed the same issues. The principal comments and the committee’s responses are summarized below.[7]

Issue 1: Verifications required by Health & Safety Code section 50897.3(e)

The Invitation to Comment included a request for specific comments on whether the verifications required before a court may enter an unlawful detainer judgment under Health and Safety Code section 50897.3(e)(2) be included as an item on form UD-101. All the Tenant Advocates and the state legislators answered yes, the verification should be in the UD-101, so that the assertions are included in the material served on defendants and can be addressed by defendants in their answer or at trial. They pointed out—and the committee agreed—that checking a box to make the verification would not be any added burden to plaintiffs.

These commenters also suggested that—in addition to including the verification in the complaint—a further defense be added to the list of defenses in item 3 on the UD-105, asserting

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[5] The Tenant Advocates who provided comments are Bay Area Legal Aid, Bet Tzedek, Community Legal Aid SoCal, Eviction Defense Collaborative, Legal Services of Northern California, Public Advocates, Inc., and Western Center on Law & Poverty jointly with California Rural Legal Assistance Foundation.

[6] Ms. Copeland provided only a general comment on the UD forms and a more specific one to be considered with pending revisions to small claims forms, not the ones in this Invitation to Comment. Those will be addressed at a later time, with the small claims form proposal

[7] A chart setting out all the comments, organized by issue, and the committee’s responses is at pages 20–60.

that the landlord had accepted rental assistance after issuance of the notice or accepted rental assistance that is not reflected in the debt noted on the complaint. The committee notes that, with the assertions included in the complaint, defendants can deny them in item 1 of the answer form. However, several similar provisions—which could be included as denials—have been added to section 3, Defenses and Objections, essentially to provide a checklist for defendants similar to the way the that form UD-101 acts as a checklist for plaintiffs. For that reason, as noted above, the committee is recommending adding the defenses to form UD-105 as well as the new item 12 to form UD-101.

Two commenters, California Apartment Association (CAA) and the TAG Team of Orange County Superior Court requested that the form UD-101 include instructions as to when the verifications should be provided, with CAA asking if they could be filed with the complaint. Because the allegations have now been added to form UD-101, which must be filed with the complaint, this question has now been addressed.

Issue 2: Form UD-101 – introductory language

Several of the Tenant Advocates suggested revising the introductory language on form UD-101, because it may give rise to an inference that the form is not required in cases filed after October 5, 2021. The committee recommends modifying the introductory language in light of these comments.

Issue 3. Form UD-101 – instructions to clerks

Most of the Tenant Advocates suggested that instructions should be added to form UD-101 for the court clerk, telling the clerk to not issue summons, in two places: (1) if a landlord checks item 4(a), indicating that a tenant has invoked the temporary halt in evictions under federal law by providing the landlord with a declaration under the CDC order (Link D); and (2) if a landlord checks item 7(d)(1), indicating that a tenant has provided the landlord with a timely declaration of financial distress invoking the state law protections under AB 3088 and SB 91.

The committee declines to add such instruction in either item. First, a clerk's issuance of a summons in an unlawful detainer proceeding is a ministerial act, mandated by Code Civil Procedure section 1166(e). Instructions on a form—if not expressly supported by statue or rule of court—would not be an appropriate basis for advising a clerk to refuse to carry out a mandated ministerial action. Second, neither the federal law nor the state law supports a blanket prohibition in issuing summons after the appropriate declaration has been served on the landlord. The CDC Order does not specifically prohibit courts from taking action; it instead prohibits landlords from evicting protected tenants who invoke the order. If a tenant invokes the protections of the CDC Order, and the landlord proceeds with the eviction, judicial determinations likely will be necessary to decide whether the CDC Order applies and, if so, to what extent. Nor does the state law prohibit all unlawful detainer actions from going forward if a tenant provides a declaration of COVID–19-related financial distress. Actions based on just cause other than nonpayment of rent may proceed even if that declaration has been provided. Code Civ. Proc., § 1179.03.5(a)(3).

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Issue 4. Form UD-101 – service of informational notice
CAA suggested adding a limiting instruction to item 7a that the informational notice is not required if the only unpaid rental payments at issue in the action came due after February 1, 2021. The committee declines to accept this suggestion, because the language currently on the form covers CAA's interpretation of the statute as well as other possible interpretations and the decision as to which is correct will ultimately have to be made by a court.

Issue 5. Form UD-105 – item 3r
The Tenant Advocates and the state legislators all correctly pointed out that the form UD-105 approved in February is mistaken in limiting the defense in item 3r to the period before July 1, 2021. Code of Civil Procedure section 1179.04.5 provides that for the duration of any tenancy that existed from March 1, 2020, to June 30, 2021 (the "covered time period") a landlord is not to apply a security deposit to cover COVID-19 rental debt (rent or other financial obligations that came due during the covered time period) or to apply rental payments to any COVID-19 rental date other than prospectively. In other words, during the entire tenancy, no matter how long it lasts going forward, the landlord cannot apply either the security deposit or future rental payments to rent due during the covered time period. The commenters are correct, and that item has been modified in the recommended revisions.

In addition, CAA pointed out that the usage of the terms rent and COVID-19 related rent (which includes more than rent) were not consistently used in this item. This proposal modifies this item to address this concern as well.

Issue 6. Form UD-105 – landlord's action re rental assistance
New Health & Safety Code section 50897.1(i) provides that, for the purposes of protections under the Fair Housing and Employment Act, assistance provided under the State Rental Assistance Program shall be deemed a "source of income" as that term is defined in Government Code section 12927(i) (i.e., under FEHA protections). Commenters look at this from two different points of view.

- The Tenant Advocates all suggested that this provision means that a landlord's *refusal to accept rental assistance* under the state program constitutes unlawful source of income discrimination under Government Code section 12955(a) and also unlawful retaliation under section 12955(f). The commenters suggest two revisions to the answer form to address this, each of which the committee agrees with, in part:
  - in item 3*l,* the current item relating to retaliation for failure to pay rent during COVID-19 covered period, the citation be expanded to include reference to Government Code section 12955(f). (See item 3*l* on revised form UD-105—the committee has added a reference to the FEHA unlawful practices statute (Gov. Code, § 12955), although not to a specific subpart.)
  - a new item asserting that the landlord refused to accept payment offered toward financial obligations, citing Health and Safety Code section 50897.1(i). (See new item 3s on attached UD-105—the committee has included cites to the FEHA

unlawful practices section (rather than to the new Health and Safety Code, because that new section does not say anything about refusing to accept payment); and to Civil Code section 1947.3, which precludes a landlord from refusing to accept payments from third parties.

- The state legislators look at the new provision from a different point of view—they suggested that it means that the landlord should not discriminate after *accepting* payments from the rental assistance program, because to do so would be to discriminate based on source of income and be retaliatory. The committee declines to add an entirely new defense based on this interpretation, but has, as noted above, added references to FEHA to two other items.

Issue 7. Form UD-105 – reasonable accommodations

The Tenant Advocates all raised a point they have raised before in commenting on revisions to the unlawful detainer forms over the past year—that the answer form should include an affirmative defense for plaintiff's failure to provide a reasonable accommodation that was requested by a disabled tenant. This affirmative defense has been codified in regulations issued by the Department of Fair Employment and Housing, effective January 2020. The committee has not acted on these comments previously for two reasons: the focus of the proposals has been on COVID-19 related statutory provisions and the suggested defense may be raised within the general defense regarding discriminatory action (item 3f). The commenters point out, however, that, while not a defense based on COVID-19 pandemic issues, this defense is particularly important during this time, when evictions are more likely to occur and people with disabilities face myriad additional barriers to timely assertion of their rights. The commenters also point out that it is a more specific affirmative defense than the general discrimination defense, and not one that parties may think of as falling under item 3f. The regulation expressly states, "An individual with a disability may raise failure to provide a reasonable accommodation as an affirmative defense to an unlawful detainer action." (2 C.C.R. 12176(8)(A).)[8] This affirmative defense has been added to the answer form as new item 3t.

The Tenant Advocates also suggested, and this too is a repetition from earlier comments, that an "advisory" be added to the answer form that people with disabilities are entitled to reasonable accommodations and may request one at any point during the unlawful detainer process. the committee concluded that such an advisory is not an appropriate part of an answer. Should information sheets be developed for unlawful detainers, as the committee hopes to do in the future, the suggestion will be considered at that time.

Issue 8. Form UD-105 – request for jury

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[8] 2 C.C.R. 12176 may be viewed at *https://govt.westlaw.com/calregs/Document/I26F34E35D0984BB3AE7C41C7CAF959A4?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)&bhcp=1*

The Tenant Advocates also repeated a prior comment that the answer form should include a request for a jury trial. The committee declines this suggestion. No such item exists on the form complaint or on any other Judicial Council pleading form. This suggestion is outside the scope of this proposal and would be a significant change to the form. Moreover, such a request may be made using the current *Request/Counter Request to Set for Trial* (form UD-105), as explained on the California Courts Online Self-Help Center.

Issue 9. Form UD-105 – other comments

Some additional minor comments were made regarding form UD-105 which do not fit into the categories above, which are on the comments chart at Issue 9.

Alternatives considered

In addition to the alternatives suggested by the commenters and discussed above, the committee considered not recommending any further revisions to these forms. However, the committee concluded that the revisions were needed so that the forms reflect current law correctly and completely.

Fiscal and Operational Impacts

Although SB 91 will have a significant impact on court operations, the revised forms should help to alleviate that impact, by making it less difficult for judicial officers to adjudicate unlawful detainer proceedings in compliance with the new law. Court staff, judicial officers, and self-help center staff will need to be made aware of the new and revised forms, and that older versions should not be rejected (see Cal. Rules of Court, rule 1.42).

Attachments and Links

1. Forms UD-101, UD-105, and UD-120, at pages 10–19.
2. Chart of comments, at pages 20-60.
3. Link A: Assembly Bill 3088 (Aug.1, 2020), *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB3088*
4. Link B: Senate Bill 91 (Jan. 29, 2021), *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB91*
5. Link C: Assembly Bill 81 (Feb. 23, 2021), *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB81*
6. Link D: Centers for Disease Control and Protection order (March 28, 2021), *https://www.federalregister.gov/documents/2021/03/31/2021-06718/temporary-halt-in-residential-evictions-to-prevent-the-further-spread-of-covid-19*

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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.: E-MAIL ADDRESS: ATTORNEY FOR *(name)*:	DRAFT 04.08.21 NOT APPROVED BY COUNCIL
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF: DEFENDANT:	
PLAINTIFF'S MANDATORY COVER SHEET AND SUPPLEMENTAL ALLEGATIONS—UNLAWFUL DETAINER	CASE NUMBER:

For action filed *(check one)*: ☐ before October 5, 2020 ☐ on October 5, 2020, or later

All plaintiffs in unlawful detainer proceedings must file and serve this form. Filing this form complies with the requirement in Code of Civil Procedure section 1179.01.5(c).

- *Serve this form with the summons.*
- *If a summons has already been served without this form, then serve it by mail or any other means of service authorized by law.*
- *If defendant has answered prior to service of this form, there is no requirement for defendant to respond to the supplemental allegations before trial.*

Before obtaining a judgment in an unlawful detainer action for nonpayment of rent on a residential property, a plaintiff will be required to verify that no rental assistance or other financial compensation has been received for the amount in the notice demanding payment or accruing afterward, and no application is pending for such assistance. For a default judgment, plaintiff must use Verification by Landlord Regarding Rental Assistance *(form UD-120) to make this verification.*

1. PLAINTIFF *(name each)*:

   alleges causes of action in the complaint filed in this action against DEFENDANT *(name each)*:

2. **Statutory cover sheet allegations** (Code Civ. Proc., § 1179.01.5(c))
   a. This action seeks possession of real property that is *(check all that apply)*: ☐ Residential ☐ Commercial
   (If "residential" is checked, complete items 3 and 4 and all remaining items that apply to this action. If only "commercial" is checked, no further items need to be completed except the signature and verification.)
   b. This action is based, in whole or in part, on an alleged default payment of rent or other charges. ☐ Yes ☐ No

3. **Tenants subject to COVID-19 Tenant Relief Act** (Code Civ. Proc., § 1179.02(h))
   a. (1) One or more defendants in this action is a natural person: ☐ Yes ☐ No
   (2) Identify any defendant not a natural person:
   (If no is checked, then no further items need to be completed except the signature and verification.)
   b. (1) All defendants named in this action maintain occupancy as described in Civil Code section 1940(b). ☐ Yes ☐ No
   (2) Identify any defendant who does not:
   (If yes is checked, then no further items need to be completed except the signature and verification.)

Form Adopted for Mandatory Use
Judicial Council of California
UD-101 [Rev. May 24, 2021]

Code of Civil Procedure, § 1179.01 et seq.
www.courts.ca.gov

PLAINTIFF:	CASE NUMBER:
DEFENDANT:	

4. **Federal law allegations**

a. Defendant ☐ has ☐ has not provided a statement under penalty of perjury for the Centers for Disease Control and Prevention's order for *Temporary Halt in Evictions to Prevent Further Spread of COVID-19* (85 Federal Register 55292) or its extension. *(Note to plaintiff: Proceeding in violation of the federal order may result in civil or criminal penalties.)*

b. This action ☐ does ☐ does not seek possession of a dwelling unit in property that has a federally backed multifamily mortgage for which forbearance has been granted under title 15 United States Code section 9057.

(1) Date forbearance began

(2) Date forbearance ended

5. ☐ **Unlawful detainer notice expired before March 1, 2020**
The unlawful detainer complaint in this action is based solely on a notice to quit, to pay or quit, or to perform covenants or quit, in which the time period specified in the notice expired before March 1, 2020. *(If this is the only basis for the action, no further items need to be completed except the signature and verification on page 4. (Code Civ. Proc., § 1179.03.5(a)(1).))*

6. ☐ **Rent or other financial obligations due between March 1, 2020, and August 31, 2020 (protected time period)**
The unlawful detainer complaint in this action is based, at least in part, on a demand for payment of rent or other financial obligations due in the protected time period. *(Check all that apply.)*

a. ☐ Defendant *(name each):*

was served the "Notice from the State of California" required by Code of Civil Procedure section 1179.04, and if more than one defendant, on the same date and in the same manner. *(Provide information regarding service of this notice in item 8 below.)*

b. ☐ One or more defendants was served with the notice in item 6a on a different date or in a different manner, which service is described in attachment 8c.

c. ☐ Defendant *(name each):*

was served with at least 15 days' notice to pay rent or other financial obligations, quit, or deliver a declaration, and an unsigned declaration of COVID-19–related financial distress, in the form and with the content required in Code of Civil Procedure section 1179.03(b) and (d).

*(If the notice identified defendant as a **high-income tenant** and requested submission of documentation supporting any declaration the defendant submits, complete item 9 below. (Code Civ. Proc., § 1179.02.5(c).))*

(*If filing form UD-100 with this form and item 6c is checked, specify this 15-day notice in item 9a(7) on form UD-100, attach a copy of the notice to that complaint form, and provide all requested information about service on that form.)*

d. Response to notice *(check all that apply):*

(1) ☐ Defendant *(name each):*

delivered a declaration of COVID-19–related financial distress on landlord in the time required. (Code Civ. Proc., § 1179.03(f).)

(2) ☐ Defendant *(name each):*

did *not* deliver a declaration of COVID-19–related financial distress on landlord in the time required. (Code Civ. Proc., § 1179.03(f).)

7. ☐ **Rent or other financial obligations due between September 1, 2020, and June 30, 2021 (the transition time period)**
The unlawful detainer complaint in this action is based, at least in part, on a demand for payment of rent or other financial obligations due during the transition time period.

a. ☐ Defendant *(name each):*

was served the "Notice from the State of California" required by Code of Civil Procedure section 1179.04, and if more than one defendant, on the same date and in the same manner. *(Provide information regarding service of this notice in item 8 below.)*

PLAINTIFF: DEFENDANT:	CASE NUMBER:

7. b. ☐ One or more defendants was served with the notice in item 7a on a different date or in a different manner, which service is described in attachment 8c.

c. ☐ Defendant *(name each):*

was served with at least 15 days' notice to pay rent or other financial obligations, quit, or deliver a declaration, and an unsigned declaration of COVID-19-related financial distress, in the form and with the content required in Code of Civil Procedure section 1179.03(c) and (d).

*(If the notice identified defendant as a **high-income tenant** and requested submission of documentation supporting any declaration the defendant submits, complete item 9 below. (Code Civ. Proc., § 1179.02.5(c).))*

(*If filing form UD-100 with this form and item 6c is checked, specify this 15-day notice in item 9a(7) on form UD-100, attach a copy of the notice to that complaint form, and provide all requested information about service on that form.)*

d. Response to notice *(check all that apply):*

(1) ☐ Defendant *(name each):*

delivered a declaration of COVID-19–related financial distress on the landlord in the time required. (Code Civ. Proc., § 1179.03(f).)

(2) ☐ Defendant *(name each):*

did *not* deliver a declaration of COVID-19–related financial distress on the landlord in the time required. (Code Civ. Proc., § 1179.03(f).))

e. ☐ Rent due (*complete only if action filed after June 30, 2021):*

(1) Rent in the amount of $ was due between September 1, 2020, and June 30, 2021.

(2) Payment of $ for that period was received by June 30, 2021.

8. **Service of Code of Civil Procedure Section 1179.04 Notice From the State of California** *(check all that apply)*

a. ☐ The notice identified in item 6a and 7a was served on the defendant named in those items as follows:

(1) ☐ By personally handing a copy to defendant on *(date):*

(2) ☐ By leaving a copy with *(name or description):* ,
a person of suitable age and discretion, on *(date):* at defendant's
☐ residence ☐ business AND mailing a copy to defendant at defendant's place of residence.

(3) ☐ By posting a copy on the premises on *(date):*
☐ AND giving a copy to a person found residing at the premises AND mailing a copy to defendant at the premises on *(date):*

(a) ☐ because defendant's residence and usual place of business cannot be ascertained OR

(b) ☐ because no person of suitable age or discretion can be found there.

(4) ☐ By sending a copy by mail addressed to the defendant on *(date):*

b. ☐ *(Name):*
was served on behalf of all defendants who signed a joint written rental agreement.

c. ☐ Information about service of notice on the defendants alleged in items 6b and 7b is stated in Attachment 8c.

d. ☐ Proof of service of the notice or notices in items 6a, 6b, 7a, and 7b is attached to this form and labeled Exhibit 1.

9. ☐ **High-income tenant.** The 15-day notice in item 6c or 7c above identified defendant as a high-income tenant and requested submission of documentation supporting the tenant's claim that tenant had suffered COVID-19–related financial distress. Plaintiff had proof before serving that notice that the tenant has an annual income that is at least 130 percent of the median income for the county the rental property is located in and not less than $100,000. (Code Civ. Proc., § 1179.02.5.)

a. ☐ The tenant did not deliver a declaration of COVID-19–related financial distress within the required time. (Code Civ. Proc., § 1179.03(f).)

b. ☐ The tenant did not deliver documentation within the required time supporting that the tenant had suffered COVID-19–related financial distress as asserted in the declaration. (Code Civ. Proc., § 1179.02.5(c).)

PLAINTIFF: DEFENDANT:	CASE NUMBER:

10. ☐ **Just cause eviction**. (*Only applicable if action is filed before July 1, 2021. Note: If the tenancy is subject to the Tenant Protection Act (including Civil Code section 1946.2), plaintiff must, if using form UD-100, complete item 8 on that form in addition to this item.)*
   a. ☐ The tenancy identified in the unlawful detainer complaint in this action was terminated for at-fault just cause as defined in Civil Code section 1946.2(b)(1), which reason is in the notice of termination. (Code Civ. Proc., § 1179.03.5(a)(3)(A)(i).)
   b. ☐ The tenancy identified in the unlawful detainer complaint in this action was terminated for no-fault just cause as defined in Civil Code section 1946.2(b)(2), which reason is in the notice of termination. (Code Civ. Proc., § 1179.03.5(a)(3)(A)(ii).) *(Complete (1) or (2) below, only if applicable.)*
      (1) ☐ The no-fault just cause is the intent to demolish or substantially remodel, which ☐ is ☐ is not necessary to comply with codes, statutes, or regulations relating to the habitability of the rental units. (Code Civ. Proc., § 1179.03.5(a)(3)(A)(ii).)
      (2) ☐ The tenancy identified in the complaint in this action was terminated because the owner of the property has entered into a contract with a buyer who intends to occupy the property and the property ☐ does ☐ does not meet all the requirements of Civil Code section 1946.2(e)(8). (Code Civ. Proc., § 1179.03.5(a)(3)(A)(ii)(II).)
   c. ☐ This action is based solely on the cause of termination checked in item 10a or b above, and is not for nonpayment of rent or other financial obligations. (*If this item applies, plaintiff may not recover any rental debt due from the period between March 1, 2020, and June 30, 2021, as part of the damages in this action.* (Code Civ. Proc., § 1179.03.5(a)(3)(B).))

11. ☐ **Rent or other financial obligations due after June 30, 2021.** (*Only applicable if action is filed on or after July 1, 2021.*) The only demand for rent or other financial obligations on which the unlawful detainer complaint in this action is based is a demand for payment of rent due after June 30, 2021.

12. ☐ **Statements regarding rental assistance** (*Required in all actions based on nonpayment of rent or any other financial obligation. Plaintiff must answer all the questions in this item and, if later seeking a default judgment, will also need to file* Verification Regarding Rental Assistance *(form UD-120).)*
   a. Has plaintiff received rental assistance or other financial compensation from any other source corresponding to the amount demanded in the notice underlying the complaint? ☐ Yes ☐ No
   b. Has plaintiff received rental assistance or other financial compensation from any other source for rent accruing *after* the date of the notice underlying the complaint? ☐ Yes ☐ No
   c. Does plaintiff have any pending application for rental assistance or other financial compensation from any other source corresponding to the amount demanded in the notice underlying the complaint? ☐ Yes ☐ No
   d. Does plaintiff have any pending application for rental assistance or other financial compensation from any other source for rent accruing *after* the date on the notice underlying the complaint? ☐ Yes ☐ No

13. ☐ Number of pages attached *(specify)*:

Date: ______________________

______________________________ ▶ ______________________________
(TYPE OR PRINT NAME) (SIGNATURE OF PLAINTIFF OR ATTORNEY)

VERIFICATION

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

I am the plaintiff in this proceeding and have read this complaint. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: ______________________

______________________________ ▶ ______________________________
(TYPE OR PRINT NAME) (SIGNATURE)

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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.: E-MAIL ADDRESS: ATTORNEY FOR *(name):*	DRAFT 04/02/21 NOT APPROVED BY JUDICIAL COUNCIL
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF: DEFENDANT:	
ANSWER—UNLAWFUL DETAINER	CASE NUMBER:

1. Defendant *(all defendants for whom this answer is filed must be named and must sign this answer unless their attorney signs):*

answers the complaint as follows:

2. ***DENIALS (Check ONLY ONE of the next two boxes.)***

a. ☐ **General Denial** *(Do not check this box if the complaint demands more than $1,000.)*
Defendant generally denies each statement of the complaint and of the *Mandatory Cover Sheet and Supplemental Allegations—Unlawful Detainer* (form UD-101).

b. ☐ **Specific Denials** *(Check this box and complete (1) and (2) below if complaint demands more than $1,000.)*
Defendant admits that all of the statements of the complaint and of the *Mandatory Cover Sheet and Supplemental Allegations—Unlawful Detainer* (form UD-101) are true EXCEPT:

(1) **Denial of Allegations in Complaint (Form UD-100 or Other Complaint for Unlawful Detainer)**

(a) Defendant claims the following statements of the complaint are false *(state paragraph numbers from the complaint or explain below or, if more room needed, on form MC-025)*:
☐ Explanation is on form MC-025, titled as Attachment 2b(1)(a).

(b) Defendant has no information or belief that the following statements of the complaint are true, so defendant denies them *(state paragraph numbers from the complaint or explain below or, if more room needed, on form MC-025)*:
☐ Explanation is on form MC-025, titled as Attachment 2b(1)(b).

(2) **Denial of Allegations in *Mandatory Cover Sheet and Supplemental Allegations—Unlawful Detainer* (form UD-101)**

(a) ☐ Defendant did not receive plaintiff's *Mandatory Cover Sheet and Supplemental Allegations* (form UD-101). *(If not checked, complete (b) and (c).)*

(b) Defendant claims the following statements on the *Mandatory Cover Sheet and Supplemental Allegations—Unlawful Detainer* (form UD-101) are false (*state paragraph numbers from form UD-101 or explain below or, if more room needed, on form MC-025*): ☐ Explanation is on form MC-025, titled as Attachment 2b(2)(b).

(c) Defendant has no information or belief that the following statements on the *Mandatory Cover Sheet and Supplemental Allegations—Unlawful Detainer* (form UD-101) are true, so defendant denies them *(state paragraph numbers from form UD-101 or explain below or, if more room needed, on form MC-025):*
☐ Explanation is on form MC-025, titled as Attachment 2b(2)(c).

Form Approved for Optional Use
Judicial Council of California
UD-105 [Rev. May 24, 2021]

Civil Code, § 1940 et seq.;
Code of Civil Procedure, §§ 425.12, 1161 et seq., 1179.01 et seq.
www.courts.ca.gov

CASE NUMBER:

3. **DEFENSES AND OBJECTIONS** (*NOTE: For each box checked, you must state brief facts to support it in item 3v (on page 3) or, if more room is needed, on form MC-025. You can learn more about defenses and objections at* www.courts.ca.gov/selfhelp-eviction.htm *.)*

a. ☐ *(Nonpayment of rent only)* Plaintiff has breached the warranty to provide habitable premises.

b. ☐ *(Nonpayment of rent only)* Defendant made needed repairs and properly deducted the cost from the rent, and plaintiff did not give proper credit.

c. ☐ *(Nonpayment of rent only)* On *(date):* before the notice to pay or quit expired, defendant offered the rent due but plaintiff would not accept it.

d. ☐ Plaintiff waived, changed, or canceled the notice to quit.

e. ☐ Plaintiff served defendant with the notice to quit or filed the complaint to retaliate against defendant.

f. ☐ By serving defendant with the notice to quit or filing the complaint, plaintiff is arbitrarily discriminating against the defendant in violation of the Constitution or the laws of the United States or California.

g. ☐ Plaintiff's demand for possession violates the local rent control or eviction control ordinance of *(city or county, title of ordinance, and date of passage)*:
(Also, briefly state in item 3v the facts showing violation of the ordinance.)

h. ☐ Plaintiff's demand for possession is subject to the Tenant Protection Act of 2019, Civil Code section 1946.2 or 1947.12, and is not in compliance with the act. *(Check all that apply and briefly state in item 3v the facts that support each.)*

(1) ☐ Plaintiff failed to state a just cause for termination of tenancy in the written notice to terminate.

(2) ☐ Plaintiff failed to provide an opportunity to cure any alleged violations of terms and conditions of the lease (other than payment of rent) as required under Civ. Code, § 1946.2(c).

(3) ☐ Plaintiff failed to comply with the relocation assistance requirements of Civ. Code, § 1946.2(d).

(4) ☐ Plaintiff has raised the rent more than the amount allowed under Civ. Code, § 1947.12, and the only unpaid rent is the unauthorized amount.

(5) ☐ Plaintiff violated the Tenant Protection Act in another manner that defeats the complaint.

i. ☐ Plaintiff accepted rent from defendant to cover a period of time after the date the notice to quit expired.

j. ☐ Plaintiff seeks to evict defendant based on an act against defendant or a member of defendant's household that constitutes domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult. *(This defense requires one of the following: (1)* ***a temporary restraining order, protective order, or police report*** *that is not more than 180 days old; OR (2)* ***a signed statement from a qualified third party*** *(e.g., a doctor, domestic violence or sexual assault counselor, human trafficking caseworker, or psychologist) concerning the injuries or abuse resulting from these acts).)*

k. ☐ Plaintiff seeks to evict defendant based on defendant or another person calling the police or emergency assistance (e.g., ambulance) by or on behalf of a victim of abuse, a victim of crime, or an individual in an emergency when defendant or the other person believed that assistance was necessary.

l. ☐ Plaintiff's demand for possession of a residential property is in retaliation for nonpayment of rent or other financial obligations due between March 1, 2020, and June 30, 2021, even though alleged to be based on other reasons. (Civ. Code, § 1942.5(d) or Gov. Code § 12955.)

m. ☐ Plaintiff's demand for possession of a residential property is based on nonpayment of rent or other financial obligations due between March 1, 2020, and June 30, 2021, and *(check all that apply)*:

(1) ☐ Plaintiff did not serve the general notice of rights under the COVID-19 Tenants Relief Act as required by Code of Civil Procedure section 1179.04.

(2) ☐ Plaintiff did not serve the required 15-day notice. (Code Civ. Proc., § 1179.03(b) or (c).)

(3) ☐ Plaintiff did not provide an unsigned declaration of COVID-19–related financial distress with the 15-day notice. (Code Civ. Proc., § 1179.03(d).)

(4) ☐ Plaintiff did not provide an unsigned declaration of COVID-19–related financial distress in the language in which the landlord was required to provide a translation of the rental agreement. (Code Civ. Proc., § 1179.03(d).)

(5) ☐ Plaintiff identified defendant as a "high-income tenant" in the 15-day notice, but plaintiff did not possess proof at the time the notice was served establishing that defendant met the definition of high-income tenant. (Code Civ. Proc., § 1179.02.5(b).)

CASE NUMBER:

m. (6) ☐ Defendant delivered to plaintiff one or more declarations of COVID-19–related financial distress and, if required as a "high-income tenant," documentation in support. (Code Civ. Proc., § 1179.03(f) and § 1179.02.5.) *(Describe when and how delivered and check all other items below that apply):*

(a) ☐ Plaintiff's demand for payment includes late fees on rent or other financial obligations due between March 1, 2020, and June 30, 2021.

(b) ☐ Plaintiff's demand for payment includes fees for services that were increased or not previously charged.

(c) ☐ *(For cases filed after June 30, 2021)* Defendant, on or before June 30, 2021, paid or offered plaintiff payment of at least 25% of the total rental payments that were due between September 1, 2020, and June 30, 2021, and that were demanded in the termination notices for which defendant delivered the declarations described in (a). (Code Civ. Proc., § 1179.03(g)(2).)

(7) ☐ Defendant is currently filing or has already filed a declaration of COVID-19–related financial distress with the court. (Code Civ. Proc., § 1179.03(h).)

(8) ☐ Rental Assistance (Health & Saf. Code, §§ 50897.1(d)(2)(B) and 50897.3(e)) (*check all that apply*):

(a) ☐ Plaintiff received or has applied for rental assistance from the State Rental Assistance or financial compensation from some other source relating to the amount claimed in the notice to pay rent or quit.

(b) ☐ Plaintiff received or has applied for rental assistance from the State Rental Assistance Program for rent accruing since the notice to pay rent or quit.

n. ☐ *(For cases filed before July 1, 2021)* Plaintiff's demand for possession of a residential tenancy is based on a reason other than nonpayment of rent or other financial obligations, and plaintiff lacks just cause for termination of the tenancy, as defined in Civil Code section 1946.2(b) or Code of Civil Procedure section 1179.03.5(a)(3)(A).

o. ☐ Plaintiff violated the COVID-19 Tenant Relief Act (Code Civ. Proc., § 1179.01 et seq.) or a local COVID-19–related ordinance regarding evictions in some other way *(briefly state facts describing this in item 3v).*

p. ☐ Defendant provided plaintiff with a declaration under penalty of perjury for the Centers for Disease Control and Prevention's temporary halt in evictions to prevent further spread of COVID-19 (85 Federal Register 55292 at 55297), and plaintiff's reason for termination of the tenancy is one that the temporary halt in evictions applies to. *(Describe when and how provided):*

q. ☐ Plaintiff violated the federal CARES Act, because the property is covered by that act and *(check all that apply)*:

(1) ☐ The federally backed mortgage on the property was in forbearance when plaintiff brought the action. (15 U.S.C. § 9057.)

(2) ☐ The plaintiff did not give the required 30 days' notice. (15 U.S.C. § 9058(c).)

r. ☐ Plaintiff improperly applied payments made by defendant in a tenancy that was in existence between March 1, 2020, and June 30, 2021 (Code Civ. Proc., § 1179.04.5.), as follows *(check all that apply):*

(1) ☐ Plaintiff applied a security deposit to rent, or other financial obligations due, without tenant's written agreement.

(2) ☐ Plaintiff applied a monthly rental payment to rent or other financial obligations that were due between March 1, 2020, and June 30, 2021, other than to the prospective month's rent, without tenant's written agreement.

CASE NUMBER:

s. ☐ Plaintiff refused to accept payment from a third party for rent due. (Civil Code § 1947.3; Gov. Code § 12955.)

t. ☐ Defendant has a disability and plaintiff refused to provide a reasonable accommodation that was requested. (2 C.C.R. 12176 (c).)

u. ☐ Other defenses and objections are stated in item 3v.

v. *(Provide facts for each item checked above, either below or, if more room needed, on form MC-025)*:
☐ Description of facts or defenses are on form MC-025, titled as Attachment 3v.

4. OTHER STATEMENTS

a. ☐ Defendant vacated the premises on *(date)*:

b. ☐ The fair rental value of the premises alleged in the complaint is excessive *(explain below or, if more room needed, on form MC-025):*
☐ Explanation is on form MC-025, titled as Attachment 4b.

c. ☐ Other *(specify below or, if more room needed, on form MC-025):*
☐ Other statements are on form MC-025, titled as Attachment 4c.

5. DEFENDANT REQUESTS

a. that plaintiff take nothing requested in the complaint.

b. costs incurred in this proceeding.

c. ☐ reasonable attorney fees.

d. ☐ that plaintiff be ordered to (1) make repairs and correct the conditions that constitute a breach of the warranty to provide habitable premises and (2) reduce the monthly rent to a reasonable rental value until the conditions are corrected.

e. ☐ Other *(specify below or on form MC-025):*
☐ All other requests are stated on form MC-025, titled as Attachment 5e.

CASE NUMBER:

6. Number of pages attached: ____________

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

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

a. Assistant's name:

b. Telephone number:

c. Street address, city, and zip code:

d. County of registration:

e. Registration number:

f. Expiration date:

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

(TYPE OR PRINT NAME)	▶ (SIGNATURE OF DEFENDANT OR ATTORNEY)
(TYPE OR PRINT NAME)	▶ (SIGNATURE OF DEFENDANT OR ATTORNEY)

VERIFICATION

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

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

Date:

(TYPE OR PRINT NAME)	▶ (SIGNATURE OF DEFENDANT)

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ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER:	FOR COURT USE ONLY
NAME:	
FIRM NAME:	DRAFT
STREET ADDRESS:	04/02/2021
CITY: STATE: ZIP CODE:	
TELEPHONE NO.: FAX NO.:	NOT APPROVED BY
E-MAIL ADDRESS:	JUDICIAL COUNCIL
ATTORNEY FOR (*name*):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF	
STREET ADDRESS:	
MAILING ADDRESS:	
CITY AND ZIP CODE:	
BRANCH NAME:	
PLAINTIFF:	
DEFENDANT:	
VERIFICATION BY LANDLORD REGARDING RENTAL ASSISTANCE--UNLAWFUL DETAINER	CASE NUMBER:

This form must *be filed by the plaintiff with any request for default judgment in any unlawful detainer action seeking possession of residential property based on nonpayment of rent or any other financial obligation under a lease. It may also be used at other times as appropriate or when requested by a judicial officer.*

1. The landlord of the property at issue in this case is (*name*):
2. All of the following statements are true:
   a. Landlord has not received rental assistance or other financial compensation from any other source corresponding to the amount demanded in the notice underlying the complaint in this action.
   b. Landlord has not received rental assistance or other financial compensation from any other source for rent accruing after the date of the notice underlying the complaint in this action.
   c. Landlord does not have any pending application for rental assistance or other financial compensation from any other source corresponding to the amount demanded in the notice underlying the complaint in this action.
   d. Landlord does not have any pending application for rental assistance or other financial compensation from any other sources for rent accruing after the date of the notice underlying the complaint in this action.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: ____________________

______________________________ ▶ ______________________________
(TYPE OR PRINT NAME) (SIGNATURE)

____
(TITLE-- *provide if signing on behalf of corporation or other business entity*)

Form Adopted for Mandatory Use
Judicial Council of California
UD-120 [Revised May 24, 2021]

VERIFICATION BY LANDLORD REGARDING RENTAL ASSISTANCE--UNLAWFUL DETAINER

Health & Safety Code, § 50897.3(e)(2)
www.courts.ca.gov

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SP21-02
Unlawful Detainers: Forms to Further Implement Senate Bill 91 (Revise forms UD-101, UD-105, and UD-120)
All comments are verbatim unless indicated by an asterisk (*).

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	**Position**	**Comment**	**Committee Response**
1.	Bay Area Legal Aid by Lauren DeMartini Housing Regional Counsel	NI	We write in response to the Judicial Council's *Invitation to Comment SP21-02, Unlawful Detainers: Forms to Implement Senate Bill 91*. We appreciate the Judicial Council's diligence in working quickly to implement the latest set of laws to protect tenants during the ongoing COVID-19 pandemic. As discussed in our prior comment letters, these forms are particularly critical when many tenants will be facing eviction without legal counsel during this public health crisis. As before, it is essential to ensure that the forms allow tenants a meaningful opportunity to assert relevant defenses. Bay Area Legal Aid ("BayLegal") is a regional non-profit law firm providing free civil legal services to eligible low-income individuals and families throughout the Bay Area. Each year, we serve approximately 10,000 low-income individuals in seven of the nine Bay Area counties. In the past year, BayLegal served 4,021 individuals and households who are unstably housed, homeless, or at-risk of homelessness. We provide full-scope legal representation for tenants as well as advice and counsel for pro per tenants. Below we address the Council's specific inquiry and offer additional suggestions. [See comments on specific provisions below.] **Conclusion** While intended to protect tenants, the complexities of the	See responses to comments on specific provisions below

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			new COVID-19 laws will place unrepresented tenants at an incredible disadvantage. We are deeply concerned about access to justice for people who are served with an unlawful detainer and cannot access legal assistance. We appreciate your efforts to make these forms accessible and comprehensive as possible in this challenging situation. Thank you for your work, and thank you for considering these comments.	
2.	Bet Tzedek by Jenna Miara Directing Attorney, Impact Litigation & Policy Los Angeles	NI	We write in response to the Judicial Council's I*nvitation to Comment SP21-02, Unlawful Detainers: Forms to Implement Senate Bill 91*. We appreciate the Judicial Council's diligence in working quickly to implement the latest set of laws to protect tenants during the ongoing COVID-19 pandemic. As discussed in our prior comment letters, these forms are particularly critical when many tenants will be facing eviction without legal counsel during this public health crisis. As before, it is essential to ensure that the forms allow tenants a meaningful opportunity to assert relevant defenses. [See comments on specific provisions below.] **Conclusion** While intended to protect tenants, the complexities of the new COVID-19 laws will place unrepresented tenants at an incredible disadvantage. We are deeply concerned about access to justice for people who are served with an unlawful detainer and cannot access legal assistance. We appreciate your efforts to make these forms accessible and comprehensive as possible in this challenging situation. Thank you for your work, and thank you for considering these comments.	See responses to comments on specific provisions below.

3.	California Apartment Association by Heidi Palutke Education, Policy and Compliance Counsel Sacramento	NI	The California Apartment Association (CAA) is the largest statewide rental housing trade association in the country, representing more than 50,000 single family and apartment owners and operators who are responsible for nearly two million affordable and market rate rental housing units throughout California. CAA's mission is to promote fairness and equality in the rental of residential housing and to promote and aid in the availability of high-quality rental housing in California. CAA represents its members in legislative, regulatory, judicial, and other state and local forums. As a preliminary matter, CAA thanks the Judicial Council and staff for their work on these forms to implement SB 91, particularly given the short timeframes for doing so. CAA offers the following comments on the proposed revisions to forms UD-101 and UD- 105 and the adoption of new form UD-120. [See comments on specific provisions below.]	See responses to comments on specific provisions below.
4.	California Legislators, Thomas Umberg Chair, Senate Judiciary Committee and Mark Stone Chair, Assembly Judiciary Committee	NI	Before we offer you our response to your Invitation to Comment on the proposed changes to the unlawful detainer forms, we would like to express our appreciation to you and your staff for your efforts in this area. We are cognizant that, when the Legislature alters the law, the Judicial Council often has to make a series of changes to the corresponding forms as a result. Of late, the Legislature has been making a lot of changes to the eviction statutes. Some of these changes have been complex and many of them have become applicable within days or even hours of passage. That puts a tremendous burden on the Judicial Council staff to update the forms rapidly, accurately, succinctly, and in a manner that is at once comprehensive and user-friendly. Even as we	See responses to comments on specific provisions below.

			propose some changes at the margins, we want to emphasize our overall appreciation for how well your staff has responded to this challenge under difficult circumstances. We have three main comments on the proposed forms implementing SB 91 (Committee on Budget and Fiscal Review, Chapter 2, Statutes of 2021). [See comments on specific provisions below.]	
5.	Community Legal Aid SoCal by Kate Marr Executive Director Santa Ana	NI	We write in response to the Judicial Council's *Invitation to Comment SP21-02, Unlawful Detainers: Forms to Implement Senate Bill 91*. We appreciate the Judicial Council's diligence in working quickly to implement the latest set of laws to protect tenants during the ongoing COVID-19 pandemic. As discussed in our prior comment letters, these forms are particularly critical when many tenants will be facing eviction without legal counsel during this public health crisis. As before, it is essential to ensure that the forms allow tenants a meaningful opportunity to assert relevant defenses. Below we address the Council's specific inquiry and offer additional suggestions. [See comments on specific provisions below.]	See responses to comments on specific provisions below.
6.	Christine Copeland Commissioner Superior Court of Santa Clara	A	The new UD complaint and Answer are great. Learning AB 3088, and now SB 91, has been challenging, but the forms you propose distill dates, procedures, etc. so are very helpful. I think they are as simple as they can be for the litigants trying to fill them out, given how many legal changes, dates (and transition periods) and procedures have been enacted in the UD world since Covid.	The committee appreciates the comments. The comments on the Small Claims form will be considered in the proposal regarding those forms.

			I can't speak to whether the revisions will save us money. I also can't speak to what these revisions will mean for staff training, case management systems, etc. I think the burden, appropriately so, is on the judicial officer hearing the case, or reviewing the default judgment request, to make sure landlords have jumped through all the hoops. I look forward to seeing the proposed changes for the small claims claim form (SC-100) to advertise the lifting of jurisdictional limits for landlords seeking more than $10,000 or $5000 (corps or LLCs). Since you'll have to change the SC-100 to accommodate that change effective 8/1/21, I ask that you consider an instruction somewhere on the form that a landlord should look at their lease and make sure all landlords and all tenants are listed as parties. This is because a large percentage of the time, we learn at the first small claims hearing that necessary parties are missing, and we have to order that the claim be amended to capture all parties. And once you amend a claim, then the clerk has to set a new court date, file more forms, the plaintiff/landlord has to then serve the amended claim, etc. and so the Court's workload is often double what it needs to be.	
7.	Eviction Defense Collaborative by Ora S. Prochovnick Director of Litigation and Policy San Francisco	NI	We write in response to the Judicial Council's *Invitation to Comment SP21-02, Unlawful Detainers: Forms to Implement Senate Bill 91*. We appreciate the Judicial Council's diligence in working quickly to implement the latest set of laws to protect tenants during the ongoing COVID-19 pandemic. The Eviction Defense Collaborative is the lead agency under San Francisco's Tenants Right to Counsel law and therefore is uniquely positioned to address this matter. These updated forms are	See responses to comments on specific provisions below.

			particularly critical as it is anticipated that so many tenants will be facing eviction during this public health crisis, and in areas outside of San Francisco with its right to counsel program they will be primarily self-represented. It is therefore essential to ensure that the forms allow tenants a meaningful opportunity to assert relevant defenses. [See comments on specific provisions below.] **Conclusion** While intended to protect tenants, the complexities of the new COVID-19 laws will place unrepresented tenants at an incredible disadvantage. We are deeply concerned about access to justice for people who are served with an unlawful detainer and cannot access legal assistance. We appreciate your efforts to make these forms as accessible and comprehensive as possible in this challenging situation. Thank you for your work and thank you for considering these comments.	
8.	Legal Services of Northern California by Olive Ehlinger Managing Attorney Vallejo	NI	Legal Services of Northern California (LSNC) writes to comment on the Judicial Council's proposed updates to Forms UD-101 and UD-105 to conform with SB 91. LSNC is the federally-funded civil legal aid organization for most of the counties in California north of the San Francisco Bay. In 2019, LSNC provided legal advice, advocacy, and representation for over 15,000 low-income Californians. Eviction defense is the single greatest need of LSNC's clients, and the number of low-income Californians that face eviction far outweighs the ability of all legal services programs to provide even the briefest counsel and advice. Therefore, simple forms that allow an unrepresented litigant to accurately and thoroughly raise their defenses in the	See responses to comments on specific provisions below.

			extremely short unlawful detainer answer period are necessary to ensure elementary access to the courts. We appreciate the Judicial Council's efforts in creating such forms from the extremely complex provisions of the COVID Tenant Relief Act. We offer to the following comments to ensure the UD answer forms allow low-income and unrepresented Californians to assert their defenses. [See comments on specific provisions below.]	
9.	Public Advocates Inc. by Shajuti Hossain, Law Fellow and Richard Marcantonio, Managing Attorney San Francisco	NI	Public Advocates Inc. writes in response to the Judicial Council's *Invitation to Comment SP21-02, Unlawful Detainers: Forms to Implement Senate Bill 91*. We appreciate the Judicial Council's diligence in working quickly to implement the latest set of laws to protect tenants during the ongoing COVID-19 pandemic. As discussed in our prior comment letters, these forms are particularly critical when many tenants will be facing eviction without legal counsel during this public health crisis. As before, it is essential to ensure that the forms allow tenants a meaningful opportunity to assert relevant defenses. [See comments on specific provisions below.] **Conclusion** While intended to protect tenants, the complexities of the new COVID-19 laws can still place unrepresented tenants at an incredible disadvantage. We are deeply concerned about access to justice for people who are served with an unlawful detainer and cannot access legal assistance. We appreciate your efforts to make these forms accessible and comprehensive as possible in this challenging situation. Thank you for your work and thank you for considering	See responses to comments on specific provisions below.

			these comments.	
10.	Superior Court of Orange County by Civil Training and Analyst Group	NI	**Would the proposal provide cost savings? If so, please quantify** No. **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?** Because court staff will not be looking at the content of the form but instead, only verifying that the form has been filed, implementation requirements would be minimal. An email advisement and change in procedure should be sufficient to put staff on notice that a new form is required prior to entering judgment on these cases. A Program Coordinator Specialist should be able to make the change in procedure and include the change in our weekly procedure blast in about one hour. A follow up Q & A session could be provided in less than an hour to answer any questions that may arise from staff or supervisors. New UD-120 form will need to be configured and tested in the case management system and added to the Civil Add Filing Guide. The eFiling vendors will need to be notified of new filing and configure their systems accordingly. Self-Help will also need the information. [See comments on specific provisions below.]	The committee appreciates the responses to the questions regarding court implementation. See responses to additional comments on specific provisions below.
11.	Western Center on Law &	NI	Western Center on Law & Poverty and California Rural	See responses to comments on specific

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	Poverty by Madeline Howard Jointly with: California Rural Legal Assistance Foundation by Brian Augusta		Legal Assistance Foundation write in response to the Judicial Council's *Invitation to Comment SP21-02, Unlawful Detainers: Forms to Implement Senate Bill 91*. We appreciate your diligence in working quickly to implement the latest set of laws to protect tenants during the ongoing COVID-19 pandemic. As discussed in our prior comment letters, these forms are particularly critical when many tenants will be facing eviction without legal counsel during this public health crisis. As before, it is essential to ensure that the forms allow tenants a meaningful opportunity to assert relevant defenses. [See comments on specific provisions below.] **Conclusion** While intended to protect tenants, the complexities of the new COVID-19 laws will place unrepresented tenants at an incredible disadvantage. We are deeply concerned about access to justice for people who receive an unlawful detainer and cannot access legal assistance. We appreciate your efforts to make these forms accessible and comprehensive as possible in this challenging situation. Thank you for your work, and thank you for considering these comments. If you have any questions, please feel free to contact me at mhoward@wclp.org.	provisions below.

SP21-02
Unlawful Detainers: Forms to Further Implement Senate Bill 91 (Revise forms UD-101, UD-105, and UD-120)
All comments are verbatim unless indicated by an asterisk (*).

ISSUE 1: Verifications Required by Health & Safety Code section 50897.3(e)		
Commenter	**Comment**	**Committee Response**
Bay Area Legal Aid Lauren DeMartini Housing Regional Counsel	**The verifications required before a court may enter an unlawful detainer judgment under Health and Safety Code section 50897.3(e)(2) should be included as an item on form UD-101.** Our primary concern with the proposed declaration regarding rental assistance under Health and Safety Code section 50897.3 is that tenants should be served with the document containing this language and afforded an opportunity to contest it. The proposed form declaration for plaintiffs makes it very easy for landlords to check a box to make all the required allegations regarding rental assistance and does not state that it must be served on tenants. Please include this language on the UD-101 so that it will be included with documents served on the tenant at the commencement of the action. In addition to including this information in the UD-101, the Answer should be modified to allow Defendants to easily deny these allegations with a check box under section (3) asserting that the landlord has waived the notice by accepting rental assistance after its issuance or accepted rental assistance that is not reflected in the claimed rental debt. Including the verification in the UD-101 form also has the advantage of reducing the number of forms needed and allows tenants to generally deny the allegations using the Answer form.	In light of this and other comments on this point, form UD-101 has been modified to include an item for the verified statements (item 12) and form UD-105 has been modified to include defenses on this point (item 3.m(8). The committee notes that a general denial is only appropriate in UD actions in which the back rent claimed is $1000 or less.
Bet Tzedek by Jenna Miara Directing Attorney, Impact Litigation & Policy Los Angeles	**The verifications required before a court may enter an unlawful detainer judgment under Health and Safety Code section 50897.3(e)(2) should be included as an item on form UD-101.** Our primary concern with the proposed declaration regarding rental assistance under Health and Safety Code section 50897.3 is that tenants should be served with the document containing this language and afforded an opportunity to contest it. The proposed form declaration for plaintiffs makes it very easy for landlords to check a box to make all the required allegations regarding rental assistance and does not state that it must be served on tenants. Please include this language on the UD-101 so that it will be included with documents served on the tenant at the commencement of the action. In addition to including this	See response to Bay Area Legal Aid Comment on this issue.

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ISSUE 1: Verifications Required by Health & Safety Code section 50897.3(e)		
Commenter	**Comment**	**Committee Response**
	information in the UD-101, the Answer should be modified to allow Defendants to easily deny these allegations with a check box under section (3) asserting that the landlord has waived the notice by accepting rental assistance after its issuance or accepted rental assistance that is not reflected in the claimed rental debt. Including the verification in the UD-101 form also has the advantage of reducing the number of forms needed and allows tenants to generally deny the allegations using the Answer form.	
California Apartment Association By Heidi Palutke Education, Policy and Compliance Counsel Sacramento	**Instructional Paragraph About Verification Requirement** This paragraph provides notice that a plaintiff will be required to verify certain facts regarding applications for and receipt of rental assistance. It then directs the plaintiff to use form UD-120 to make that verification when the plaintiff is seeking a default judgment. CAA recommends that the Judicial Council clarify two matters in the instruction paragraph: (1) At what point in time, "before obtaining a judgment" should this verification be filed? – i.e., is it best filed as late as possible? Can it be filed with the complaint? (2) If the plaintiff landlord is not seeking a default judgment, can the landlord still use form UD-120? **<u>UD-120 Verification by Landlord Regarding Rental Assistance</u>** CAA's only comment on this form is the same comment made with respect	The law is not clear on this point, so it will be up to individual courts and judicial officers. Because the required verifications have now been added to form UD-101, which must be filed with the complaint, the issue of whether they can be filed with the complaint has been addressed. The instructions on form UD-120 have been clarified to provide that it may be used in other situations as well, including when requested by a judicial officer. As noted, the verifications have now been added to the complaint and the instructions

ISSUE 1: Verifications Required by Health & Safety Code section 50897.3(e)		
Commenter	**Comment**	**Committee Response**
	to the instructional paragraph on form UD-101. This form could also use additional instructions that clarify when the form must be filed and the circumstances in which it can be used. Including this information in form UD-120, will help plaintiffs and will hopefully reduce the number of questions directed to court staff and will increase the filing of the proper verifications.	on form UD-120 have been clarified.
California Legislators, Thomas Umberg Chair, Senate Judiciary Committee and Mark Stone Chair, Assembly Judiciary Committee	[I]n your Invitation to Comment, you specifically requested feedback about whether the landlord verifications required by Health and Safety Code Section 50897.3(e)(2) should be incorporated into the complaint form or, as currently proposed, those verifications should appear as part of a separate form that landlords must file in order to obtain a default judgment. For the reasons detailed below, we believe that the verifications should be incorporated into the complaint form. Just as importantly, we believe that the Answer form should be revised to enable defendant tenants to respond directly to those verifications. The verifications required pursuant to SB 91 oblige the landlord to state whether the landlord has received money from the rental assistance program, or has an application pending to receive money from it. More specifically, the landlord must verify whether that money corresponds to rent demanded in the notice pursuant to Code of Civil Procedure Section 1161(2) or rent accruing after that notice expired. Discouraging fraud is one purpose behind this verification requirement. Without it, unscrupulous landlords could apply for and obtain money from the rental assistance program while simultaneously requesting a court judgment for that same money as part of an unlawful detainer suit, and there would be no way for the court to know this fraudulent activity was happening.	See response to Bay Area Legal Aid Comment on this issue.

ISSUE 1: Verifications Required by Health & Safety Code section 50897.3(e)		
Commenter	**Comment**	**Committee Response**
	That is why SB 91 requires a similar verification in civil actions to recover unpaid rent outside of the unlawful detainer process. (Health and Saf. Code § 50897.3(e)(1).) The idea is to prevent double-dipping. In the unlawful detainer context, however, the landlord verifications also serve another purpose: they help the court determine if the landlord has invalidated the notice or possibly acquiesced to the tenant's ongoing possession of the property by accepting or applying for rental assistance money. It is a well-established principle of landlord/tenant law that, if a landlord accepts rental payments at any time after issuing a formal notice pursuant to Code of Civil Procedure Section 1161(2), then the landlord can no longer obtain a judgment for possession based on that notice. That is because, if the payment corresponds to all or any part of the amount demanded in the notice, then the notice will thereafter overstate the amount of rent due and owing, rendering it void. (*Levitz Furniture Co. v. Wingtip Communications* (2001) 86 Cal.App.4th 1035, 1038: "A notice that seeks rent in excess of the amount due is invalid and will not support an unlawful detainer.") Similarly, a landlord who accepts rental payments corresponding to the time after the notice has expired, has, by virtue of that acceptance, acquiesced to the tenant's ongoing possession of the property. (*Kern Sunset Oil Co. v. Good Roads Oil Co*. (1931) 214 Cal. 435, 441, quoting Ruling Case Law, 16 R. C. L., p. 1132: "[T]he acceptance by a landlord of the rents, with full knowledge of a breach in the conditions of the lease, and of all of the circumstances, is an affirmation by him that the contract of lease is still in force, and he is thereby estopped from setting up a breach in any of the conditions of the lease, and demanding a forfeiture thereof.") While there is caselaw indicating that a landlord can accept housing assistance from the Section 8 program without reinstating the lease, that decision was based on the conclusion that a Section 8 housing subsidy is not rent. (*Savett v. Davis* (1994) 29 Cal.App.4th Supp. 13.) In contrast, the rental assistance program established by SB 91 will be paying	

ISSUE 1: Verifications Required by Health & Safety Code section 50897.3(e)		
Commenter	**Comment**	**Committee Response**
	the actual rent on the tenant's behalf. Seeking or accepting a payment from the rental assistance program would therefore seem to indicate "an affirmation that the lease is still in force." The point is that the landlord verifications not only inform the court whether the landlord has complied with technical requirements of Health and Safety Code 50897(e)(2); they also provide the court with substantive assurance that the landlord has not waived the notice or acquiesced to the tenant's ongoing possession of the property by seeking rental assistance money at the same time the landlord is trying to evict the tenant. These are factual claims and, as such, the tenant defendant should have the opportunity to put them at issue by denying them in the Answer. For that to happen, the verifications need to be contained within the Complaint. Just as crucially, the revised Answer form should make it simple and straightforward for defendants to deny the factual claims made in the verification.	
Community Legal Aid SoCal Kate Marr Executive Director Santa Ana	**The verifications required before a court may enter an unlawful detainer judgment under Health and Safety Code section 50897.3(e)(2) should be included as an item on form UD-101.** Our primary concern with the proposed declaration regarding rental assistance under Health and Safety Code section 50897.3 is that tenants should be served with the document containing this language and afforded an opportunity to contest it. The proposed form declaration for plaintiffs makes it very easy for landlords to check a box to make all the required allegations regarding rental assistance and does not state that it must be served on tenants. Please include this language on the UD-101 so that it will be included with documents served on the tenant at the commencement of the action. In addition to including this information in the UD-101, the Answer should be modified to allow Defendants to easily deny these allegations with a check box under section (3) asserting that the landlord	See response to Bay Area Legal Aid Comment on this issue.

ISSUE 1: Verifications Required by Health & Safety Code section 50897.3(e)		
Commenter	**Comment**	**Committee Response**
	has waived the notice by accepting rental assistance after its issuance or accepted rental assistance that is not reflected in the claimed rental debt. Including the verification in the UD-101 form also has the advantage of reducing the number of forms needed and allows tenants to generally deny the allegations using the Answer form. This declaration is an essential element to a Plaintiff's cause of action, and basic due process requires that defendants receive notice of the verification as part of the complaint. It is settled law that all the facts that are material to the cause of action—i.e., the facts that make a difference to the outcome of the case—must be alleged. Likewise, the Complaint must provide notice of the issues sufficient to enable preparation of a defense. However, if the certification is only required when the court enters judgment, it deprives defendants of vital information that is necessary to defend their case. Without requiring the certification in the UD-101, pro per defendants may not know whether the landlord has requested rental assistance and would have to request discovery to obtain this basic information. By only requiring the certification at judgment, the information is given to defendants when it is likely too late for them to dispute it. `Additionally, the UD-120 form incorrectly implies that it is only required for default judgments, when it should really be required in all judgments. The best way to address these concerns is to make the declaration part of the UD-101 form.	
Eviction Defense Collaborative By Ora S. Prochovnick Director of Litigation and Policy San Francisco	**The verifications required before a court may enter an unlawful detainer judgment under Health and Safety Code section 50897.3(e)(2) should be included as an item on form UD-101.** Tenants should be served with the document containing the declaration regarding rental assistance under Health and Safety Code section 50897.3 and afforded an opportunity to contest it. The proposed form declaration for plaintiffs makes it very easy for landlords to check a box to make all the	See response to Bay Area Legal Aid Comment on this issue.

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ISSUE 1: Verifications Required by Health & Safety Code section 50897.3(e)		
Commenter	**Comment**	**Committee Response**
	required allegations regarding rental assistance and does not state that it must be served on tenants. This language should be included on the UD-101 so that it will be served on the tenant at the commencement of the action. In addition to including this information in the UD-101, the Answer should be modified to allow Defendants to easily deny these allegations if appropriate by checking a box under section (3) asserting that the landlord has waived the notice by accepting rental assistance after its issuance or accepted rental assistance that is not reflected in the claimed rental debt. Including the verification in the UD-101 form also has the advantage of reducing the number of forms needed and allows tenants to generally deny the allegations using the Answer form.	
Legal Services of Northern California By Olive Ehlinger Managing Attorney Vallejo	**Unlawful Detainer defendants should be provided the opportunity to dispute whether the Plaintiff has complied with Health and Safety Code section 50897.3(e)(2).** Our colleagues at the Western Center on Law and Poverty, who submit a concurrent comment, assert that Unlawful Detainer defendants must have the opportunity to dispute a plaintiff's allegation that the plaintiff has complied with section 50897.3(e)(2) and is not attempting to collect alleged rental debt that a rental assistance program has paid to the plaintiff. Western Center advises that the Judicial Council should require all plaintiffs to certify compliance with section 50897.3(e)(2) in the Mandatory Coversheet, UD-101. LSNC concurs with Western Center's comment.`` However, the Judicial Council should also include a Plaintiff's failure to comply with section 50897.3(e)(2) as an additional item in Paragraph 3 of UD-105 defense. Compliance with section 50897.3(e)(2) is a part of the plaintiff's prima facie case for unlawful detainer under the COVID Tenant Relief Act and unlawful detainer defendants do not bear the burden to present evidence that a plaintiff demands rent which a rental assistance	See response to Bay Area Legal Aid Comment on this issue.

ISSUE 1: Verifications Required by Health & Safety Code section 50897.3(e)		
Commenter	**Comment**	**Committee Response**
	agency has already paid to the plaintiff (as discussed in the prior section). However, to the extent defenses and objections will continue to appear together in Paragraph 3 of UD-105, any opportunity to raise this defense is necessary to afford unrepresented litigants fair process.	
Public Advocates, Inc. By Shajuti Hossain, Law Fellow and Richard Marcantonio, Managing Attorney San Francisco	**The verifications required before a court may enter an unlawful detainer judgment under Health and Safety Code section 50897.3(e)(2) should be included as an item on form UD-101. `** Our primary concern with the proposed declaration regarding rental assistance under Health and Safety Code section 50897.3 is that tenants should be served with the document containing this language and afforded an opportunity to contest it. The proposed form declaration for plaintiffs makes it very easy for landlords to check a box to make all the required allegations regarding rental assistance and does not state that it must be served on tenants. Please include this language on the UD-101 so that it will be included with documents served on the tenant at the commencement of the action. In addition to including this information in the UD-101, the Answer should be modified to allow Defendants to easily deny these allegations with a check box under section (3) asserting that the landlord has waived the notice by accepting rental assistance after its issuance or accepted rental assistance that is not reflected in the claimed rental debt. Including the verification in the UD-101 form also has the advantage of reducing the number of forms needed and allows tenants to generally deny the allegations using the Answer form.	See response to Bay Area Legal Aid Comment on this issue.
Superior Court of Orange County by Civil Training and Analyst Group	Pursuant to Health and Safety Code 50897.3(e)(2), the verification (form UD-120) is required on "any unlawful detainer action seeking possession of residential rental property based on nonpayment of rent or any other financial obligation under the lease, the court shall not enter a judgment in favor of the landlord unless the landlord verifies all of the following under penalty of	See response to Bay Area Legal Aid Comment on this issue.

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ISSUE 1: Verifications Required by Health & Safety Code section 50897.3(e)		
Commenter	**Comment**	**Committee Response**
	perjury" Currently, form UD-120 states under the header, "This form must be filed by the plaintiff with any request for default judgment in any unlawful detainer action seeking possession of residential property based on nonpayment of rent or any other financial obligation under a lease" (emphasis added). Theoretically, Plaintiff could file an action seeking possession of residential rental property based on nonpayment of rent, defendant could file an answer and a court trial would be held. If the Court wanted to confirm that Plaintiff complied with the requirement of Health and Safety Code 50897.3(e)(2), plaintiff's counsel could argue that the Judicial Council explicitly states on the UD-120 form that this verification is only needed on a default judgment. Recommendation: Revise UD-120 by removing the language "any request for default judgment." This would require the plaintiff seeking possession on a residential property based on nonpayment of rent or any other financial obligation under a lease to file form UD-120, regardless of whether they are seeking a default judgment, in accordance with Health and Safety Code 50897.3(e)(2). Or, revise the language to clarify this point by adding language such as "…with any request for default judgment, or request for trial." **Should the verifications required before a court may enter an unlawful detainer judgment under Health and Safety Code section 50897.3(e)(2) be included as an item on form UD-101?** No, the verifications should not be included in for UD-101. I agree with the committee that the information added to form UD-101 is helpful and appropriate as is and the listed verification should remain in the new UD-120 form.	The committee is proposing that the verifications be included in form UD-101, filed with the complaint. In addition, the instructions on form UD-120 would be clarified to indicate that in addition to being required with a default request, it may be used at other times also. The committee notes that, if a trial is held, the plaintiff could provide the verifications verbally. After further consideration, the committee disagrees and now recommends that the verifications be included on form UD-101, to ensure that the defendant has notice of the assertions being made by the plaintiff.
Western Center on Law & Poverty by Madeline Howard	**Should the verifications required before a court may enter an unlawful detainer judgment under Health and Safety Code section 50897.3(e)(2) be included as an item on form UD-101?** Yes. It is extremely important that tenants be served with the declaration	See response to Bay Area Legal Aid Comment on this issue.

ISSUE 1: Verifications Required by Health & Safety Code section 50897.3(e)		
Commenter	**Comment**	**Committee Response**
Jointly with: California Rural Legal Assistance Foundation by Brian Augusta	regarding rental assistance under Health and Safety Code section 50897.3 at the outset of the action and afforded an adequate opportunity to contest it. The proposed form declaration for plaintiffs makes it very easy for landlords to check a box to make all the required allegations regarding rental assistance and does not state that it must be served on tenants. Please include this language on the UD-101 so that it will be incorporated into the documents served on the tenant at the commencement of `the action. The factual issues set out in this verification are not only required by SB 91, they could also form the basis for multiple defenses to the unlawful detainer action. For example, if a landlord accepted rental assistance after issuing the notice to pay rent or quit, it would constitute waiver of the notice. If the landlord was offered rental assistance and refused it, it would constitute source of income discrimination. As such it is critical that tenants receive notice of the landlord's allegations and have opportunity to contest them. In addition to including this information in the UD-101, the Answer should be modified to allow Defendants to easily deny these allegations with a check box under section (3) asserting that the landlord has waived the notice by accepting rental assistance after its issuance or accepted rental assistance that is not reflected in the claimed rental debt. Source of income discrimination is discussed below.	

ISSUE 2: Form UD-101 – Introductory Language		
Commenter	**Comment**	**Committee Response**
Bay Area Legal Aid Lauren DeMartini Housing Regional Counsel	The language at the top of the UD-101 cover sheet is confusing because it still refers to cases filed before October 5, 2020. The introductory language at the top should make it clear that this form is mandatory for all actions and must be served on the tenant. The language regarding what to do if a summons has already been served should be removed, because this form should now be served with all summons.	The committee has modified the introductory language in light of these comments.
Bet Tzedek Jenna Miara Directing Attorney, Impact Litigation & Policy Los Angeles	The language at the top of the UD-101 cover sheet is confusing because it still refers to cases filed before October 5, 2020. The introductory language at the top should make it clear that this form is mandatory for all actions and must be served on the tenant. The language regarding what to do if a summons has already been served should be removed, because this form should now be served with all summons.	The committee has modified the introductory language in light of these comments.
Community Legal Aid SoCal Kate Marr Executive Director Santa Ana	The language at the top of the UD-101 cover sheet is confusing because it still refers to cases filed before October 5, 2020. The introductory language at the top should make it clear that this form is mandatory for all actions and must be served on the tenant. The language regarding what to do if a summons has already been served should be removed, because this form should now be served with all summons.	The committee has modified the introductory language in light of these comments.
Eviction Defense Collaborative By Ora S. Prochovnick Director of Litigation and Policy San Francisco	The language at the top of the UD-101 cover sheet is confusing because it refers to cases filed before October 5, 2020. The introductory language at the top should make it clear that this form is mandatory for all actions and must be served on the tenant. The language regarding what to do if a summons has already been served should be removed, because this form should be served with all summons and too much time has passed for there still to be pending cases where that did not occur.	The committee has modified the introductory language in light of these comments.
Public Advocates, Inc. By Shajuti Hossain, Law	The language at the top of the UD-101 cover sheet is incorrect because it still refers to cases filed before October 5, 2020. This language should	The committee has modified the introductory language in light of these comments.

ISSUE 2: Form UD-101 – Introductory Language		
Commenter	**Comment**	**Committee Response**
Fellow and Richard Marcantonio, Managing Attorney San Francisco	make it clear that this form is mandatory for all actions and must be served on the tenant. The language regarding what to do if a summons has already been served should be removed, because this form should now be served with all summons.	
Western Center on Law & Poverty by Madeline Howard Jointly with: California Rural Legal Assistance Foundation by Brian Augusta	The language at the top of the UD-101 cover sheet is confusing because it still refers to cases filed before October 5, 2020. The introductory language at the top should make it clear that this form is mandatory for all actions and must be served on the tenant. The language regarding what to do if a summons is already served should be removed, because this form should now be served with all summons.	The committee has modified the introductory language in light of these comments.

ISSUE 3: Form UD-101 – instructions to not issue summons		
Commenter	**Comment**	**Committee Response**
Bay Area Legal Aid Lauren DeMartini Housing Regional Counsel	The UD-101 should also include instructions that no summons should issue if box 4(a) is checked, indicating that the tenant provided a CDC declaration, and the action was filed before March 31, 2021, or such date as the CDC moratorium is extended. Similarly, the form should include instructions that no summons should issue if box 7(d)(1) is checked if the action is filed before June 30, 2021, or such date as SB 91's protections are extended.	The committee has considered but declines these suggestions. Code of Civil Procedure section 1166(e) makes issuance of a summons in a UD action a ministerial act, to be completed upon the filing of a UD complaint. Neither law expressly or implicitly changes that. There is no provision in the CDC order that expressly prohibits state courts from acting after service of a CDC declaration on a landlord. There is nothing in the state law that prohibits a court from issuing a summons after a declaration of financial distress has been served on a landlord. AB 3088 and SB 91 do not amend section 1166 (although other general provisions of UD procedures—such as masking—were amended to address the new provisions). Moreover, even if this item is checked, a plaintiff may proceed to trial and judgment if seeking a just cause eviction under section 1179.03.5(a)(3).
Bet Tzedek Jenna Miara Directing Attorney, Impact Litigation & Policy Los Angeles	The UD-101 should also include instructions that no summons should issue if box 4(a) is checked, indicating that the tenant provided a CDC declaration, and the action was filed before March 31, 2021, or such date as the CDC moratorium is extended. Similarly, the form should include instructions that no summons should issue if box 7(d)(1) is checked if the action is filed before June 30, 2021, or such date as SB 91's protections are extended.	See response to Bay Area Legal Aid on this issue.

ISSUE 3: Form UD-101 – instructions to not issue summons		
Commenter	**Comment**	**Committee Response**
Community Legal Aid SoCal Kate Marr Executive Director Santa Ana	The UD-101 should also include instructions that no summons should issue if box 4(a) is checked, indicating that the tenant provided a CDC declaration, and the action was filed before March 31, 2021, or such date as the CDC moratorium is extended. Similarly, the form should include instructions that no summons should issue if box 7(d)(1) is checked if the action is filed before June 30, 2021, or such date as SB 91's protections are extended.	See response to Bay Area Legal Aid on this issue.
Eviction Defense Collaborative By Ora S. Prochovnick Director of Litigation and Policy San Francisco	The UD-101 should also include instructions that no summons should issue if box 4(a) is checked, indicating that the tenant provided a CDC declaration, and the action was filed before March 31, 2021, or such date as the CDC moratorium is extended. Similarly, the form should include instructions that no summons should issue if box 7(d)(1) is checked if the action is filed before June 30, 2021, or such date as SB 91's protections are extended.	See response to Bay Area Legal Aid on this issue.
Public Advocates, Inc. By Shajuti Hossain, Law Fellow and Richard Marcantonio, Managing Attorney San Francisco	The UD-101 should also include instructions that no summons should issue if box 4(a) is checked, indicating that the tenant provided a CDC declaration, and the action was filed before March 31, 2021, or such date as the CDC moratorium is extended. Similarly, the form should include instructions that no summons should issue if box 7(d)(1) is checked if the action is filed before June 30, 2021, or such date as SB 91's protections are extended.	See response to Bay Area Legal Aid on this issue.
Western Center on Law & Poverty by Madeline Howard	The UD-101 should also include instructions that no summons should issue if box 4(a) is checked, indicating that the tenant provided a CDC declaration, and the action was filed before March 31, 2021, or such date as the CDC moratorium is extended.	See response to Bay Area Legal Aid on this issue.

SP21-02
Unlawful Detainers: Forms to Further Implement Senate Bill 91 (Revise forms UD-101, UD-105, and UD-120)
All comments are verbatim unless indicated by an asterisk (*).

ISSUE 3: Form UD-101 – instructions to not issue summons		
Commenter	**Comment**	**Committee Response**
Jointly with: California Rural Legal Assistance Foundation by Brian Augusta	Similarly, the form should include instructions that no summons should issue if box 7(d)(1) is checked if the action is filed before June 30, 2021, or such date as SB 91's protections are extended.	

ISSUE 4: Form UD-101 – service of informational notice		
Commenter	**Comment**	**Committee Response**
California Apartment Association By Heidi Palutke Education, Policy and Compliance Counsel Sacramento	**Form UD-101: Plaintiff's Mandatory Cover Sheet and Supplemental Allegations - Unlawful Detainer** CAA agrees that the revisions proposed for this form are appropriate. However, CAA recommends two additional changes to make the form easier for landlords to use. [The other suggestion is set out in Issue 1, above.] **Section 7 (a) Service of Informational Notice:** This section allows the plaintiff to make an allegation with respect to service of the informational "Notice from the State of California" originally required by AB 3088 and required by the updated informational notice under SB 91. SB 91 requires the updated notice to be served on or before February 28, 2020, only on those tenants who as of February 1, 2021, have not paid one or more rental payments that came due during the covered time period. (Code of Civil Procedure §1179.04(b).) This means the informational notice is not required if the only unpaid rental payments at issue in the action came due after February 1, 2021. It would be helpful to include this limitation on the statutory requirement in the instructions. CAA recommends that the following instructional text be added to Section 7(a): (*Code of Civil Procedure Section 1179.04 requires the notice to be served on tenants who as of February 1, 2021, have not paid one or more rental payments that came due between March 1, 2020, and June 30, 2021.*)	 The committee declines this suggestion. The committee has concluded that, while the language proposed by CAA is one possible interpretation of the statutory requirement, it is not the only interpretation. The statute could also be read to require that for those tenants who default on payments at a later time, the informational notice must be served before the service of any termination notice. (Code Civ. Proc., § 1179.04(d).) For that reason, the committee declines the suggestion that the text be changed. Instead, as proposed, the relevant item in both form UD-101 and form UD-105 will continue to state that the notice was served "as required by Code of Civil Procedure section 1179.04" without putting a more specific time frame into the form.

ISSUE 5: Form UD-105 – Item 3r		
Commenter	**Comment**	**Committee Response**
Bay Area Legal Aid Lauren DeMartini Housing Regional Counsel	The Answer defense (r)(2) contains an error in the dates. That subsection reads "Between March 1, 2020 and June 30, 2021, plaintiff applied a monthly rental payment to COVID-19-related debt other than to the prospective month's rent, without tenant's written agreement." This section of SB 91 is not so time limited and actually applies until July 1, 2025, so the time limitation in (r)(2) is incorrect. Instead this language should read: "Plaintiff applied a rental payment to COVID-19-related debt other than the prospective month's rent, without tenant's written agreement." Otherwise, starting in July 2021, landlords could use rolling ledger accounting to apply payments to COVID debt, thereby making the tenant delinquent on the current month's rent. This could lead to eviction even for tenants with COVID rental debt who are currently paying as required, which is the exact problem that section 1179.04.5 is intended to prevent. In addition, the word "monthly" should be omitted to avoid any confusion about payments made to cover 25% of multiple months' rent.	The committee agrees and is recommending that item 3r be revised in light of this and other comments.
Bet Tzedek Jenna Miara Directing Attorney, Impact Litigation & Policy Los Angeles	The Answer defense (r)(2) contains an error in the dates. That subsection reads "Between March 1, 2020 and June 30, 2021, plaintiff applied a monthly rental payment to COVID-19-related debt other than to the prospective month's rent, without tenant's written agreement." This section of SB 91 is not so time limited and actually applies until July 1, 2025, so the time limitation in (r)(2) is incorrect. Instead this language should read: "Plaintiff applied a rental payment to COVID-19-related debt other than the prospective month's rent, without tenant's written agreement." Otherwise, starting in July 2021, landlords could use rolling ledger accounting to apply payments to COVID debt, thereby making the tenant delinquent on the current month's rent. This could lead to eviction even for tenants with COVID rental debt who are currently paying as required, which is the exact problem that section 1179.04.5 is intended to prevent. In addition, the word "monthly" should be omitted to avoid any confusion about payments made to cover 25% of multiple months' rent.	See response to Bay Area Lega Aid on this issue.
California Apartment Association	**Section 3(r)** The references in this section to "rent" and "COVID-19-related debt" should	The committee is recommending modifications in light of this comment. Note

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

ISSUE 5: Form UD-105 – Item 3r		
Commenter	**Comment**	**Committee Response**
By Heidi Palutke Education, Policy and Compliance Counsel Sacramento	be consistent – and incorporate the definitions of "COVID-19 rental debt" and "Covered time period" from the statute. (Code of Civil Procedure § 1179.02.) In addition, the requirement in Civil Code Section 1179.04.5 that payments be applied to prospective rent, rather than COVID-19 rental debt only applies prospectively. It does not apply to any application of a payment by a landlord prior to the law's effective date of January 29, 2021. Specifically, CAA recommends the following changes: Section 3(r) (1) Plaintiff applied a security deposit to rent or another financial obligation under the tenancy due between March 1, 2020, and June 30, 2021, without the tenant's written permission. (2) Between March 1, 2020 January 29, 2021, and June 30, 2021, plaintiff applied a monthly rental payment to COVID-19-related debt rent or another financial obligation under the tenancy due between March 1, 2020, and June 30, 2021, other than the prospective month's rent, without tenant's written agreement.	that the proposal also removes the time delimiter in item 3(r)(2) as it is not supported by statute.
California Legislators, Thomas Umberg Chair, Senate Judiciary Committee and Mark Stone Chair, Assembly Judiciary Committee	First, and probably most importantly, we believe that the language contained in the proposed UD-105 answer form at 3(r)(2) misstates the law by suggesting that landlords are only prohibited from using rolling ledger accounting to apply payments toward COVID-19 debt until June 30, 2021. In fact, as the underlying statute makes clear, the prohibition on rolling ledger accounting continues to apply beyond June 30, 2021. The relevant clause in 3(r)(2) of the proposed Answer form reads: "*Between March 1, 2020 and June 30, 2021,* plaintiff applied a monthly rental payment to COVID-19-related debt other than to the prospective month's rent, without tenant's written agreement." (Emphasis added.) In contrast to this language, *the statute restricting rolling ledger accounting does not include any such time limitation*. The statute reads:	See response to Bay Area Lega Aid on this issue.

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

ISSUE 5: Form UD-105 – Item 3r		
Commenter	**Comment**	**Committee Response**
	Notwithstanding Sections 1470, 1947, and 1950 of the Civil Code, or any other law, for the duration of any tenancy that existed during the covered time period, the landlord shall not do either of the following: (a) Apply a security deposit to satisfy COVID-19 rental debt, unless the tenant has agreed, in writing, to allow the deposit to be so applied. Nothing in this subdivision shall prohibit a landlord from applying a security deposit to satisfy COVID-19 rental debt after the tenancy ends, in accordance with Section 1950.5 of the Civil Code. (b) Apply a monthly rental payment to any COVID-19 rental debt other than the prospective month's rent, unless the tenant has agreed, in writing, to allow the payment to be so applied. (Civ. Code § 1179.04.5.1) [now Code Civ. Proc. § 1179.04.5.1] The deliberate omission of a time limitation is absolutely critical to the entire framework behind SB 91. Under SB 91, so long as a tenant timely returns a declaration of financial hardship and pays at least 25 percent of the rent accruing between September 1, 2020 and June 30, 2021, any remaining unpaid balance for the period March 1, 2020 to June 30, 2021 is converted into consumer debt and cannot form the basis for an eviction. For eviction purposes, in other words, tenants get a fresh start on paying rent as of July 1, 2021. If landlords can simply use rolling ledger accounting to apply their tenant's July 2021 rent payment toward the unpaid balance, however, there is no fresh start. Extraordinary numbers of tenants would then face eviction for failing to pay July 2021 rent, not because they did not tender a monthly rent payment to the landlord at the beginning of July, but because the landlord took the proffered payment and applied it to the unpaid balance instead of July's rent. For this reason, 3(r)(2) of the Answer form must be revised. We suggest: "The plaintiff applied a monthly rental payment to COVID-19-related debt other than the prospective month's rent, without tenant's written agreement."	

ISSUE 5: Form UD-105 – Item 3r		
Commenter	**Comment**	**Committee Response**
Community Legal Aid SoCal Kate Marr Executive Director Santa Ana	The Answer defense (r)(2) contains an error in the dates. That subsection reads "Between March 1, 2020 and June 30, 2021, plaintiff applied a monthly rental payment to COVID-19-related debt other than to the prospective month's rent, without tenant's written agreement." This section of SB 91 is not so time limited and actually applies until July 1, 2025, so the time limitation in (r)(2) is incorrect. Instead this language should read: "Plaintiff applied a rental payment to COVID-19-related debt other than the prospective month's rent, without tenant's written agreement." Otherwise, starting in July 2021, landlords could use rolling ledger accounting to apply payments to COVID debt, thereby making the tenant delinquent on the current month's rent. This could lead to eviction even for tenants with COVID rental debt who are currently paying as required, which is the exact problem that section 1179.04.5 is intended to prevent. In addition, the word "monthly" should be omitted to avoid any confusion about payments made to cover 25% of multiple months' rent.	See response to Bay Area Lega Aid on this issue.
Eviction Defense Collaborative By Ora S. Prochovnick Director of Litigation and Policy San Francisco	The Answer defense (r)(2) contains an error in the dates. That subsection reads "Between March 1, 2020 and June 30, 2021, plaintiff applied a monthly rental payment to COVID-19-related debt other than to the prospective month's rent, without tenant's written agreement." This section of SB 91 is not time limited and actually applies until July 1, 2025, so the time limitation in (r)(2) is incorrect. Instead this language should read: "Plaintiff applied a rental payment to COVID-19- related debt other than the prospective month's rent, without tenant's written agreement." Otherwise, starting in July 2021, landlords could use rolling ledger accounting to apply payments to COVID debt, thereby making the tenant delinquent on the current month's rent. This could lead to eviction even for tenants with COVID rental debt who are currently paying as required, which is the exact problem that Section 1179.04.5 is intended to prevent. In addition, the word "monthly" should be omitted to avoid any confusion about payments made to cover 25% of multiple months' rent.	See response to Bay Area Lega Aid on this issue.
Public Advocates, Inc.	The Answer defense (r)(2) contains an error in the dates. That subsection	See response to Bay Area Lega Aid on this

ISSUE 5: Form UD-105 – Item 3r		
Commenter	**Comment**	**Committee Response**
By Shajuti Hossain, Law Fellow and Richard Marcantonio, Managing Attorney San Francisco	reads "Between March 1, 2020 and June 30, 2021, plaintiff applied a monthly rental payment to COVID-19-related debt other than to the prospective month's rent, without tenant's written agreement." This section of SB 91 is not so time limited and actually applies until July 1, 2025, so the time limitation in (r)(2) is incorrect. Instead, this language should read: "Plaintiff applied a rental payment to COVID-19-related debt other than the prospective month's rent, without tenant's written agreement." Otherwise, starting in July 2021, landlords could use rolling ledger accounting to apply payments to COVID debt, thereby making the tenant delinquent on the current month's rent. This could lead to eviction even for tenants with COVID rental debt who are currently paying as required, which is the exact problem that section 1179.04.5 is intended to prevent. In addition, the word "monthly" should be omitted to avoid any confusion about payments made to cover 25% of multiple months' rent.	issue..
Western Center on Law & Poverty by Madeline Howard Jointly with: California Rural Legal Assistance Foundation by Brian Augusta	The Answer defense (r)(2) contains an error. That subsection reads "Between March 1, 2020 and June 30, 2021, plaintiff applied a monthly rental payment to COVID-19-related debt other than to the prospective month's rent, without tenant's written agreement." This section of SB 91 is not so time limited and actually applies until July 1, 2025, so the time limitation in (r)(2) is incorrect. Instead this language should read: "Plaintiff applied a rental payment to COVID-19-related debt other than the prospective month's rent, without tenant's written agreement." Otherwise, starting in July 2021, landlords could use rolling ledger accounting to apply payments to COVID debt, thereby making the tenant delinquent on the current month's rent. This could lead to eviction for tenants who are paying current rent, which is the exact problem Civil Code section 1179.04.5 is intended to prevent. In addition, the word "monthly" should be omitted to avoid any confusion about payments made to cover 25% of multiple month's rent.	Item 3r has been revised in light of this and other comments.

ISSUE 6: Form UD-105 -- Landlord's Action re Rental Assistance		
Commenter	**Comment**	**Committee Response**
Bay Area Legal Aid Lauren DeMartini Housing Regional Counsel	SB 91 specifically states that refusal to accept rental assistance constitutes source of income discrimination under the Fair Employment and Housing Act. This specific defense should be easily identifiable in section (3) of the Answer form. The language of 3(l) referring to retaliation could be amended to allow for an allegation regarding retaliation under FEHA by citing to Government Code section 12955(f) in addition to Civil Code section 1942.5. The standard for retaliation under FEHA is different and should be reflected in the form Answer. I n addition, please add a checkbox under (m) stating that the landlord refused to accept payment offered towards the financial obligations, citing to Health and Safety Code section 50897.1(i) and FEHA.	In considering this comment, the committee notes that SB 91 does not "specifically state" anything regarding refusal to accept rental assistance. However, in light of this and other comments relating to new Health & Safety Code section 50897.1(i), the committee has added a reference in item 3*l* to the FEHA unlawful practices statute (Gov. Code, § 12955). In addition, in light of this and other comments, a new item has been added asserting that plaintiff refused to accept payment from a third party, citing to the FEHA unlawful practices section, and to Civil Code section 1947.3, which generally precludes a landlord from refusing to accept payments from third parties.
Bet Tzedek Jenna Miara Directing Attorney, Impact Litigation & Policy Los Angeles	SB 91 specifically states that refusal to accept rental assistance constitutes source of income discrimination under the Fair Employment and Housing Act. This specific defense should be easily identifiable in section (3) of the Answer form. The language of 3(l) l referring to retaliation could be amended to allow for an allegation regarding retaliation under FEHA by citing to Government Code section 12955(f) in addition to Civil Code section 1942.5. The standard for retaliation under FEHA is different and should be reflected in the form Answer. In addition, please add a checkbox under (m) stating that the landlord refused to accept payment offered towards the financial obligations, citing to Health and Safety Code section 50897.1(i) and FEHA.	See response to Bay Areal Legal Aid comment on this issue.

ISSUE 6: Form UD-105 -- Landlord's Action re Rental Assistance		
Commenter	**Comment**	**Committee Response**
California Legislators, Thomas Umberg Chair, Senate Judiciary Committee and Mark Stone Chair, Assembly Judiciary Committee	Finally, we would recommend that you consider including an additional checkbox under affirmative defenses on the UD-105 Answer Form. This new checkbox would correspond to the provisions in SB 91 that make it clear that payments from the rental assistance program are "sources of income" for which the tenant cannot be discriminated against under the Fair Employment and Housing Act. (Health & Saf. Code § 50897.1(i).) Although such an affirmative defense falls within the broader category of affirmative defenses contemplated by 3(f), only very sophisticated tenants are likely to know that. We therefore respectfully suggest an additional affirmative defense checkbox that reads: "By serving defendant with the notice to quit or filing the complaint, plaintiff is discriminating against the defendant because some of the defendant's rent was paid by a rental assistance program. (Health & Saf. Code § 50897.1(i).)"	The committee considered this comment, but declines to add the suggested item, both because it is vague and duplicative of the existing item on discriminatory action. The committee has, however, in light of this and other comments, added cross references to the FEHA statutes invoked by the new Health and Safety Code provision to other items on the answer.
Community Legal Aid SoCal Kate Marr Executive Director Santa Ana	SB 91 specifically states that refusal to accept rental assistance constitutes source of income discrimination under the Fair Employment and Housing Act. This specific defense should be easily identifiable in section (3) of the Answer form. The language of 3(l) l referring to retaliation could be amended to allow for an allegation regarding retaliation under FEHA by citing to Government Code section 12955(f) in addition to Civil Code section 1942.5. The standard for retaliation under FEHA is different and should be reflected in the form Answer. In addition, please add a checkbox under (m) stating that the landlord refused to accept payment offered towards the financial obligations, citing to Health and Safety Code section 50897.1(i) and FEHA.	See response to Bay Areal Legal Aid comment on this issue.
Eviction Defense Collaborative By Ora S. Prochovnick Director of Litigation and	SB 91 specifically states that refusal to accept rental assistance constitutes source of income discrimination under the Fair Employment and Housing Act. This specific defense should be easily identifiable in section (3) of the Answer form. The language of 3(l) l referring to retaliation could be	See response to Bay Areal Legal Aid comment on this issue.

ISSUE 6: Form UD-105 -- Landlord's Action re Rental Assistance		
Commenter	**Comment**	**Committee Response**
Policy San Francisco	amended to allow for an allegation regarding retaliation under FEHA by citing to Government Code section 12955(f) in addition to Civil Code section 1942.5. The standard for retaliation under FEHA is different and should be reflected in the form Answer. In addition, there should be a checkbox under (m) stating that the landlord refused to accept payment offered towards the financial obligations, citing to Health and Safety Code section 50897.1(i) and FEHA.	
Public Advocates, Inc. By Shajuti Hossain, Law Fellow and Richard Marcantonio, Managing Attorney San Francisco	SB 91 specifically states that refusal to accept rental assistance constitutes source of income discrimination under the Fair Employment and Housing Act. This specific defense should be easily identifiable in section (3) of the Answer form. The language of 3(l) l referring to retaliation could be amended to allow for an allegation regarding retaliation under FEHA by citing to Government Code section 12955(f) in addition to Civil Code section 1942.5. The standard for retaliation under FEHA is different and should be reflected in the form Answer. In addition, please add a checkbox under (m) stating that the landlord refused to accept payment offered towards the financial obligations, citing to Health and Safety Code section 50897.1(i) and FEHA.	See response to Bay Areal Legal Aid comment on this issue.
Western Center on Law & Poverty by Madeline Howard Jointly with: California Rural Legal Assistance Foundation by Brian Augusta	SB 91 specifically states that refusal to accept rental assistance constitutes source of income discrimination under the Fair Employment and Housing Act. Health & Safety Code section 50897.1(i). This specific defense should be easily identifiable in section (3) of the Answer form. Please add a checkbox under (m) stating that the landlord refused to accept payment offered towards the financial obligations, citing to Health and Safety Code section 50897.1(i) and FEHA. In addition, the language of 3(l) referring to retaliation should be amended to	See response to Bay Areal Legal Aid comment on this issue.

ISSUE 6: Form UD-105 -- Landlord's Action re Rental Assistance		
Commenter	**Comment**	**Committee Response**
	allow for an allegation regarding retaliation under FEHA by citing to Government Code section 12955(f) in addition to Civil Code section 1942.5. The standard for retaliation under FEHA is different and should be reflected in the form Answer.	

ISSUE 7: Form UD-105 -- Reasonable Accommodations		
Commenter	**Comment**	**Committee Response**
Bay Area Legal Aid Lauren DeMartini Housing Regional Counsel	On January 1, 2020, the Department of Fair Employment and Housing issued new regulations interpreting and explaining the Fair Employment and Housing Act's provisions related to reasonable accommodations for people with disabilities, among other topics. As explained in prior comment letters, because people with disabilities will face myriad additional barriers to timely assertion of their rights during the pandemic, fair housing protections for tenants with disabilities facing eviction are particularly critical at this time. Therefore, the form should include an additional defense regarding reasonable accommodations, and an advisement that people with disabilities are entitled to reasonable accommodations and may request one as needed at any point during the unlawful detainer process, including post judgment. 2 C.C.R. §12176. The current affirmative defense language in 3(f) is extremely general and an unrepresented person would likely not realize that refusal to accommodate constitutes discrimination.	In light of this and other comments, a new defense has been added, asserting the plaintiff's failure to provide a reasonable accommodation for a defendant with a disability. (See item 3t on form UD-105.) The committee declines to add an advisory to defendants on this form, as it is a pleading form in which defendant is to respond to the allegations in a complaint. Should information sheets be developed for UD actions, as the committee hopes to do in the future, the suggestion will be considered at that time.
Bet Tzedek Jenna Miara Directing Attorney, Impact Litigation & Policy Los Angeles	On January 1, 2020, the Department of Fair Employment and Housing issued new regulations interpreting and explaining the Fair Employment and Housing Act's provisions related to reasonable accommodations for people with disabilities, among other topics. As explained in prior comment letters, because people with disabilities will face myriad additional barriers to timely assertion of their rights during the pandemic, fair housing protections for tenants with disabilities facing eviction are particularly critical at this time. Therefore, the form should include an additional defense regarding reasonable accommodations, and an advisement that people with disabilities are entitled to reasonable accommodations and may request one as needed at any point during the unlawful detainer process, including post judgment. 2 C.C.R. §12176. The current affirmative defense language in 3(f) is extremely general and an unrepresented person would likely not realize that refusal to accommodate constitutes discrimination.	See response to Bay Areal Legal Aid comment on this issue.

ISSUE 7: Form UD-105 -- Reasonable Accommodations		
Commenter	**Comment**	**Committee Response**
Community Legal Aid SoCal Kate Marr Executive Director Santa Ana	On January 1, 2020, the Department of Fair Employment and Housing issued new regulations interpreting and explaining the Fair Employment and Housing Act's provisions related to reasonable accommodations for people with disabilities, among other topics. As explained in our prior comment letter, because people with disabilities will face myriad additional barriers to timely assertion of their rights during the pandemic, fair housing protections for tenants with disabilities facing eviction are particularly critical at this time. Therefore, the form should include an additional defense regarding reasonable accommodations, and an advisement that people with disabilities are entitled to reasonable accommodations and may request one as needed at any point during the unlawful detainer process, including post judgment. 2 C.C.R. §12176. The current affirmative defense language in 3(f) is extremely general and an unrepresented person would likely not realize that refusal to accommodate constitutes discrimination.	See response to Bay Areal Legal Aid comment on this issue.
Eviction Defense Collaborative By Ora S. Prochovnick Director of Litigation and Policy San Francisco	On January 1, 2020, the Department of Fair Employment and Housing issued new regulations interpreting and explaining the Fair Employment and Housing Act's provisions related to reasonable accommodations for people with disabilities, among other topics. People with disabilities will face myriad additional barriers to timely assertion of their rights during the pandemic, making fair housing protections for tenants with disabilities facing eviction particularly critical at this time. Therefore, the form should include an additional defense regarding reasonable accommodations, and an advisement that people with disabilities are entitled to reasonable accommodations and may request one as needed at any point during the unlawful detainer process, including post judgment. 2 C.C.R. §12176. The current affirmative defense language in 3(f) is extremely general and an unrepresented person would likely not	See response to Bay Areal Legal Aid comment on this issue.

ISSUE 7: Form UD-105 -- Reasonable Accommodations		
Commenter	**Comment**	**Committee Response**
	realize that refusal to accommodate constitutes discrimination.	
Public Advocates, Inc. By Shajuti Hossain, Law Fellow and Richard Marcantonio, Managing Attorney San Francisco	On January 1, 2020, the Department of Fair Employment and Housing issued new regulations interpreting and explaining the Fair Employment and Housing Act's provisions related to reasonable accommodations for people with disabilities, among other topics. As explained in our prior comment letter, because people with disabilities will face myriad additional barriers to timely assertion of their rights during the pandemic, fair housing protections for tenants with disabilities facing eviction are particularly critical at this time. Therefore, the form should include an additional defense regarding reasonable accommodations, and an advisement that people with disabilities are entitled to reasonable accommodations and may request one as needed at any point during the unlawful detainer process, including post judgment. 2 C.C.R. §12176. The current affirmative defense language in 3(f) is extremely general and an unrepresented person would likely not realize that refusal to accommodate constitutes discrimination.	See response to Bay Areal Legal Aid comment on this issue.
Western Center on Law & Poverty by Madeline Howard Jointly with: California Rural Legal Assistance Foundation by Brian Augusta	On January 1, 2020, the Department of Fair Employment and Housing issued new regulations interpreting and explaining the Fair Employment and Housing Act's provisions related to reasonable accommodations for people with disabilities, among other topics. As explained in our prior comment letter, because people with disabilities will face myriad additional barriers to timely assertion of their rights during the pandemic, fair housing protections for tenants with disabilities facing eviction are particularly critical at this time. Therefore, the form should include an additional defense regarding reasonable accommodations, and an advisement that people with disabilities are entitled to reasonable accommodations and may request one as needed at any point during the unlawful detainer process, including post judgment. 2 C.C.R. §12176. The current affirmative defense language in 3(f) is extremely general and an unrepresented person would likely not realize that refusal to accommodate constitutes discrimination.	See response to Bay Areal Legal Aid comment on this issue.

ISSUE 8: Form UD-105 – Request for Jury		
Commenter	**Comment**	**Committee Response**
Bay Area Legal Aid Lauren DeMartini Housing Regional Counsel	Tenants are being asked to complete and understand a very large number of forms due to the new COVID-19 protections. As we raised in a prior comment letter, it would simplify the process if there were a jury request box on the Answer form to facilitate tenants' ability to exercise their constitutional right to a jury.	The committee declines this suggestion. No such item exists on the form complaint or on any other Judicial Council pleading form. This request is outside the scope of this proposal and would be a significant change. Moreover, such a request may be made using the current *Request/Counter Request to Set for Trial* (form UD-105), as explained at the California Courts Online Self-Help Center
Bet Tzedek Jenna Miara Directing Attorney, Impact Litigation & Policy Los Angeles	Tenants are being asked to complete and understand a very large number of forms due to the new COVID-19 protections. As raised in prior comment letters, it would simplify the process if there were a jury request box on the Answer form to facilitate tenants' ability to exercise their constitutional right to a jury.	See response to Bay Areal Legal Aid comment on this issue.
Community Legal Aid SoCal Kate Marr Executive Director Santa Ana	Tenants are being asked to complete and understand a very large number of forms due to the new COVID-19 protections. As we raised in a prior comment letter, it would simplify the process if there were a jury request box on the Answer form to facilitate tenants' ability to exercise their constitutional right to a jury.	See response to Bay Areal Legal Aid comment on this issue.
Eviction Defense Collaborative By Ora S. Prochovnick Director of Lit. and Policy San Francisco	Tenants are being asked to complete and understand a very large number of forms due to the new COVID-19 protections. It would greatly simplify the process if there were a jury request box on the Answer form to facilitate tenants' ability to exercise their constitutional right to a jury.	See response to Bay Areal Legal Aid comment on this issue.
Public Advocates, Inc. By Shajuti Hossain, Law Fellow and Richard Marcantonio, Managing Attorney San Francisco	Tenants are being asked to complete and understand a very large number of forms due to the new COVID-19 protections. As we raised in a prior comment letter, it would simplify the process if there were a jury request box on the Answer form to facilitate tenants' ability to exercise their constitutional right to a jury.	See response to Bay Areal Legal Aid comment on this issue.

ISSUE 8: Form UD-105 – Request for Jury		
Commenter	**Comment**	**Committee Response**
Western Center on Law & Poverty by Madeline Howard Jointly with: California Rural Legal Assistance Foundation by Brian Augusta	Tenants are being asked to complete and understand a very large number of forms due to the new COVID-19 protections. As we raised in a prior comment letter, it would simplify the process if there were a jury request box on the Answer form to facilitate tenants' ability to exercise their constitutional right to a jury.	

ISSUE 9: Form UD-105 – Other comments		
Commenter	**Comment**	**Committee Response**
California Apartment Association By Heidi Palutke Education, Policy and Compliance Counsel Sacramento	**UD-105 Answer-Unlawful Detainer** **Section 3(m)(6)** A tenant who submits a declaration of COVID-19 financial distress qualifies for the prohibitions on late and increased fees in Civil Code Section 1942.0. However, to qualify for the protections that result from making the 25% payment, high-income tenants must have also complied with the documentation requirement, if applicable. Separating the defense related to the payment of 25% of the rent makes it clearer that the preconditions are different. CAA recommends that Section 3(m)(6) be revised as follows to address this distinction. Section 3(m)(6) ____ Defendant delivered to plaintiff one or more declarations of COVID-19-related financial distress. (Code Civ. Proc., § 1179.03(f).) (Describe when and how delivered and check all other items below that apply). (a) _____Plaintiff's demand for payment includes late fees on rent or other financial obligations under the tenancy that came due between March 1, 2020, and June 30, 2021. (b) _____Plaintiff's demand for payment includes fees for services that were increased or not previously charged. (c) _____ Defendant, on or before June 30, 2021, paid or offered plaintiff payment of at least 25% of the total rental payments that were due between September 1, 2020, and June 30, 2021, and that were demanded in the termination notices for which defendant delivered the declarations described in (a) and documentation if required of a high-income tenant. (Code Civ. Proc., §1179.03(g)(2).)	Item 3m has been further revised in light of this comment, with a reference to the documentation required of a high-income tenant now included.
Legal Services of Northern California By Olive Ehlinger	**The UD Answer should remove elements of an Unlawful Detainer cause of action for which Plaintiffs bear the burden from the affirmative defenses section.**	The committee agrees that item 3 on form UD-105 now contains matters on which the plaintiff bears the burden of proof. All

ISSUE 9: Form UD-105 – Other comments		
Commenter	**Comment**	**Committee Response**
Managing Attorney Vallejo	Paragraph 3 of the UD Answer form prompts defendants to assert "Defenses and Objections," but contains multiple elements for which a UD plaintiff actually bears the burden. In general, any issue on which defendant bears the burden of proof at trial must be specially pleaded in the answer. *Harris v. City of Santa Monica* (2013) 56 Cal. App. 4th 203, 239. However, a precursor to cause of action for unlawful detainer is the termination of valid notice to terminate tenancy. *Kwok v. Bergren* (1982) 130 Cal. App. 3d 596. Additionally, because unlawful detainer is a summary proceeding, a plaintiff must strict comply with the statutory notice requirements. *Lamey v. Masciotra* (1969) 273 Cal. App. 2d. 709. Therefore, a UD defendant never bears the burden showing a notice is defective; it is the plaintiff's obligation to plead and present evidence that their notice is fully compliant with all applicable statutes. In the experience of LSNC's advocates, the distinction between an affirmative defense and an unlawful detainer Plaintiff's prima facie case is mostly academic in practice. However, LSNC advocates have observed trial courts frequently prohibiting unrepresented defendants from raising evidence tied to affirmative defenses which the defendant did not raise in their answer. In the instance where a plaintiff has a defective notice and the defendant fails to check the appropriate box in Paragraph 3 corresponding to the defect, this may lead to a defendant being able to dispute a plaintiff's prima facie case. This is especially salient in light of Code of Civil Proc. section 1173, which allows unlawful detainer Plaintiffs to amend their complaints according to proof at trial. LSNC advocates have observed local trial courts using this section 1173 to grant unlawful detainer judgments to plaintiffs on termination notices which the plaintiff alleged on the day of trial and, thus, defendants had no meaningful opportunity to dispute. As much, pleadings that clearly distinguish which party bears the burden of proving a disputed element will better protection the rights of unrepresented litigants.	but one of the items identified by the commenter were added to the answer form at the express request of Tenant Advocates following the enactment of AB 3088 (the other was added at their request earlier, following the enactment of the Tenant Protection Act), so that the form could serve as a kind of checklist of the defenses that a tenant might raise under the new laws. There is nothing in the form that indicates that it is a defendant's obligation to plead or prove these various defenses. In fact, the committee changed the title of the item (formerly called "Affirmative Defenses") for just this reason. The committee declines the suggestion to reorganize the items based on burden of proof at this time.

ISSUE 9: Form UD-105 – Other comments		
Commenter	**Comment**	**Committee Response**
	The UD-105 form currently lists the following defenses that are the plaintiff's burden under the "Defenses and Objections" section: -3(h): Plaintiff's demand for possession is subject to the Tenant Protection Act of 2019, Civil Code section 1946.2 or 1947.12, and is not in compliance with the act; -3(m): Plaintiff's demand for possession of a residential property is based on nonpayment of rent or other financial obligations due between March 1, 2020, and June 30, 2021; -3(n): (For cases filed before July 1, 2021) Plaintiff's demand for possession of a residential tenancy is based on a reason other than nonpayment of rent or other financial obligations, and plaintiff lacks just cause for termination of the tenancy, as defined in Civil Code section 1946.2(b) or Code of Civil Procedure section 1179.03.5(a)(3)(A); and -3(q) Plaintiff violated the federal CARES Act, because the property is covered by that act and the federally backed mortgage on the property was in forbearance when plaintiff brought the action or the plaintiff did not give the required 30 days' notice. (15 U.S.C. § 9058(c).) LSNC recommends that the UD forms somehow distinguish between elements that the defendant bears the burden to prove and those for which the Plaintiff bears the burden. UD-105 can do so by separating "Defenses" and "Objections" within Paragraph 3 and instructing the defendant that they bear the burden to prove "Defenses" and the plaintiff bears the burden to overcome "Objections." LSNC recognizes that this distinction may go beyond the scope of this particular invitation for comments, and that the Judicial Council is balancing presenting all the new elements of the COVID Tenant Relief Act with creating a functional form. However, as the COVID Tenant Relief Act Provisions expire and UD-105 faces new revisions, the Judicial Council will have additional opportunities to clarify how UD defendants can assert defects in the plaintiff's prima facie case.	

Item number: 07

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee action requested [Choose from drop down menu below]**:**
Submit to JC (without circulating for comment)

Rules Committee Meeting Date: April 14, 2021

Title of proposal: Rules and Forms: Technical Change to Gun Violence Emergency Protective Order

Proposed rules, forms, or standards *(include amend/revise/adopt/approve):*
Revisew for EPO-002

Committee or other entity submitting the proposal:
Civil and Small Claims Advisory Committee

Staff contact (name, phone and e-mail): Anne M. Ronan, 415-865-8933, anne.ronan@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by Rules Committee date: Oct 21, 2020
Project description from annual agenda: Revision to EPO-002 (GVRO form). Project Summary: Senate Bill 2617 amends Penal Code section 18140 and provides that a more specific time frame in which a law enforcement officer must file a copy of a Gun Violence Emergency Protective Order (form EPO-002) with the court after it has been issued. Current law states it must be filed "as soon as practicable"; the new law adds "but not later than three days after issuance." This bill was sponsored by the Judicial Council.
Status/Timeline: The change to the form is a technical change that will not need to circulate for comment, and will be ready for approval by the council early next year.

If requesting July 1 or out of cycle, explain:
New law already in effect.

Additional Information: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

Information for JC Staff regarding form translations:

- *List any amended forms in this proposal that have already been translated:*
- *List any new forms that require translation by statute or that you will request to be translated:*

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 2
For business meeting on May 21, 2021

Title
Rules and Forms: Technical Change to Gun Violence Emergency Protective Order

Rules, Forms, Standards, or Statutes Affected
Revise form EPO-002

Recommended by
Civil and Small Claims Advisory Committee
Hon. Ann I. Jones, Chair

Agenda Item Type
Action Required

Effective Date
September 1, 2021

Date of Report
April 6, 2021

Contact
Anne M. Ronan, 415-865-8933
anne.ronan@jud.ca.gov

Executive Summary

Senate Bill 2617 (Stats. 2020; ch.286) amends the Penal Code to, among other things, further refine the time frame in which a law enforcement officer who requests a temporary emergency gun violence restraining order must file that order with the court. This proposal is to conform the language on the gun violence emergency protective order form with the amended language in the statute.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective September 1, 2021, revise *Gun Violence Emergency Protective Order* (form EPO-002) to add the language from Senate Bill 2617 to the form.

The revised form is attached at pages 3–4.

Relevant Previous Council Action

The Judicial Council in 2020 sponsored legislation to amend Penal Code section 18140 to amend the time frame in which a law enforcement officer must file with the court a copy of a temporary

emergency gun violence restraining order, amending it from "as soon as practicable" to "as soon as practicable, but not later than three court days, after issuance." The proposed legislation was enacted in Senate Bill 2617.

Analysis/Rationale

Currently, the *Gun Violence Emergency Protective Order* (form EPO-002) contains an instruction to law enforcement, which includes the statement that a copy of the form must be filed with the court "as soon as practicable after issuance so a hearing can be set if one was not already scheduled." The statement in the revised form conforms to the statute, by changing this to the phrase "as soon as practicable, but not later than three court days, after issuance." The revised instruction conforms to the mandate in Penal Code section 18140.

Policy implications

There are no policy implications to this proposal. It is required in order for the form to comply with the new statutory provision.

Comments

This proposal was not circulated for public comment because the change is minor and noncontroversial, and is therefore within the Judicial Council's purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).)

Alternatives considered

None.

Fiscal and Operational Impacts

Operational impacts are expected to be minor. The proposed revisions may result in reproduction costs if courts provide hard copies of the form, and for law enforcement agencies that produce hard copies. Because the proposed revision is to conform to law, it is a necessary change.

Attachments and Links

1. Form EPO-002 at pages 3–4.
2. Link A: Senate Bill 2617 (Stats. 2020; ch. 286), *https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB2617*

EPO-002
GUN VIOLENCE EMERGENCY PROTECTIVE ORDER

LAW ENFORCEMENT CASE NUMBER:

Clerk stamps date here when form is filed.

DRAFT
Not approved by the
Judicial Council
04/06/2021

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. **RESTRAINED PERSON** *(insert name):* ______
   Address: ______

   Sex: ☐ M ☐ F Ht.: ______ Wt.: ____ Hair color: ______
   Eye color: ______ Race: ______ Age: _____ Date of birth: ______

2. **TO THE RESTRAINED PERSON**
   (Also see important Warnings and Information on page 2):
   You are required to surrender all firearms, ammunition, and magazines that you own or possess in accordance with Section 18120 of the Penal Code and you may not have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive, any firearm, ammunition, or magazine while this order is in effect. However a more permanent gun violence restraining order may be obtained from the court. You may seek the advice of an attorney as to any matter connected with the order. The attorney should be consulted promptly so that the attorney may assist you in any matter connected with the order.
   If you have any firearms, ammunition, and magazines, **you MUST IMMEDIATELY SURRENDER THEM** if asked by a police officer. If a police officer does not ask you to surrender any of the above, within 24 hours of getting this order, you must take them to a police station or a licensed gun dealer to sell or store them and must file a receipt with the court proving that this has been done. You have 48 hours to file a receipt with the court shown to the right. **If you do not file a receipt within 48 hours you have violated this order and can go to jail.**

3. **This order will last until:** ______ **Time** ______
   INSERT DATE OF 21st CALENDAR DAY (DO NOT COUNT DAY THE ORDER IS GRANTED)

4. **Court Hearing** ☐ A court hearing will be set within 21 days.
   ☐ A court hearing will take place at the court above on: Date: ______ Time/Dept: ______

You must go to the court hearing if you do not want this restraining order against you. At the hearing, the judge can make this order last for up to five years.

5. Reasonable grounds for the issuance of this order exist, and a Gun Violence Emergency Protective Order (1) is necessary because the Restrained Person poses an immediate danger of causing personal injury to himself or herself or to another by having custody or control, owning, purchasing, possessing, or receiving any firearms, ammunition, or magazines; **and** (2) less restrictive alternatives were ineffective or have been determined to be inadequate or inappropriate under the circumstances.

6. Judicial officer *(name):* granted this order on *(date):* at *(time):*

APPLICATION

7. Officer has a reasonable cause to believe that the grounds set forth in item 5, above, exist *(state supporting facts and dates; specify weapons—number, type and location)*:

8. ☐ Firearms were ☐ observed ☐ reported ☐ searched for ☐ seized.
   ☐ Ammunition (including magazines) was ☐ observed ☐ reported ☐ searched for ☐ seized.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

By: ______ (PRINT NAME OF LAW ENFORCEMENT OFFICER)

▶ ______ (SIGNATURE OF LAW ENFORCEMENT OFFICER)

Agency: ______ Telephone No: ______ Badge No: ______
Address: ______

PROOF OF SERVICE

9. I personally delivered copies of this Order to the restrained person name in item 1.
   Date of service: ______ Time of service: ______ Address:

10. At the time of service, I was at least 18 years of age.

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 SERVER/LAW ENFORCEMENT OFFICER) ▶ ______ (SIGNATURE OF SERVER)

GUN VIOLENCE EMERGENCY PROTECTIVE ORDER
WARNINGS AND INFORMATION

TO THE RESTRAINED PERSON: You are prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm, ammunition, or a magazine. (Pen. Code, § 18125 et seq.) A violation of this order is a misdemeanor punishable by a $1,000 fine or imprisonment for six months or both. (Pen. Code, §§ 19, 18205.)

Within 24 hours of receipt of this order, you must turn in all firearms, ammunition, and magazines to a law enforcement agency or sell them to or store them with a licensed firearms dealer until the expiration of this order. (Pen. Code, § 18125 et seq.) A receipt proving surrender, sale, or storage must be filed with the court within 48 hours of receipt of this order, or on the next court business day if the 48-hour period ends on a day when the court is closed. You must also file the receipt with the law enforcement agency that served you with this Order. You may use Form GV-800, *Proof of Firearms, Ammunition, and Magazines Turned In, Sold, or Stored.*

This Gun Violence Emergency Protective Order is effective when made. It will last until the date and time in item 3 on the front. The court will hold a hearing within 21 days to determine if a longer-term order should be issued. If the date and time are not stated in item 4 on the front, you will get a notice with the date and time of the hearing in the mail at the residential address listed on page 1 of this form. If you would like to respond to this order in writing you must use Form GV-020, *Response to Gun Violence Emergency Protective Order.* A family member, employer, coworker, teacher, or school administrator may also seek a more permanent restraining order from the court.

If you violate this order, you will also be prohibited from having in your custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm, ammunition, or magazine for an additional five-year period, to begin on the expiration of the more permanent gun violence restraining order. (Pen. Code, § 18205.)

This protective order must be enforced by all law enforcement officers in the state of California who are aware of it or shown a copy of it. The terms and conditions of this order remain enforceable regardless of the acts or any agreement of the parties; it may be changed only by order of the court.

A LA PERSONA RESTRINGIDA: Tiene prohibido ser dueño de un arma de fuego, municiones o cargadores, o poseer, comprar, recibir, o tratar de comprar o recibir un arma de fuego, municiones o cargadores. (Código Penal, §§ 18125 y siguientes). Una violación de esta orden está sujeta a una multa de $1000 o encarcelamiento de seis meses o ambos. (Código Penal, §§ 19 y 18205.)

Dentro de las 24 horas de recibir esta orden, tiene que entregar sus armas de fuego, municiones y cargadores a una agencia del orden público o venderlos a un comerciante de armas autorizado, o almacenarlos con el mismo hasta el vencimiento de esta orden. (Código Penal, §§ 18125 y siguientes). Se tiene que presentar a la corte una prueba de haberlos entregado, vendido, o almacenado dentro de las 48 horas de recibir esta orden. Se puede usar el formulario GV-800, *Prueba de entrega, venta o almacenamiento de armas de fuego, municiones y cargadores*, por este propósito.

Esta orden de protección de emergencia de armas de fuego entra en vigencia en el momento en que se emite. Durará hasta la fecha y hora indicadas en el punto 3 de la primera página. Se realizará una audiencia dentro de 21 días para determinar si es necesario emitir una orden que dure por más tiempo. Si la fecha y la hora no se indican en el punto 4 de la primera página, recibirá un aviso con la fecha y la hora de la audiencia por correo a la dirección residencial indicada en la primera página. Si desea responder a esta orden por escrito, tiene que usar el formulario GV-020, *Respuesta a la orden de protección de emergencia de armas de fuego*. Un miembro de su familia, su empleador, un colega del trabajo, un maestro o profesor, o administrador educativo también puede solicitar al tribunal una orden de restricción más permanente.

Si contraviene esta orden de restricción, se le prohibirá tener en su posesión o control, comprar, poseer o recibir, o tratar de comprar o recibir un arma de fuego, municiones o cargadores por otro periodo de cinco años más, comenzando a partir del vencimiento de la orden de restricción de armas de fuego más permanente. (Código Penal, § 18205.)

Todo agente del orden público del estado de California que tenga conocimiento de la orden o a quien se le muestre una copia de la misma deberá hacer cumplir esta orden de protección. Los términos y condiciones de esta orden se podrán hacer cumplir independientemente de las acciones de las partes; solo la corte podrá cambiar esta orden.

To law enforcement: The Gun Violence Emergency Protective Order must be served on the restrained person by the officer if the restrained person can reasonably be located. Ask the restrained person if he or she has any firearms, ammunition, or magazines in his or her possession or under his or her custody or control. A copy must be filed with the court as soon as practicable, but not later than three court days, after issuance, so a hearing can be set, if one was not already scheduled. If the court did not give you a hearing date when issuing the order (to put in item 4 on the front), the court will set a hearing within 21 days and will provide you with notice of the hearing. Also, the officer must have the order entered into the computer database system for protective and restraining orders maintained by the Department of Justice.

The provisions in this temporary Gun Violence Emergency Protective Order do not affect those of any other protective or restraining order in effect, including a criminal protective order. The provisions in another existing protective order remain in effect.

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Print this form | Save this form | Clear this form

Item number: 08

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee action requested [Choose from drop down menu below]**:**
Circulate for comment (January 1 cycle)

Rules Committee Meeting Date: April 14, 2021

Title of proposal: Discovery: Remote Depositions

Proposed rules, forms, or standards *(include amend/revise/adopt/approve):*
Amend rule 3.1010

Committee or other entity submitting the proposal:
Civil and Small Claims Advisory Committee

Staff contact (name, phone and e-mail): James Barolo, 415-865-8928, james.barolo@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by Rules Committee date: November 2, 2020
Project description from annual agenda: Senate Bill 1146 amends Code of Civil Procedure section 2025.310 and authorizes the greater use of remote technology in depostions, allowing parties, witnesses, and deposition officer to be in separate locations. Current Rules of Court, rule 3.1010 regarding remote depositions must be ameded in light of the new statute.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

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INVITATION TO COMMENT

SPR-__

Title
Discovery: Remote Depositions

Proposed Rules, Forms, Standards, or Statutes
Amend Cal. Rules of Court, rule 3.1010

Proposed by
Civil and Small Claims Advisory Committee
Hon. Ann I. Jones, Chair

Action Requested
Review and submit comments by May 27, 2021

Proposed Effective Date
January 1, 2022

Contact
James Barolo, 415-865-8928
james.barolo@jud.ca.gov

Executive Summary and Origin

The Civil and Small Claims Advisory Committee recommends amending rule 3.1010 of the California Rules of Court governing remote depositions. The proposed amendments reflect recent statutory changes enacted in Senate Bill 1146 (Stats. 2020, ch. 112, § 3) that (1) removed the requirement that deponents appear in the physical presence of the deposition officer, and (2) eliminated the different treatment for party and nonparty deponents. The revised law also permits any party to be physically present with the deponent during the deposition. Accordingly, the proposed amendment adds a notice requirement for any party wishing to do so.

Background

In April 2020, as part of the emergency rules of court adopted in response to the public safety concerns raised by the COVID-19 pandemic, the Judicial Council adopted emergency rule 11,[1] which provided that the deponent "is not required to be present with the deposition officer at the time of the deposition." In September 2020, the California Legislature passed, and the Governor signed, SB 1146 (Link A). Among other modifications, SB 1146 changed Code of Civil Procedure section 2025.310,[2] the law regarding the conduct of depositions. SB 1146 deleted the prior provisions of section 2025.310 that, with certain limitations, allowed for remote depositions and replaced them with language from emergency rule 11. Section 2025.310 previously treated party deponents and nonparty deponents differently: party deponents had to appear in person at a deposition, while nonparty deponents could, by court order for good cause, appear remotely so long as in the presence of the deposition officer. The Legislature eliminated those differences

[1] All further rule references are to the California Rules of Court unless otherwise noted.
[2] All statutory references are to the Code of Civil Procedure unless otherwise noted.

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee. It is circulated for comment purposes only.

(including the authorization for a nonparty deponent to seek to appear remotely) and added a provision that, at the election of the deponent or deposing party, the deposition officer may attend the deposition and swear in the deponent from a location separate from the deponent. Additionally, subject to existing law on protective orders, any party or attorney of record may, but is not required to, be physically present with the deponent.

Because SB 1146 was enacted as urgency legislation, it went into effect immediately upon being signed by the Governor. Thereafter, emergency rule 11 was repealed by the Judicial Council. Accordingly, rule 3.1010 of the California Rules of Court does not conform to current law regarding remote depositions.

The Proposal

This proposal recommends the changes to rule 3.1010 discussed below. The changes are needed to reflect recent amendments to Code of Civil Procedure section 2025.310 that are already in effect and to require notice if a party or attorney of record wishes to attend the deposition in the physical presence of the deponent.

Revised section 2025.310 permits a party or attorney of record to be physically present with the deponent and existing rule 3.1010(a)(3) provides that "any party may be personally present at the deposition without giving prior notice." Because deponents may sit for remote depositions in their home or another private place and given the public health concerns raised by the COVID-19 pandemic, this proposal would amend rule 3.1010(a)(3) to require notice. Specifically, any party or attorney of record appearing at the deposition in the physical presence of the deponent would be required to provide three-days written notice. (Providing notice seems particularly important to allow parties time to make a motion for a protective order under section 2025.420, as envisioned by revised section 2025.310.) The notice provisions are similar to those in existing rule 3.1010(b)(1), but also expressly reference Code of Civil Procedure section 2025.420. Additionally, the proposed language tracks the statute by referring to "[a]ny party *or attorney of record*" and using "physically" instead of "personally" before "present." This proposal makes a parallel change to subsection (b) by adding "or attorney of record" after "[a]ny party."

Senate Bill 1146 also eliminated the different treatment for party and nonparty deponents. Specifically, party deponents were required to appear in person and in the presence of the deposition officer, while nonparty deponents were able to appear remotely for good cause. Current subsections (c) and (d) of the rule echo the previous law's different provisions for party and nonparty deponents. This proposal would remove those differences by eliminating subsection (d) and making subsection (c) applicable to all deponents. Additionally, the requirement that deponents be in the presence of the deposition officer is removed from subsection (c) to conform to the revised statute and replaced with language requiring deponents to appear "as required by statute or as agreed to by the parties and deponent."

This proposal aims to address the amended provisions of the Code of Civil Procedure and also account for the practical reality that many parties agree to hold depositions remotely. Hence, this

proposal expressly provides that deponents can appear "as agreed to by the parties and deponent" and safely implements the statute's ability for parties to attend the deposition in the physical presence of the deponent by requiring advance notice of such attendance. This balance should serve the judicial branch by reducing eliminating unnecessary disputes about depositions, and aid parties and attorneys by affording the maximum flexibility provided under the law.

Alternatives Considered

Because SB 1146 went into effect last September and expressly contradicts the provisions of rule 3.1010, the advisory committee determined it must act and that taking no action would be inappropriate. In addition to this proposal, the committee considered deleting rule 3.1010 altogether, to remove the conflict between rule 3.1010 and section 2025.310 without providing for anything further. A majority of the advisory committee ultimately decided, however, that providing guidance in the form of a rule of court is preferrable. In particular, the committee concluded that amending rule 3.1010 to add a notice requirement for a party appearing at the deposition in the physical presence of the deponent was appropriate because the statute is silent on any such notice. Given the possibility that deponents may plan to participate in remote depositions from their homes, a notice requirement in order for other parties to be physically present was deemed crucial.

The committee also considered developing new rules governing conduct of remote depositions, but concluded that it was too early in the process to determine what rules were needed. The committee will look at this issue in the fall when it develops its agenda for next year.

Fiscal and Operational Impacts

Because the COVID-19 pandemic has limited in-person interaction, many litigants have already stipulated to holding depositions remotely. To the extent such depositions are authorized by the new statute, the only operational impact this rule is likely to have is from the guidance it provides as to what notice is required in order to appear physically at an otherwise remote deposition. The proposal should have little financial impact on litigants and may provide some savings for courts by decreasing the number of discovery disputes.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- 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?
- Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Rules of Court, rule 3.1010, at pages 5–6
2. Link A: SB 1146, *https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB1146*

Rule 3.1010 of the California Rules of Court would be amended, effective January 1, 2022, to read:

Rule 3.1010. Oral depositions by telephone, videoconference, or other remote electronic means

(a) Taking depositions

Any party may take an oral deposition by telephone, videoconference, or other remote electronic means, provided:

(1) Notice is served with the notice of deposition or the subpoena;

(2) That party makes all arrangements for any other party to participate in the deposition in an equivalent manner. However, each party so appearing must pay all expenses incurred by it or properly allocated to it;

(3) Any party or attorney of record may be ~~personally~~ physically present at the deposition at the location of the deponent with~~out giving prior~~ written notice of such appearance served by personal delivery, email, or fax, at least three court days before the deposition, and subject to Code of Civil Procedure section 2025.420.

(b) Appearing and participating in depositions

Any party or attorney of record may appear and participate in an oral deposition by telephone, videoconference, or other remote electronic means, provided:

(1) Written notice of such appearance is served by personal delivery, email, or fax at least three court days before the deposition;

(2) The party so appearing makes all arrangements and pays all expenses incurred for the appearance.

(c) ~~Party d~~Deponent's appearance

A ~~party~~ deponent must appear as required by statute or as agreed to by the parties and deponent ~~at his or her deposition in person and be in the presence of the deposition officer~~.

(d) ~~Nonparty deponent's appearance~~

~~A nonparty deponent may appear at his or her deposition by telephone, videoconference, or other remote electronic means with court approval upon a finding of good cause and no prejudice to any party. The deponent must be sworn in the presence of the deposition officer or by any other means stipulated to by the parties or ordered by the court. Any party may be personally present at the deposition.~~

1
2 ~~(e)~~ **Court orders**
3
4 On motion by any person, the court in a specific action may make such other orders
5 as it deems appropriate.
6

Item number: 09

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee action requested [Choose from drop down menu below]**:**
Circulate for comment (January 1 cycle)

Rules Committee Meeting Date: April 14, 2021

Title of proposal: Updating the Collaborative Justice Courts Advisory Committee's Area of Focus and Duties

Proposed rules, forms, or standards *(include amend/revise/adopt/approve):*
Amend rule 10.56 of the California Rules of Court

Committee or other entity submitting the proposal:
Collaborative Justice Courts Advisory Committee

Staff contact (name, phone and e-mail): Francine Byrne,415-865-8069, francine.byrne@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by Rules Committee date:
Project description from annual agenda: Project title: Review California Rule of Court 10.56 to ensure that the CJCAC charge adequately serves collaborative court model programs and participants that struggle with behavioral health issues.

The Collaborative Justice Courts Advisory Committee (CJCAC) set forth in its 2021 Annual Agenda to review rule 10.56 and to propose any needed amendments. Rule 10.56 (originally adopted as rule 6.56 and renumbered effective January 1, 2007) was adopted in 2000 to establish the Collaborative Justice Courts Advisory Committee. Numerous program and policy changes have occurred since then, including the implementation of a variety of diversion programs that incorporate many collaborative justice elements. The CJCAC recommends updating its defining rule to ensure that its role reflects the work that is happening in the field and that the courts and the public are appropriately supported by the committee.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

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INVITATION TO COMMENT

SPR21-04

Title
Collaborative Justice: Updating the Collaborative Justice Courts Advisory Committee's Area of Focus and Duties

Proposed Rules, Forms, Standards, or Statutes
Amend Cal. Rules of Court, rule 10.56

Proposed by
Collaborative Justice Courts Advisory Committee
Hon. Richard Vlavianos, Chair

Action Requested
Review and submit comments by May 27, 2021

Proposed Effective Date
January 1, 2022

Contact
Francine Byrne, 415-865-8069
francine.byrne@jud.ca.gov

Deanna Adams, 916-263-1378
deanna.adams@jud.ca.gov

Executive Summary and Origin

The Collaborative Justice Courts Advisory Committee recommends amending rule 10.56 of the California Rules of Court to expand and clarify its areas of focus and duties. This recommendation would allow the advisory committee to better address judicial leadership and court processes impacting collaborative justice courts and similar programs that impact individuals who are moving through the court system and who have mental illnesses, substance use disorders, or co-occurring disorders. These proposed amendments seek to (1) revise the scope of duties to more accurately align with the evolution of collaborative courts, and (2) allow the advisory committee to address diversion and other collaborative programs involving the courts and informed by—or could benefit from—the incorporation of collaborative justice court principles and practices.

Background

The Judicial Council's Collaborative Justice Courts Advisory Committee was created in 2000 by Chief Justice Ronald M. George to support the growing number of collaborative justice courts in California. The areas of focus, duties, and structure that were established for the committee in January 2000 via rule 6.56 (now rule 10.56) remain in place and only some minor, nonsubstantive amendments to the rule have been made. Although the advisory committee rule remains largely unchanged, the same cannot be said for the field of collaborative justice courts. Several policy changes have taken place that have required collaborative justice courts to adjust their practices, including a shift in the classification of many lower level theft and drug crimes

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from felonies to misdemeanors and the creation of a number of diversion programs. Advisory committee members who act as subject matter experts in their field are constrained by the rule's limited focus on traditional collaborative justice court models and would like the rule to reflect their more expansive role in diversion and similar programs.

The Proposal

Amending rule 10.56 of the California Rules of Court is needed to enable the Collaborative Justice Courts Advisory Committee to more effectively carry out its duties of making recommendations to the Judicial Council, assessing the success of programs, and identifying and disseminating to courts best practices and outreach activities. The proposed amendments make changes to existing subdivisions.

Changes to the Collaborative Justice Courts Advisory Committee's areas of focus

The proposed amendments are needed for the advisory committee to continue its focus on collaborative programs that were established after the adoption of rule 10.56 and that are routinely assigned by trial courts to fall under the duties and purview of collaborative justice courts. These proposed amendments will modernize the criteria originally used to define collaborative justice courts to better reflect the evolution of these courts. These amendments to subdivision (a) of rule 10.6 would:

- Require the advisory committee to include within its scope all programs that incorporate judicial supervision, collaboration among justice system partners, or rehabilitative services aimed at improving outcomes for individuals with mental illnesses, substance use disorders, or co-occurring disorders;

- Would eliminate the antiquated list of specific types of collaborative justice courts; and

- Move specific duties to subdivision (b) Additional duties.

Changes to the Collaborative Justice Courts Advisory Committee's additional duties

The proposed amendments are needed for the advisory committee to align its focus with recent reforms that affect court, criminal justice, and behavioral health systems and recent shifts in the legislative and executive branches to establish collaborative programs that impact adult and youth with mental illnesses, substance use disorders, and co-occurring disorders. These amendments to subdivision (b) of rule 10.56 would:

- Establish a distinctive focus on education and training opportunities for judicial officers, court staff, and justice system partners; and

- Specify the nature of recommendations that can be made to the Judicial Council about funding and outreach activities that can benefit collaborative justice courts and similar collaborative programs focused on individuals with mental illnesses, substance use disorders, or co-occurring disorders.

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The specific changes and their rationale are as follows:

(1) Make recommendations to the council on best practices and guidelines for collaborative programs; *This duty was originally included in subdivision (a) Area of focus, and it is moved for consistency and clarity into subdivision (b) Additional duties.*

(2) Assess and measure the success ~~and effectiveness~~ of ~~local~~ collaborative ~~justice courts~~ programs, including methods for collecting data to evaluate the effectiveness of these programs; *The word "local" is removed to enable assessment of statewide programs, and the word "effectiveness" is removed for brevity and to reduce redundant use of term. The term "data collection methods" is specified to ensure that programs collect standard data elements to support courts' ability to engage in ongoing self-assessment.*

(3) Identify and disseminate to trial courts locally generated and nationally recognized best practices for collaborative programs, and training and program implementation activities to support collaborative programs; *The term "nationally recognized" is added to allow the committee to support the implementation of national standards that have been developed for adult and dependency drug courts. "Training and program implementation activities" is added to reflect work that committee members conduct to assist courts in implementing new programs, such as mental health diversion programs created pursuant to Penal Code sections 1001.35 and 1001.36.*

(4) Recommend to the Center for Judicial Education and Research Advisory Committee minimum judicial education standards on collaborative programs, and educational activities to support those standards ~~to the Governing Committee of the Center for Judicial Education and Research~~; *Adds collaborative programs for specificity and changes the sentence structure for clarity.*

(5) Advise the council of potential funding sources, including those that may advance collaborative programs; *Allows the committee to advise the council on potential local, state, and federal funding sources, as appropriate. This will enable the committee and the Judicial Council to be prepared in the event that federal funding for collaborative courts becomes available in the form of block grants.*

(6) Make allocation recommendations regarding grant funding programs that are administered by the Judicial Council ~~staff for~~ that support ~~drug courts and other treatment courts~~ collaborative programs; and *Replaces "drug and other treatment courts" with the more expansive "collaborative programs" terminology.*

(7) ~~Recommend~~ Identify and implement appropriate outreach activities needed to support collaborative ~~justice courts~~ programs, including but not limited to collaborations with educational institutions, professional associations, and community-based organizations. *Changes "recommend" to "identify and disseminate" to more clearly reflect the committee's role; replaces "collaborative justice courts" with "collaborative programs"; adds specific examples of the types of outreach and identifies collaboration partners.*

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Alternatives Considered

The proposed amendments allow the Collaborative Justice Courts Advisory Committee to better address judicial leadership and court processes impacting collaborative justice courts and similar programs that impact individuals who have mental illnesses, substance use disorders, or co-occurring disorders. As an alternative, the advisory committee considered narrowing its activities and reframing how it approaches developing projects though its annual agenda process to fall squarely within the current limitations and parameters of rule 10.56. This alternative was rejected because the current rule was developed before the numerous recent reforms that affect court, criminal justice, and behavioral health systems.

The advisory committee considered proposing the creation of a new advisory committee focused on specific matters of importance to the courts and judicial branch that are consistent with the scope of the Collaborative Justice Courts Advisory Committee but are excluded based on the current rule 10.56. This alternative was rejected because (1) the duties and responsibilities of a new advisory committee may overlap in scope with those of the Collaborative Justice Courts Advisory Committees on certain matters, (2) the expertise encompassed across the Collaborative Justice Courts Advisory Committee membership equips the advisory committee to accomplish the duties and responsibilities of a new advisory committee, and (3) the creation of a new advisory committee would create substantial fiscal and operational impacts on the Judicial Council.

Fiscal and Operational Impacts

This proposal updates the area of focus and duties of the Collaborative Justice Courts Advisory Committee to maximize its ability to comply with rule 10.34 of the California Rules of Court and to provide the necessary breadth for the advisory committee to effectively make recommendations to the Judicial Council. This proposal will have no fiscal or operational impact on the courts or the Judicial Council, including Judicial Council staff.

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Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal result in fiscal or operational costs for the courts? If so, please quantify.
- Are there implementation requirements for the courts as a result of this change?

Attachments and Links

1. Cal. Rules of Court, rule 10.56, at pages 6-7

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Rule 10.56 of the California Rules of Court would be amended, effective January 1, 2022, to read:

Rule 10.56. Collaborative Justice Courts Advisory Committee

(a) Area of focus

The committee makes recommendations to the Judicial Council on criteria for ~~identifying and~~ evaluating and improving ~~collaborative justice courts and~~ programs that incorporate judicial supervision, collaboration among justice system partners or rehabilitative services. Collaborative programs include collaborative justice courts, diversion programs, and similar programs that seek to improve outcomes for court-involved and justice system–involved adults and youth and those at risk of becoming justice system–involved, including individuals with mental health issues, substance use disorders, or co-occurring disorders. ~~for improving the processing of cases in these courts, which include drug courts, domestic violence courts, youth courts, and other collaborative justice courts. Those recommendations include "best practices" guidelines and methods for collecting data to evaluate the long-term effectiveness of collaborative justice courts.~~

(b) Additional duties

In addition to the duties described in rule 10.34, the committee must:

(1) Make recommendations to the council on best practices and guidelines for collaborative programs;

(2) Assess and measure the success ~~and effectiveness~~ of ~~local~~ collaborative ~~justice courts~~ programs, including methods for collecting data to evaluate the effectiveness of these programs;

(3) Identify and disseminate to trial courts locally generated and nationally recognized best practices for collaborative programs, and training and program implementation activities to support collaborative programs;

(4) Recommend to the Center for Judicial Education and Research Advisory Committee minimum judicial education standards on collaborative programs, and educational activities to support those standards ~~to the Governing Committee of the Center for Judicial Education and Research~~;

(5) Advise the council of potential funding sources, including those that may advance collaborative programs;

(6) Make allocation recommendations regarding grant funding programs that are administered by the Judicial Council ~~staff for~~ that support ~~drug courts and other treatment courts~~ collaborative programs; and

(7) ~~Recommend~~ Identify and implement appropriate outreach activities needed to support collaborative ~~justice courts~~ programs, including but not limited to collaborations with educational institutions, professional associations, and community-based organizations.

(c) * * *

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee action requested [Choose from drop down menu below]**:**
Circulate for comment (January 1 cycle)

Rules Committee Meeting Date: April 14, 2021

Title of proposal: Rules and Forms: Waiver of Court-Funded Interpreter Services

Proposed rules, forms, or standards *(include amend/revise/adopt/approve):*
Adopt new rule of court 2.896

Committee or other entity submitting the proposal:
Court Interpreters Advisory Panel

Staff contact (name, phone and e-mail): Diana B. Glick, 916-643-7012, diana.glick@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by Rules Committee date: Approved by E&P October 21, 2020
Project description from annual agenda: Develop a policy for limited English proficient (LEP) persons to waive a court-appointed interpreter. It is anticipated that a new rule of court and form will also need to be developed in conjunction with development of this policy. This project originated with LAP Recommendation #75.

If requesting July 1 or out of cycle, explain:
N/A

Additional Information: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)
N/A

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INVITATION TO COMMENT

ITC SPR21-05

Title
Rules and Forms: Waiver of Court-Funded Interpreter Services

Action Requested
Review and submit comments by Thursday, May 27, 2021

Proposed Rules, Forms, Standards, or Statutes
Adopt Cal. Rules of Court, rule 2.896

Proposed Effective Date
January 1, 2022

Proposed by
Court Interpreters Advisory Panel
Hon. Brian L. McCabe, Chair
Mr. Hector Gonzalez, Vice-Chair

Contact
Diana Glick, 916-643-7012
diana.glick@jud.ca.gov

Executive Summary

The Court Interpreters Advisory Panel recommends the adoption of a new rule of court to mandate the procedure to be followed in civil courts if a court user who has been appointed a court-funded interpreter expresses a desire to waive the services of the court-funded interpreter. This waiver may be a "preference" waiver, for a court user who prefers that the court appoint a privately funded interpreter, or a "complete" waiver, for a court user asking to proceed in the matter without any interpretation services. The purpose of the procedures for both types of waiver is to protect limited English proficient court users and the integrity of the court process by ensuring that such a waiver is knowing, voluntary, and intelligent.

Background

The Strategic Plan for Language Access in the California Courts, adopted by the Judicial Council in January 2015, contains a recommendation that the Language Access Plan Implementation Task Force develop a policy to allow a court user with limited English proficiency (LEP) to

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. It is circulated for comment purposes only.

request a waiver of interpretation services.[1] The recommendation specifies that any such waiver should be "knowing, intelligent, and voluntary;" made after the LEP court user has been able to consult with counsel; and approved at the discretion of a judicial officer.

Upon the sunsetting of the task force, the Court Interpreters Advisory Panel (CIAP) took on the task of implementing this recommendation. During deliberations, the CIAP determined that a waiver policy should include procedures for both a "preference" waiver—for those who prefer to provide their own qualified interpreter—and a "complete" waiver"—for those who are asking that no interpreter be used at all.

Preference waiver

When an LEP court user executes a preference waiver, the services of the court-provided and court-funded interpreter are waived, and the court user supplies an interpreter for the in-court proceeding. California law contemplates the possibility that a litigant may want to obtain the services of a privately funded interpreter. Under Government Code section 71802(a), courts are required to appoint court employee interpreters exclusively (instead of independent contractor interpreters), with limited exceptions. Section 71802(b) sets out the parameters within which a nonemployee interpreter may be appointed, at the discretion of the court, including when "[t]he interpreter is paid directly by the parties to the proceeding." The goal of developing procedures for a preference waiver is to allow court users to retain their own qualified interpreters if this option is desired and possible and does not compromise the process for other court users or disrupt the operations of the court, and to protect LEP court users by ensuring that such a waiver of a court-funded interpreter is knowing, voluntary, and intelligent. In accordance with Government Code section 68561, all interpreters appointed by the court must be either certified or registered, with limited exceptions. The definitions for "certified" and "registered" interpreters and the requirements for finding an interpreter to be provisionally qualified are all set forth in California Rules of Court, rule 2.893. Any procedures that allows for a privately funded interpreter to be appointed by the court should ensure that the privately funded interpreter is qualified for appointment in accordance with rule 2.893[2].

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[1] Recommendation #75: "The Implementation Task Force will develop a policy addressing an LEP court user's request of a waiver of the services of an interpreter. The policy will identify standards to ensure that any waiver is knowing, intelligent, and voluntary; is made after the person has consulted with counsel; and is approved by the appropriate judicial officer, exercising his or her discretion. The policy will address any other factors necessary to ensure the waiver is appropriate, including: determining whether an interpreter is necessary to ensure the waiver is made knowingly; ensuring that the waiver is entered on the record, or in writing if there is no official record of the proceedings; and requiring that a party may request at any time, or the court may make on its own motion, an order vacating the waiver and appointing an interpreter for all further proceedings. The policy shall reflect the expectation that waivers will rarely be invoked in light of access to free interpreter services and the Implementation Task Force will track waiver usage to assist in identifying any necessary changes to policy. (Phase 1)" (Judicial Council of Cal., *Strategic Plan for Language Access in the California Courts* (2015), p. 80. (Link A).)

[2] California Rules of Court, rule 2.893, available at https://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2_893

Complete waiver
When an LEP court user executes a complete waiver, all interpretation services are waived for the in-court proceeding. The purpose of a policy for a complete waiver is to protect LEP court users and the court by ensuring that such a waiver is knowing, voluntary, and intelligent and that communication in the courtroom will be unimpeded. The requirements for a complete waiver are designed to protect the integrity of the court process and protect due process for LEP litigants, while still allowing for the rare occasion when an LEP litigant is capable of and wants to proceed without interpreter assistance.

The Proposal

This proposal recommends the adoption of a new rule of court, rule 2.896, that provides procedures for the court to follow in the event that a court user who has been appointed a court-funded interpreter waives the services of the court-funded interpreter.

The proposed rule has been placed in title 2 in the current series of rules on interpreters that apply to the trial courts. Specific language in subdivision (a) of the rule makes it clear that this waiver procedure applies only in civil matters. It also applies exclusively to court users (parties, witnesses, and others) who have had an interpreter appointed in the matter to interpret for them.

Subdivision (b) of the proposed rule describes the procedures to be followed for a preference waiver. If a court-funded interpreter has been appointed in a matter for a court user, and that court user expresses a desire to waive the services of the court-funded interpreter and requests the appointment of a privately funded interpreter, the court must make specific statements to the court user regarding the importance of understanding and participating in the matter, the availability of a court-funded interpreter and that the waiver may be retracted at any time. The court may only approve the waiver and appoint the privately funded interpreter if it finds that the statements above were made to the court user with the services of the court-funded interpreter, that the waiver is knowing, voluntary and intelligent, and that the privately funded interpreter is a California court certified, registered or provisionally qualified interpreter, in accordance with rule 2.893.

Subdivision (c) of the proposed rule describes the procedures to be followed for a complete waiver. If a court user expresses a desire to waive the services of a court-funded interpreter and proceed in the matter without interpretation services, the court must make specific statements to the court user regarding the importance of understanding and participating in the matter, the availability of a court-funded interpreter and that the waiver may be retracted at any time. The court may only approve the complete waiver of interpretation services if it finds that the statements above were made to the court user with the services of the court-funded interpreter, and that the waiver is knowing, voluntary and intelligent.

Subdivision (d) of the proposed rule describes procedures that apply after either type of waiver has been approved by the court. These include the right of the LEP court user to retract the

waiver at any time and request the appointment of a court-funded interpreter and the authority of the judicial officer, on the court's initiative, to set aside the waiver at any time during the proceedings and appoint a court-funded interpreter.

Finally, the proposed rule of court includes an advisory committee comment that reinforces the importance of managing waivers in a way that protects limited English proficient court users and preserves the integrity of the court process.

Alternatives Considered

The committee considered applying the procedures for waiver to criminal actions as well as civil cases. The committee ultimately decided to focus on the civil context at this time in light of the different constitutional factors that apply in criminal cases and the existence of case law that clearly sets forth the requirements for the waiver of a right to an interpreter by a criminal defendant. Such a waiver must be made "voluntarily and intelligently," it must be made on the record, and waiver by counsel alone is not considered sufficient.[3]

CIAP also considered the possibility of developing a court form to assist parties seeking approval of a waiver and for the purpose of collecting information about the waiver of interpretation services. Ultimately, the committee decided that the advisements that the court must provide an LEP court user who asserts a waiver of court-funded interpreter services should be made orally in open court and on the record, after the appointment of a court-funded interpreter. Therefore, the committee determined that a court form was not necessary and could create additional confusion about the process.

Fiscal and Operational Impacts

This proposal will require the development of a bench card with the contents of the rule to guide the actions of judicial officers in the event that a waiver is made by an LEP court user who has been appointed a court-funded interpreter in a civil matter.

[3] "The requirements for a waiver of this right are well established. The right may not be waived by a failure to request an interpreter, nor may it be waived by acquiescence or other nonverbal conduct by the defendant. (*People* v. *Aguilar supra*, 35 Cal.3d at p. 794; *People* v. *Carreon, supra*, 151 Cal.App.3d at p. 574.) To waive the right, a defendant must do so voluntarily and intelligently on the record. A waiver by counsel without participation by the defendant is likewise inadequate." (*People v. Nieblas* (1984) 161 Cal.App.3d 527, 530 [207 Cal.Rptr. 695].)

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- What additional resources, beyond the development of a bench card, could be helpful in supporting the work of judicial officers when a waiver is presented to the court?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- 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?
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Proposed Cal. Rules of Court, rule 2.896, at pages 6–8
2. Link A: *Strategic Plan for Language Access in the California Courts*, www.courts.ca.gov/documents/CLASP_report_060514.pdf

Rule 2.896 of the California Rules of Court would be adopted, effective January 1, 2022, to read:

Rule 2.896. Waiver of Interpreter Services

(a) Procedures for waiver

A limited English proficient (LEP) court user who has been appointed a court-funded interpreter in a civil proceeding may waive the services of the court-funded interpreter subject to the approval of the court, following the procedures in this rule.

(b) Waiver of court-funded interpreter services and request to appoint privately funded interpreter

(1) An LEP court user who intends to waive the services of an appointed court-funded interpreter and request that the court appoint a privately funded interpreter must:

(A) State on the record that the LEP court user waives the services of the appointed court-funded interpreter and request that the court appoint a privately funded interpreter in accordance with California Rules of Court, rule 2.893; and

(B) If represented, state on the record that the LEP court user has consulted with counsel before waiving the court-funded interpreter services.

(2) If an LEP court user makes a request under (b)(1), the court must communicate the following to the LEP court user on the record, using the appointed court-funded interpreter to interpret in the language spoken by the LEP court user:

(A) That the LEP court user will be financially responsible for the services of a privately funded interpreter;

(B) That a court-funded interpreter is available for the language to be interpreted; and

(C) That the LEP court user may retract the waiver at any time during the proceedings.

(3) The court may approve the request only if it makes the following findings on the record:

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(A) The interpreter that the LEP court user is seeking to have appointed is a California court certified, registered or provisionally qualified interpreter, in accordance with rule 2.893;

(B) The court provided the verbal advisements in (2) on the record with the services of the appointed court-funded interpreter; and

(C) The LEP court user's waiver of a court-funded interpreter is knowing, voluntary, and intelligent.

(c) Waiver of all interpreter services

(1) An LEP court user who has been appointed a court-funded interpreter and intends to waive all interpreter services must:

(A) State on the record that the LEP court user is sufficiently proficient in English to participate in the process without an interpreter and waives all interpreter services; and

(B) If represented, state on the record that the LEP court user has consulted with counsel before waiving the interpreter services.

(2) If an LEP court user makes a request under (c)(1), the court must communicate the following to the LEP court user on the record, using the appointed court-funded interpreter to interpret in the language spoken by the LEP court user:

(A) The importance of understanding and meaningfully participating in all aspects of the proceeding;

(B) That a court-funded interpreter is available for the language to be interpreted; and

(C) That the LEP court user may retract the waiver at any time during the proceedings.

(3) The court may approve the waiver only if it makes the following findings on the record:

(A) The court provided the verbal advisements in (2) on the record with the services of the appointed court-funded interpreter; and

(B) The LEP court user's waiver of a court-funded interpreter is knowing, voluntary, and intelligent.

(d) Provisions applicable to all waivers

Once a waiver has been approved by the court:

(1) In the interest of justice, the court may set aside the approval of the waiver at any time and appoint a court-funded interpreter for the remainder of the proceedings; and

(2) The LEP court user may retract the waiver at any time during the proceedings and request the services of a court-funded interpreter.

Advisory Committee Comment

The intent of this rule is to ensure that the requests for approval of waivers are managed by the court in a way that protects both the interests of limited English proficient parties and the integrity of the judicial process.

Item number: 11

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee action requested [Choose from drop down menu below]**:**
Circulate for comment (January 1 cycle)

Rules Committee Meeting Date: April 14, 2021

Title of proposal: Criminal Procedure: Immigration Consequences Advisements on Plea Forms

Proposed rules, forms, or standards *(include amend/revise/adopt/approve):*
Revise forms CR-101, CR-102

Committee or other entity submitting the proposal:
Criminal Law Advisory Committee

Staff contact (name, phone and e-mail): Eve Hershcopf, 415-865-7961
Eve.Hershcopf@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by Rules Committee date: November 2, 2020
Project description from annual agenda: Revise Plea Form, With Explanations and Waiver of Rights—Felony (form CR-101), regarding immigration advisement

The committee will consider amending the felony plea form's immigration advisement in light of People v. Ruiz (2020) 49 Cal.App.5th 1061.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)
The Criminal Law Advisory Committee proposes revisions to Plea Form, With Explanations and Waiver of Rights—Felony (form CR-101) and Domestic Violence Plea Form With Waiver of Rights (Misdemeanor) (form CR-102) to conform to case law that has clarified the requirements for court and counsel immigration consequences advisements.

JUDICIAL COUNCIL OF CALIFORNIA

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

INVITATION TO COMMENT

SPR21-06

Title	**Action Requested**
Criminal Procedure: Immigration Consequences Advisement on Plea Forms	Review and submit comments by May 27, 2021
Proposed Rules, Forms, Standards, or Statutes	**Proposed Effective Date**
Revise forms CR-101 and CR-102	January 1, 2022
Proposed by	**Contact**
Criminal Law Advisory Committee Hon. Brian M. Hoffstadt, Chair	Eve Hershcopf, 415-865-7961 Eve.Hershcopf@jud.ca.gov

Executive Summary and Origin

The Criminal Law Advisory Committee proposes revisions to *Plea Form, With Explanations and Waiver of Rights—Felony* (form CR-101) and *Domestic Violence Plea Form With Waiver of Rights (Misdemeanor)* (form CR-102) to conform to case law that has clarified the requirements for court and counsel immigration consequences advisements.

Background

The Judicial Council approved for optional use *Plea Form, With Explanations and Waiver of Rights—Felony* (form CR-101), and *Domestic Violence Plea Form With Waiver of Rights (Misdemeanor)* (form CR-102), to promote increased uniformity in plea waiver forms used throughout the state. Form CR-101, approved effective January 1, 2007, was substantially revised in 2012 in response to criminal justice realignment legislation and was most recently revised effective January 1, 2021. Form CR-102, approved effective July 1, 2011, was last revised effective January 1, 2020. The forms are designed to include all necessary waivers, a notice of the direct consequences of a plea, and common advisements, including advisements regarding the immigration consequences of a plea.

Penal Code section 1016.5 (see Link A) requires the court, prior to acceptance of a plea of guilty or nolo contendere to any offense punishable as a crime under state law except infractions, to administer an advisement regarding immigration consequences to the defendant. Both forms CR-101 and CR-102 were revised, effective January 1, 2020, to conform to the statutory language by requiring the defendant to confirm their understanding that if they are not a citizen of the United States, the plea of guilty or no contest *may* result in deportation or other

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee.
It is circulated for comment purposes only.

immigration consequences. The forms had previously included the word "will" rather than "may." Although the section 1016.5 statement is included in forms CR-101 and CR-102, the statute requires the court to administer the advisement on the record.

In 2019, the Legislature amended Penal Code section 1473.7[1] (see Link B) to make it easier to retroactively challenge convictions based on the ground that the defendant was not properly advised of the immigration consequences. Under the 2019 amendment, the trial court may set aside a conviction based on counsel's immigration advisement errors without a "finding of ineffective assistance of counsel."

In *People v. Ruiz* (2020) 49 Cal.App.5th 1061, the Court of Appeal, Second Appellate District, held that the defendant was entitled to challenge her conviction under Penal Code section 1473.7 on the basis that she had not received adequate advisement about the immigration consequences of her plea, and that she did not have to meet the ineffective assistance of counsel standard that was applicable earlier. The court noted that the section 1016.5 advisement alone was not an adequate advisement given the nature of Ruiz's controlled substance offense.

The *Ruiz* decision is consistent with other recent decisions addressing the differing duties of the court and of counsel in advising defendants regarding immigration consequences. In *People v. Camacho* (2019) 32 Cal.App.5th 998, the Second Appellate District reversed the denial of a section 1473.7 motion and granted relief based on the failure of defense counsel to advise about mandatory deportation, notwithstanding the court's advisement that the plea "will result" in deportation. In *In re Hernandez* (2019) 33 Cal.App.5th 530, 545, the Fourth Appellate District held that "the 'generic advisement' required of the court under Penal Code section 1016.5, subdivision (a) … 'is not designed, nor does it operate, as a substitute for such advice' of defense

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[1] Penal Code section 1473.7(a)(1) authorizes the filing of a motion to vacate a conviction or sentence for the following reason:

> The conviction or sentence is legally invalid due to prejudicial error damaging the moving party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or nolo contendere. A finding of legal invalidity may, but need not, include a finding of ineffective assistance of counsel.

counsel regarding the applicable immigration consequences in a given case" (quoting *People v. Patterson* (2017) 2 Cal.5th 885, 898).[2]

Based on these decisions, the committee is recommending revisions to the attorney advisement and the Attorney's Statement in forms CR-101 and CR-102 to state that defendant was advised by counsel of immigration consequences that apply to the defendant, if any, and whether they are mandatory.

The Proposal

The committee proposes the following revisions to form CR-101:

- Revise item 6a(5), the attorney advisement, to read:

  Before entering this plea, I have had a full opportunity to discuss the following with my attorney: The consequences of this plea, including the immigration consequences~~; and~~ that apply to me, if any, and whether any of the immigration consequences are mandatory.

- Revise the Attorney's Statement to read:

  I am the attorney of record for the defendant. I have reviewed this form with my client. I have explained each of the items in the form, including the defendant's constitutional and statutory rights, to the defendant and have answered all of his or her questions with regard to those rights, the other items in this form, and the plea agreement. I have also discussed the facts of the case with the defendant and

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[2] The California Supreme Court explained in *Patterson* (2 Cal.5th at pp. 896–897):

> [R]eceipt of the section 1016.5 advisement does not bar a criminal defendant from challenging his conviction on the ground that his counsel was ineffective in failing to adequately advise him about the immigration consequences of entering a guilty plea. [Citation.] We explained that, under section 1016.5, "defendants who wish to plead guilty are entitled to receive from the court some advice regarding immigration consequences—a general warning of three immigration consequences that 'may' occur. [Citation.] In evaluating the court's advice, '[t]he defendant can be expected to rely on counsel's independent evaluation of the charges, applicable law, and evidence, and of the risks and probable outcome of trial.' " [Citation.] One of the purposes of the section 1016.5 advisement is to enable the defendant to seek advice from counsel about the actual risk of adverse immigration consequences. [Citation.]

In a footnote (*id.* at p. 897, fn. 4.) the Court noted:

> This intent recently has been reinforced by the 2015 enactment of Penal Code section 1016.3, which requires that defense counsel "provide accurate and affirmative advice about the immigration consequences of a proposed disposition … ."

The Court continued at page 898:

> As we explained in *Giron*, to hold that ignorance of specific immigration consequences may constitute good cause to withdraw a plea is not to hold that the trial court is under a duty to provide such case-specific immigration advice. [Citation.] … [¶] … The generic advisement under section 1016.5 is not designed, nor does it operate, as a substitute for such advice [from counsel].

have explained the nature and elements of each charge; any possible defenses to the charges; the effect of any prior convictions, enhancements, and special allegations; and the consequences of the plea, including the immigration consequences that apply to the defendant, if any, and whether any of those immigration consequences are mandatory.

The committee proposes the following revisions to form CR-102:

- Revise item 8a, "Discussion with my attorney," to read:

  Before entering this plea, I have had a full opportunity to discuss with my attorney the facts of the case, the elements of the charged offenses and prior convictions (if any), any defenses that I may have, my constitutional and statutory rights and waiver of those rights, the consequences of this plea, including the immigration consequences that apply to me, if any, and whether any of the immigration consequences are mandatory, and anything else I think is important to my case.

- Revise the Attorney's Statement to read:

  I am the attorney of record for the defendant. I have reviewed this form with my client. I have explained each of the items in the form, including the defendant's constitutional and statutory rights, to the defendant and have answered all of his or her questions with regard to those rights, the other items in this form, and the plea agreement. I have also discussed the facts of the case with the defendant and have explained the nature and elements of each charge, any possible defenses to the charges, the effect of any prior convictions and probation violations, and the consequences of the plea, including the immigration consequences that apply to the defendant, if any, and whether any of those immigration consequences are mandatory.

The committee recommends two other minor revisions: (1) on form CR-101, adding "Pen. Code, §" to the heading of item 2c; (2) on form CR-102, revising the wording of subdivision (a) of the Court's Findings and Order to be consistent with the same finding (item 1) on form CR-101.

Alternatives Considered

Given the recent revision of the forms, the committee discussed postponing further revisions, but decided to move forward in order to conform the forms to the case law to delineate more clearly the varying responsibilities of the court and defense counsel with respect to advisement of the defendant on immigration consequences. The committee also considered an alternative approach to including the advisement:

- Revise the immigration consequences advisement (item 3i on form CR-101) to include check boxes and read:

  I understand that if I am not a citizen of the United States, my plea of guilty or no contest ☐ *may* or ☐ *will*, as explained by my attorney, result in my deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

- Revise the attorney advisement (item 6a(5) on form CR-101) to read:

  Before entering this plea, I have had a full opportunity to discuss the following with my attorney: The consequences of this plea, including ~~the~~ whether any immigration consequences are mandatory;

The committee declined to select this option, based on the following:

- Using "will" in the advisement is inconsistent with the statutory language in Penal Code section 1016.5(a), which requires the court to administer a specific advisement on the record to the defendant that states that the offense for which the defendant has been charged *may* have immigration consequences.

- Including language in form CR-101 that confirms that the plea *will* result in immigration consequences may inadvertently reveal information about the defendant's immigration status in a public court document—a potentially harmful unintended consequence. The harm could be avoided by using alternative language in the attorney advisement.

Fiscal and Operational Impacts

As both forms CR-101 and CR-102 are optional forms, expected costs are limited to training, possible case management system updates, and the production of new forms. No other implementation requirements or operational impacts are expected.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- 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?
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Forms CR-101 and CR-102, at pages 7–16
2. Link A: Penal Code section 1016.5, *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1016.5&lawCode=PEN*
3. Link B: Penal Code section 1473.7, *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1473.7.&lawCode=PEN*

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	*FOR COURT USE ONLY*
PEOPLE OF THE STATE OF CALIFORNIA v. Defendant:	
PLEA FORM, WITH EXPLANATIONS AND WAIVER OF RIGHTS—FELONY	CASE NUMBER:

INSTRUCTIONS: (1) Fill out this form only if you want to plead guilty or no contest.

(2) Read this form carefully. For each item, if you understand and agree with what you read, put your initials in the box to the right of the item. For any item that does not apply to you or that you do not understand, leave the box blank.

(3) On page 6, sign and date the form under "DEFENDANT'S STATEMENT."

(4) Keep in mind that the court cannot give legal advice. If you have any questions about anything in this form, ask your attorney.

INITIALS

1. **CHARGES AND MAXIMUM TERM.** I want to plead guilty or no contest ("nolo contendere") to the charges and allegations listed below. I understand that the minimum and maximum penalties for the charges to which I am pleading guilty or no contest are listed below. ☐

COUNT	CHARGES (SECTION & DESCRIPTION)	YEARS / MONTHS		PRIOR CONVICTIONS, ENHANCEMENTS, & SPECIAL ALLEGATIONS (SECTION & DESCRIPTION)	YEARS / MONTHS		TOTAL MAXIMUM TIME
		MINIMUM	MAXIMUM		MINIMUM	MAXIMUM	
						AGGREGATE MAXIMUM TIME OF IMPRISONMENT	

2. **PLEA AGREEMENT.** I understand that I must tell the court on this form about any promises anyone has made to me about the sentence I will receive or the sentence recommendations that will be made to the court. My attorney, the court, or the prosecutor has explained to me that if I plead guilty or no contest to the charges and admit the allegations listed above, the court will sentence me as follows:

INITIALS

a. Check one: ☐ **State Prison** (or the Division of Juvenile Justice) ☐ **County Jail** for ☐

(1) ☐ years and months or

(2) ☐ Not less than ☐ years and ☐ months and/or not more than ☐ years and ☐ months.

(3) ☐ Other *(specify):*

b. **Probation** for years under conditions to be set by the court, including: ☐

☐ days in the **county jail** or

☐ up to days in the **county jail.**

I understand that a violation of any of the conditions of probation, including failure to complete a drug education or treatment program, if ordered by the court, may cause the court to send me to **county jail or state prison** for up to the **"Aggregate Maximum Time of Imprisonment"** specified in item 1, which may include a period of mandatory supervision under Penal Code section 1170(h)(5)(B) if the court sends me to county jail.

Form Approved for Optional Use
Judicial Council of California
CR-101 [Rev. January 1, 2022]

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:

INITIALS

2. c. **Split Sentence (Pen. Code, § 1170(h)(5)(B)):** years and days in the county jail and years and days on mandatory supervision under conditions set by the court. I understand that if I violate any of the terms or conditions of mandatory supervision, I may be remanded into custody for the entire unserved portion of the sentence.

d. **Open Plea**

1. ☐ I understand the maximum and minimum sentences for the charges and allegations stated on page 1. No one has made any other promises to me about what sentence the court may order.
2. ☐ I understand that I am not eligible for probation.
3. ☐ I understand that I will not be granted probation unless the court finds at the time of sentencing that this is an unusual case where the interests of justice would be best served by granting probation.

e. **Restitution, Statutory Fees, and Assessments**

I understand that the court will order me to pay the following amounts (if an amount is not yet known, "TBD" for "to be determined" is entered next to the $); I must prepare financial disclosure statements to assist the court in determining my ability to pay; and refusal or failure to prepare the required financial disclosure statements may be used against me at sentencing:

1. ☐ $ **to the Victim Restitution Fund**
2. ☐ $ **restitution to actual victims**
3. ☐ $ **restitution to the State of California, Victims of Crime Fund**
4. ☐ $ **court operations assessment**
5. ☐ $ **court facilities assessment**
6. ☐ $ **base fine plus any applicable penalties, assessments, and surcharges**
7. ☐ $ **other** *(specify):*
8. ☐ $ **other** *(specify):*
9. ☐ An (additional) amount to be determined by the court at sentencing or such other hearing as the court may set.

f. **Fines for Revocation of Parole, Postrelease Community Supervision, Mandatory Supervision, or Probation**

I understand that if I am sentenced to **state prison**, the court **will** impose a parole revocation fine or a postrelease community supervision revocation fine, which will be collected only if my parole or postrelease community supervision is later revoked. I also understand that if I am granted probation or mandatory supervision, the court **will** impose a probation revocation fine or mandatory supervision revocation fine, which will be collected only if my probation or mandatory supervision is later revoked.

g. **Dismissal of Other Counts**

I understand that as part of the plea agreement bargain, the following counts will be dismissed after sentencing:

I understand and agree that the sentencing judge may consider facts underlying dismissed counts to determine restitution and to sentence me on the counts to which I am entering a plea.

h. **Other Terms *(specify):***

3. **CONSEQUENCES OF MY PLEA**

INITIALS

a. **No Contest ("Nolo Contendere") Plea**

I understand that a no contest plea is the same as pleading guilty and that if I plead no contest, I will be convicted and my no contest plea could be used against me in a civil case.

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:

INITIALS

b. **Parole and Postrelease Community Supervision**
I understand that if I am sentenced to **state prison**
(1) I will be placed on parole or postrelease community supervision for up to years after my release.
(2) If I abscond or the court tolls my supervision, the total time of parole or postrelease community supervision can be extended.
(3) If I violate any of the terms or conditions of my parole, I can be sentenced to county jail for up to 180 days for each violation, or returned to state prison for up to one year, up to a maximum of years. If I violate any of the terms or conditions of postrelease community supervision, I can be sentenced to county jail for up to 180 days for each violation, for up to a maximum of 3 years.

c. **Effect of Conviction on Other Cases**
I understand that a conviction in this case may constitute a violation of any other current grant of parole, mandatory supervision, postrelease community supervision, or probation in any other case and that I may receive additional punishment as a result of that violation.

d. **Registration**
I understand that I will be required to register with the local police agency or sheriff's department in the city or county in which I reside as

(1) ☐ an arson offender
(2) ☐ a gang member
(3) ☐ a sex offender **(this registration is a lifelong requirement)**
(4) ☐ other *(specify):*

and that if I fail to register or to keep my registration current for any reason, new felony criminal charges may be filed against me.

e. **Prints and DNA Samples**
I understand that I must provide biological samples and prints for identification purposes—including buccal (mouth) swab samples, right thumb prints, palm prints of each hand, and blood specimens or other biological samples required by law—and that failure to do so constitutes a new criminal offense.

f. **Serious or Violent Felony**
(1) ☐ I understand that by pleading guilty or no contest to a serious or violent felony ("strike"), the penalty for any future felony conviction will be increased as a result of my conviction in this case, depending on the number of strikes I have, up to a mandatory prison sentence of double the term otherwise provided or a term of at least 25 years to life.
(2) ☐ I understand that if I am convicted of a violent felony, jail or prison conduct/work-time credit I may accrue will not exceed 15%.
(3) ☐ I understand that if I am admitting a prior strike conviction, prison work-time credit that I may accrue will not exceed 20% of the total term of imprisonment.
(4) ☐ I understand that if I am convicted of murder or a third felony conviction of certain offenses, I am ineligible to receive work-time credits. Count is such an offense.

g. **Prior Prison Term for Sexually Violent Offense**
I understand that if I am sentenced to serve a state prison term for this sexually violent offense, as defined in Welfare and Institutions Code section 6600(b), the penalty for any future felony conviction may be increased as a result of my incarceration in this case.

h. **Driver's License and Vehicle Forfeiture**
I understand that my privilege to drive a motor vehicle may be revoked or suspended by the court or the California Department of Motor Vehicles, and my vehicle may be ordered forfeited if it was involved in the offense.

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:

INITIALS

3. i. **Immigration Consequences**
I understand that if I am not a citizen of the United States, my plea of guilty or no contest may result in my deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

j. **Firearms**
I understand that federal and state laws prohibit a convicted felon from possessing firearms or ammunition for life.

k. **Other Consequences** *(specify):*

4. **RIGHT TO AN ATTORNEY**
I understand that I have the right to an attorney of my choice to represent me throughout the proceedings. If I cannot afford to hire an attorney, the court will appoint one to represent me.

I hereby give up my right to be represented by an attorney.

5. **OTHER CONSTITUTIONAL RIGHTS**
I understand that I am entitled to each of the following rights as to the charges listed in item 1 (on page 1):

a. **Right to a Jury Trial**
I understand that I have a right to a speedy and public jury trial. At the trial, I would be presumed to be innocent, and I could not be convicted unless, after hearing all of the evidence, 12 impartial jurors chosen from the community were unanimously convinced beyond a reasonable doubt that I am guilty. I have a right, through my counsel, to participate in jury selection.

b. **Right to a Court Trial**
I understand that, as an alternative to a jury trial, if the prosecutor agrees, I may give up a jury trial and have a court trial in which the judge alone, without a jury, hears the evidence. I still could not be convicted unless, after hearing all of the evidence, the judge was convinced beyond a reasonable doubt that I am guilty.

c. **Right to Confront and Cross-Examine Witnesses**
I understand that I have the right to confront and cross-examine all witnesses testifying against me. This means that the prosecution must produce the witnesses in court, they must testify under oath in my presence, and my attorney may question them.

d. **Right to Remain Silent and Not to Incriminate Myself**
I understand that I have the right to remain silent, and my silence cannot be considered as evidence against me. I understand that I also have the right not to incriminate myself, and I cannot be forced to testify.

e. **Right to Produce Evidence and to Present a Defense**
I understand that I have a right to present evidence and to have the court issue subpoenas to bring to court all witnesses and evidence favorable to me, at no cost to me. I also have the right to testify on my own behalf.

6. **BEFORE THE PLEA**

a. **Discussion With My Attorney**

Before entering this plea, I have had a full opportunity to discuss the following with my attorney:

(1) The facts of my case;
(2) The elements of the charged offenses, prior convictions, enhancements, and special allegations;
(3) Any defenses that I may have;
(4) My constitutional and statutory rights and waiver of those rights;
(5) The consequences of this plea, including the immigration consequences that apply to me, if any, and whether any of the immigration consequences are mandatory; and
(6) Anything else I think is important to my case.

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:

INITIALS

6. b. **Questions**
I have no further questions of the court or of my attorney with regard to my plea and admissions in this case, any of the rights, or anything else on this form.

c. **Stipulation to Commissioner**
I understand that I have the right to have a judge take my plea and sentence me. I give up this right and agree to have a commmissioner, sitting as a temporary judge, take my plea and sentence me.

d. **Medications or Controlled Substances**
I am not taking any medication that affects my ability to understand this form and the consequences of my plea, have not recently consumed any alcohol or drugs, and am not suffering from any medical condition, except for the following:

e. **Court Approval of Plea Agreement**
I understand that the plea agreement in item 2 (on pages 1 and 2) is based on the facts before the court. I understand that if the court approves this plea agreement the approval of the court is not binding, and that the court may withdraw its approval of the plea agreement upon further consideration of the matter. I understand that if the court withdraws its approval of this plea agreement I will be allowed to withdraw my plea. (Pen. Code, § 1192.5.)

7. **STATUTORY RIGHT TO A PRELIMINARY HEARING**
I understand that before I have a trial, the law gives me the right to a speedy preliminary hearing at which the prosecution would produce evidence and the court must find reasonable cause to believe I committed the crimes with which I have been charged. I understand that I have all of the above constitutional rights at the preliminary hearing, except for the right to a jury trial.

I give up my right to a preliminary hearing and the constitutional rights listed in item 5 (on page 4).

8. **WAIVER OF CONSTITUTIONAL RIGHTS**
I give up, for each of the charges and allegations listed in item 1 (on page 1), my right to a jury trial, my right to a court trial, my right to confront and cross-examine witnesses, my right to remain silent and not to incriminate myself, and my right to produce evidence and to present a defense, including my right to testify on my own behalf. I understand that I am, in fact, incriminating myself with my plea.

9. **THE PLEA**
I freely and voluntarily plead ☐ GUILTY ☐ NO CONTEST to the charges listed in item 1 (on page 1) and admit the allegations listed in item 1 (on page 1), understanding that this plea and admission will lead to the penalties listed in item 2 (on pages 1 and 2).

a. I offer my plea of guilty or no contest freely and voluntarily and with full understanding of everything in this form. No one has made any threats; used any force against me, my family, or my loved ones; or made any promises to me, except as listed in this form, in order to convince me to plead guilty or no contest.

b. **I understand that the court is required to find a factual basis for my plea to make sure that I am entering a plea to the proper offenses under the facts of the case.**

I offer to the court the following as the basis for my plea of guilty or no contest and any admissions:

(1) **I understand that the court may consider the following as proof of the factual basis for my plea:**

(a) ☐ Preliminary hearing transcript
(b) ☐ Police report
(c) ☐ Probation report
(d) ☐ Welfare investigator's declaration
(e) ☐ Court documents regarding any alleged prior offenses
(f) ☐ Other *(specify):*
(g) ☐ (Specify facts):

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:

INITIALS

9. b. (2) **I am pleading guilty or no contest to take advantage of a plea agreement (my attorney will stipulate to a factual basis for the plea).** (*People v. West* (1970) 3 Cal.3d 595.) ☐

10. **AFTER THE PLEA**

a. **Surrender**
I understand that the court is allowing me to surrender at a later date to begin serving time in custody. ☐

I agree that if I fail to appear on the date set for surrender or sentencing without a legal excuse, my plea will become an "open plea" to the court, I will not be allowed to withdraw my plea, and I may be sentenced up to the maximum allowed by law. ☐

b. **Sentencing Court**
I understand that I have the right to be sentenced by the same judge or commissioner who takes my plea. I give up that right and agree that any judge or commissioner may sentence me. ☐

c. **Sentencing Date**
I understand that I have the right to be sentenced within 20 court days. I give up that right and agree to be sentenced at a later date. ☐

11. **MANDATORY WARNING** ☐
I understand that if I am charged with violating Vehicle Code section 23103, as specified in Vehicle Code section 23103.5, or Vehicle Code sections 23152 or 23153, the following warning applies:

You are hereby advised that being under the influence of alcohol or drugs, or both, impairs your ability to safely operate a motor vehicle. Therefore, it is extremely dangerous to human life to drive while under the influence of alcohol or drugs, or both. If you continue to drive while under the influence of alcohol or drugs, or both, and as a result of that driving someone is killed, you can be charged with murder.

DEFENDANT'S STATEMENT

I have read or have had read to me this form and have initialed each of the items that applies to my case. If I have an attorney, I have discussed each item with my attorney. By putting my initials next to the items in this form, I am indicating that I understand and agree with what is stated in each item that I have initialed. The nature of the charges, possible defenses, and effects of any prior convictions, enhancements, and special allegations have been explained to me. I understand each of the rights outlined above, and I give up each of them to enter my plea.

(SIGNATURE OF DEFENDANT)

DATE

ATTORNEY'S STATEMENT

I am the attorney of record for the defendant. I have reviewed this form with my client. I have explained each of the items in the form, including the defendant's constitutional and statutory rights, to the defendant and have answered all of his or her questions with regard to those rights, the other items in this form, and the plea agreement. I have also discussed the facts of the case with the defendant and have explained the nature and elements of each charge; any possible defenses to the charges; the effect of any prior convictions, enhancements, and special allegations; and the consequences of the plea, including the immigration consequences that apply to the defendant, if any, and whether any of those immigration consequences are mandatory.

I concur in the plea and admissions and join in the waiver of the defendant's constitutional and statutory rights, and I hereby stipulate that there is a factual basis for the plea and refer the court to the ☐ police report ☐ preliminary hearing transcript ☐ probation report ☐ other *(specify):* (*People v. West* (1970) 3 Cal.3d 595.)

(ATTORNEY'S SIGNATURE)

DATE

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:

INTERPRETER'S STATEMENT

I, having been duly sworn or having a written oath on file, certify that I truly translated this form to the defendant in the language noted below.

Language: ☐ Spanish ☐ Other *(specify):*

(INTERPRETER'S SIGNATURE)

DATE

(TYPE OR PRINT INTERPRETER'S NAME)

(CERTIFICATION NUMBER)

DISTRICT ATTORNEY'S STATEMENT

I have read this form and understand the terms of the plea agreement.

I ☐ agree ☐ do not agree with the terms of the plea agreement and the indicated sentence.

(ATTORNEY'S SIGNATURE)

DATE

COURT'S FINDINGS AND ORDER

The court, having reviewed this form (and any addenda), and having orally examined the defendant, finds as follows:

1. The initialed items in this form have been read by or read to the defendant, and the defendant understands each of them.
2. The defendant understands the nature of the crimes and allegations listed in item 1 (on page 1) and the consequences of the plea and any admissions.
3. The defendant expressly, knowingly, understandingly, and intelligently waives the constitutional and statutory rights associated with this plea.
4. The defendant's plea, admissions, and waiver of rights are made freely and voluntarily.
5. A factual basis exists for the plea and admissions, or the defendant is pleading pursuant to a plea bargain under *People v. West.*

The court accepts the defendant's plea, admissions, and waiver of rights, and the defendant is hereby convicted based thereon.

It is ordered that this document be filed with the court's records of this case and that the defendant's plea, admissions, and waiver of rights be accepted and entered in the minutes of this court.

(SIGNATURE OF JUDICIAL OFFICER)

DATE

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	FOR COURT USE ONLY
PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	
DOMESTIC VIOLENCE PLEA FORM WITH WAIVER OF RIGHTS (MISDEMEANOR)	CASE NUMBER:

Instructions:

- *Fill out this form only if you want to plead guilty or no contest.*
- *Read this form carefully. For each item, if you understand and agree with what you read, put your initials in the box to the right of the item. For any item that does not apply to you or that you do not understand, leave the box blank.*
- *Sign and date the form under "DEFENDANT'S STATEMENT" on page 3.*
- *Keep in mind that the court cannot give legal advice. If you have an attorney and have questions about anything in this form, ask your attorney.*

INITIALS

1. **Charges and Maximum Penalties.** I want to plead guilty or no contest to the charges listed below. I understand that the maximum penalties for the charges to which I am pleading guilty or no contest are listed below. ☐

COUNT	CHARGES (SECTION & DESCRIPTION)		MAXIMUM PENALTY (FINE & JAIL)	

2. **Prior Convictions.** I understand that I am also charged with a prior conviction in case number(s): ☐

3. **Probation Violations.** I understand that I am also charged with a violation of probation in case number(s): ☐

4. **Right to an Attorney** *(Leave this box blank if you have an attorney).* I understand that I have the right to an attorney of my choice to represent me throughout the proceedings. If I cannot afford to hire an attorney, the court will appoint one to represent me. **I hereby give up my right to be represented by an attorney.** ☐

5. **Other Constitutional Rights.** I understand that I am entitled to each of the following rights concerning the charges and prior convictions (if any) listed in items 1 and 2 (above):

   a. **Right to a jury trial.** I understand that I have a right to a speedy and public jury trial. At the trial, I would be presumed to be innocent and I could not be convicted unless, after hearing all of the evidence, 12 impartial jurors chosen from the community were convinced beyond a reasonable doubt that I am guilty. ☐

   b. **Right to confront and cross-examine witnesses.** I understand that I have the right to confront and cross-examine all witnesses testifying against me. This means that the prosecution must produce the witnesses in court to testify under oath in my presence and I or my attorney may question them. ☐

   c. **Right to remain silent and not incriminate myself.** I understand that I have the right to remain silent and my silence cannot be considered as evidence against me. I understand that I also have the right not to incriminate myself and I cannot be forced to testify. ☐

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:

INITIALS

6. **Rights for Probation Violations** *(Leave this box blank if you are not charged with a probation violation).* I understand that I have all the constitutional rights listed above for all probation violations charged against me, except that I do not have a right to a jury trial, only a court hearing before a judge.
7. **Consequences of My Plea**
   a. **No contest plea.** I understand that a no contest plea has the same effect as a guilty plea except that it cannot be used against me in a civil case that derives from an act on which this prosecution is based unless the offense is punishable as a felony.
   b. **Effect of conviction on other cases.** I understand that a conviction in this case may be used to increase my punishment for future domestic violence convictions and may constitute a violation of any other current grant of parole or probation, which may result in additional punishment.
   c. **Mandatory minimum conditions of probation.** I understand that if I am granted probation, the terms and conditions will include *at least* all of the following (see Pen. Code, § 1203.097):
      (1) A minimum of either 36 months (3 years) or 48 months (4 years) of probation;
      (2) A criminal court protective order that may include residence exclusion or stay-away conditions;
      (3) Booking within one week of sentencing if I have not already been booked;
      (4) Several statutory fines, fees, and assessments, including a domestic violence fee, restitution fine, probation revocation fine (stayed), criminal conviction assessment, and court security fee;
      (5) Successful completion of an appropriate batterer's treatment program lasting at least 52 weeks;
      (6) Community service;
      (7) Restitution to the victim (if applicable);
      (8) An order to not own, possess, purchase, or receive any firearms;
      (9) An order to relinquish any firearms in my possession or control; and
      (10) Other:
   d. **Effect of future probation violation.** I understand that if I violate any of the terms or conditions of probation, I may be returned to court and sentenced up to the maximum punishment on each charge as indicated in item 1.
   e. **Immigration consequences.** I understand that if I am not a citizen of the United States, my plea of guilty or no contest may result in my deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.
   f. **Firearm prohibition.** I understand that a conviction in this case may prohibit me from owning, using, or possessing firearms and ammunition within 10 years under Penal Code sections 29805 and 30305.
   g. **Child custody consequences.** I understand that a conviction in this case may result in a rebuttable presumption that an award of sole or joint physical or legal custody of a child is detrimental to the best interest of the child under Family Code section 3044.
   h. **Other consequences** *(specify):*
8. **Before the Plea**
   a. **Discussion with my attorney** *(Leave this box blank if you are not represented by an attorney).* Before entering this plea, I have had a full opportunity to discuss with my attorney the facts of the case, the elements of the charged offenses and prior convictions (if any), any defenses that I may have, my constitutional and statutory rights and waiver of those rights, the consequences of this plea, including the immigration consequences that apply, if any, and whether any of the immigration consequences are mandatory, and anything else I think is important to my case.
   b. **Questions.** I have no further questions for the court or for my attorney with regard to my plea and admissions in this case or any of my rights or anything else on this form.
9. **Waiver of Constitutional Rights.** For each of the charges, prior convictions (if any), and probation violations (if any) listed in items 1, 2, and 3, I give up my right to a jury trial, my right to a court hearing, my right to confront and cross-examine witnesses, and my right to remain silent and not to incriminate myself. I understand that I am, in fact, incriminating myself with my plea.
10. **The Plea** *(check one).* I freely and voluntarily plead ☐ GUILTY ☐ NO CONTEST to the charges listed in item 1. I offer my plea with full understanding of everything in this form. No one has made any threats; used any force against me, my family, or loved ones; or made any promises to me, except as listed in this form, in order to convince me to plead guilty or no contest.

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:

INITIALS

11. **Prior Convictions.** I freely and voluntarily admit the prior convictions (if any) listed in item 2, and I understand that this admission may increase the penalties that are imposed on me.
12. **Probation Violations.** I freely and voluntarily admit the probation violations (if any) listed in item 3.
13. **Sentencing.** I understand that I have a right to delay my sentencing at least 6 hours and as long as 5 days after my plea. I give up this right and agree to be sentenced at this time.
14. **Relief from Conviction**
You are hereby advised that in the future you may be eligible for relief from the conviction that results from this plea. The Department of Justice is required to grant automatic relief under certain circumstances for convictions imposed on or after January 1, 2021. (Pen. Code, § 1203.425.) Discuss with your attorney whether the conviction that will result from this plea may be eligible for relief. You may also have a right to petition for a certificate of rehabilitation and pardon.

DEFENDANT'S STATEMENT

I have read or have had read to me this form and have initialed each of the items that applies to my case. If I have an attorney, I have discussed each item with my attorney. By putting my initials next to the items in this form, I am indicating that I understand and agree with what is stated in each item that I have initialed. The nature of the charges, possible defenses, and the effects of any prior convictions and probation violations have been explained to me. I understand each of the rights outlined above and I give up each of them to enter my plea.

(DEDENDANT'S SIGNATURE) DATE

ATTORNEY'S STATEMENT

I am the attorney of record for the defendant. I have reviewed this form with my client. I have explained each of the items in the form, including the defendant's constitutional and statutory rights, to the defendant and have answered all of his or her questions with regard to those rights, the other items in this form, and the plea agreement. I have also discussed the facts of the case with the defendant and have explained the nature and elements of each charge, any possible defenses to the charges, the effect of any prior convictions and probation violations, and the consequences of the plea, including the immigration consequences that apply to the defendant, if any, and whether any of those immigration consequences are mandatory.

(ATTORNEY'S SIGNATURE) DATE

INTERPRETER'S STATEMENT

I, having been duly sworn or having a written oath on file, certify that I truly translated this form to the defendant in the language noted below.

Language: ☐ Spanish ☐ Other *(specify):*

(INTERPRETER'S SIGNATURE) DATE

(TYPE OR PRINT INTERPRETER'S NAME) (CERTIFICATION NUMBER)

COURT'S FINDINGS AND ORDER

The court, having reviewed this form and having orally examined the defendant, finds that (a) the initialed items in this form have been read by or read to the defendant, and the defendant understands each of them; (b) the defendant understands the nature of the crimes and allegations listed in items 1, 2, and 3 and the consequences of the plea and any admissions; (c) the defendant expressly, knowingly, understandingly, and intelligently waives his or her constitutional and statutory rights; and (d) the defendant's plea, admissions, and waiver of rights are made freely and voluntarily.

The court accepts the defendant's plea, admissions, and waiver of rights, and the defendant is hereby convicted based thereon.

It is ordered that this document be filed with the court's records of this case and that the defendant's plea, admissions, and waiver of rights be accepted and entered in the minutes of this court.

(SIGNATURE OF JUDICIAL OFFICER) DATE

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee action requested [Choose from drop down menu below]**:**
Circulate for comment (January 1 cycle)

Rules Committee Meeting Date: April 14, 2021

Title of proposal: Criminal Forms: Incarcerated Individual Hand Crew Member Conviction Relief

Proposed rules, forms, or standards *(include amend/revise/adopt/approve):*
Adopt forms CR-430, CR-430-INFO, CR-431, CR-432

Committee or other entity submitting the proposal:
Criminal Law Advisory Committee

Staff contact (name, phone and e-mail): Eve Hershcopf, 415-865-7961
Eve.Hershcopf@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by Rules Committee date: November 2, 2020
Project description from annual agenda: Develop forms to implement AB 2147, Convictions: expungement: incarcerated individual hand crews

Develop forms to implement AB 2147, which grants criminal record relief to persons who have fought fires while incarcerated.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)
The Criminal Law Advisory Committee recommends four new optional forms to implement the provisions of Assembly Bill 2147 (Stats 2020, ch. 60), legislation that authorizes conviction relief for a petitioner who successfully participated as an incarcerated individual hand crew member in California's fire camp programs operated by a county or by the California Department of Corrections and Rehabilitation.

JUDICIAL COUNCIL OF CALIFORNIA

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

INVITATION TO COMMENT

SPR21-07

Title
Criminal Forms: Incarcerated Individual Hand Crew Conviction Relief

Proposed Rules, Forms, Standards, or Statutes
Approve forms CR-430, CR-430-INFO, CR-431, and CR-432

Proposed by
Criminal Law Advisory Committee
Hon. Brian M. Hoffstadt, Chair

Action Requested
Review and submit comments by May 27, 2021

Proposed Effective Date
January 1, 2022

Contact
Eve Hershcopf, 415-865-7961
Eve.Hershcopf@jud.ca.gov

Executive Summary and Origin

The Criminal Law Advisory Committee recommends four new optional forms to implement the provisions of Assembly Bill 2147 (Stats 2020, ch. 60), which authorizes conviction relief for a petitioner who successfully participated as an incarcerated individual hand crew member in a fire camp program operated by a county or the California Department of Corrections and Rehabilitation.

Background

Effective January 1, 2021, AB 2147 added Penal Code section 1203.4b[1], authorizing conviction relief for a petitioner who successfully participated as an incarcerated individual hand crew member in the California Conservation Camp program—a fire camp program operated by the California Department of Corrections and Rehabilitation (CDCR)—or successfully participated on a county incarcerated individual hand crew. Under section 1203.4b, a court may, in its discretion and in the interest of justice, permit a qualifying petitioner to withdraw a guilty or no contest plea, or the court may set aside a verdict of guilt and dismiss a case against the petitioner.

For the court to order the requested relief, section 1203.4b(b)(2) requires the CDCR secretary or the appropriate county authority to certify to the court that the petitioner successfully participated in the incarcerated individual conservation camp program or as a member of a county incarcerated individual hand crew, and has been released from custody. Section 1203.4b(a)(3)

[1] All subsequent references are to the Penal Code.

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee.
It is circulated for comment purposes only.

defines successful participation as meaning that the incarcerated individual adequately performed their duties without any conduct that warranted removal from the program.

Incarcerated individuals who are state prison inmates may participate in fire camps operated under CDCR's conservation camp program. Currently, CDCR has agreements with at least 10 counties (Alpine, Kings, Los Angeles, Orange, Riverside, San Diego, San Joaquin, Santa Cruz, Shasta, and Sierra) for county jail inmates to also participate in CDCR fire camps. (Los Angeles operates fire camps in conjunction with CDCR.) These county jail "boarders" are placed in CDCR custody and issued CDCR numbers for the sole purpose of participation in fire camps. Thus, the vast majority of county jail inmates who participate in a fire camp are in a CDCR-operated camp. Currently, only one county, San Bernardino, operates its own fire camp through a program of the San Bernardino County Sheriff's Department in conjunction with the San Bernardino County Fire Department.

If the court grants the requested relief, under section 1203.4b, the petitioner is released from all penalties and disabilities resulting from the offense, with specified exceptions. The relief applies to all eligible convictions for which the petitioner served a sentence at the time the petitioner successfully participated in a qualifying program. (Section 1203.4b(a)(1) specifies the offenses ineligible for relief.)

The Proposal

The committee has developed four optional forms to assist courts in implementing the provisions of Penal Code section 1203.4b, including a form to request certification by CDCR or the appropriate county agency of a petitioner's successful participation as an incarcerated individual fire camp hand crew member:

- CR-430, *Petition for Dismissal—Incarcerated Individual Hand Crew*;
- CR-430-INFO, *Information on Filing a Petition for Dismissal—Incarcerated Individual Hand Crew*;
- CR-431, *Court Cover Letter and Agency Certification—Incarcerated Individual Hand Crew*; and
- CR-432, *Order on Petition—Incarcerated Individual Hand Crew*.

These optional forms will aid self-represented litigants who may be eligible for section 1203.4b relief to petition the court. The forms will also be useful to courts by providing a standard format for litigants to file petitions for conviction relief, for the court to request certification of successful participation in fire camp, for CDCR or the appropriate county authority to respond, and for the court's order.

It appears that CDCR may have limited records on inmates who previously participated in fire camps, particularly for those who participated several years ago. Although not required by statute, it will be beneficial for petitioners to provide as much information as possible regarding their participation in fire camp to facilitate CDCR's certification process. For this reason,

proposed optional form CR-430 requests that petitioners indicate their CDCR number, name of fire camp, and approximate dates of participation, if known.

Form CR-430

The proposed optional *Petition for Dismissal—Incarcerated Individual Hand Crew* (form CR-430):

- Includes space in the header to indicate a petitioner's CDCR number, Local Identifying Number (for counties that utilize them), and date of birth, as well as the name of the fire camp and approximate dates of participation, if known. These identifiers, together with the case number, will assist court staff to connect a petitioner to the appropriate court case and facilitate the certification process by CDCR or the appropriate county authority.
- Sets forth the elements of eligibility for the requested relief, including that the petitioner:
    - was not convicted of an ineligible offense;
    - successfully participated as a hand crew member in a fire camp program (the petition specifies that the petitioner participated in fire camp as a "hand crew member"; participation in any other fire camp role does not qualify the petitioner for relief);
    - did not engage in any conduct that warranted removal from the program;
    - has been released from custody; and
    - has no pending criminal charges.
- Provides an option for the petitioner to indicate whether they are currently on probation, parole, or supervised relief, and to request early termination of supervision.
- Sets forth the petitioner's request that they be permitted to withdraw the plea of guilty or nolo contendere and a plea of not guilty be entered, or that the verdict or finding of guilt be set aside, and that the court dismiss the action under section 1203.4b.

Form CR-430-INFO

The proposed optional *Information on Filing a Petition for Dismissal—Incarcerated Individual Hand Crew* (form CR-430-INFO) is designed to provide self-represented petitioners with directions for filling out the petition form and additional information regarding the petition process. The information sheet:

- Lists the section 1203.4b eligibility criteria (including participation on a "hand crew");
- Explains the reasons it is useful for the petitioner to include relevant fire camp information;
- Describes the filing and service process and the role of the district attorney; and
- Provides information on the hearing, the court's decision, and the restrictions on relief if the court grants the petition.

Form CR-431

Section 1203.4b(b)(1) requires the court to provide a copy of the petition to CDCR or the appropriate county authority. Proposed optional *Court Cover Letter and Agency Certification—Incarcerated Individual Hand Crew* (form CR-431) is designed to accompany the petition and provide a consistent format for courts' requests to CDCR or the appropriate county authority for certification of the petitioner's successful participation in fire camp. The court cover letter portion:

- Includes space in the header for the petitioner's name, date of birth, CDCR number, fire camp name, and approximate dates in fire camp, if known;
- Requests the Secretary of CDCR or the appropriate county authority to certify, by a specified date, whether the petitioner successfully participated as a hand crew member in a fire camp program; and
- Includes space for the court clerk's name and court contact information.

Proposed form CR-431 also provides a format for the certifying agency to:

- Respond to the court request for certification; and
- Indicate whether the petitioner:
    - successfully participated in a fire camp program as a hand crew member and was released from custody, and the dates of participation in fire camp; or
    - was not successful as a hand crew member in a fire camp program; or
    - did not participate in a fire camp program.

Form CR-432

The *Order on Petition—Incarcerated Individual Hand Crew* (form CR-432):

- Provides options for findings by the court;
- Sets forth various bases for the court's decision to grant or deny the petition; and
- Lists the restrictions on relief if the court grants the petition.

Alternatives Considered

The number of formerly incarcerated individuals who have participated as a hand crew member in a CDCR or county-operated fire camp program is not large. Given that, the committee considered whether it was necessary for the Judicial Council to provide a new set of forms for this type of conviction relief. The committee determined, based on the high level of interest by self-represented petitioners and because this form of relief requires coordination between the courts and CDCR or the appropriate county authority, that optional forms could facilitate the process of providing relief to eligible petitioners.

Fiscal and Operational Impacts

As forms CR-430, CR-430-INFO, CR-431 and CR-432 would be optional, expected costs are limited to training, possible case management system updates, and the production of new forms. No other implementation requirements or operational impacts are expected.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Is there benefit in having the court state, on proposed form CR-432, the reasons for the court's determination that granting relief to the petitioner would not serve the interests of justice, or is it unnecessary?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- 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?
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Forms CR-430, CR-430-INFO, CR-431, and CR-432, at pages 6–14
2. Link A: Assembly Bill 2147, *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB2147*
3. Link B: Penal Code section 1203.4b, *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1203.4b&lawCode=PEN*

CR-430 Petition for Dismissal—Incarcerated Individual Hand Crew (Pen. Code, § 1203.4b)

A copy of this petition must be served on the prosecuting attorney and a proof of service must be filed with the court (you may use *Proof of Service* (form CR-106), available at courts.ca.gov/forms).

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

PEOPLE OF THE STATE OF CALIFORNIA
vs
DEFENDANT:

Fill in court name and street address:

Superior Court of California, County of

Case Number:

For Court use only:
Date:
Time:
Department:

1 Petitioner's Information

a. Name: ______________________________
Last *First* *Middle*

Date of birth: ____________________ *(mm/dd/yyyy)*

Address: ______________________________
Street

______________________ ______ __________
City *State* *Zip*

Telephone *(optional)*: ____________________

Email *(optional)*: ____________________

Local Identifying Number *(if known):* ____________________

CDCR No. *(while in fire camp, if known)*: ____________________

Name of fire camp *(if known):* ______________________________

Approximate dates in fire camp *(if known):* ____________ to ____________
(month/year) *(month/year)*

b. Your attorney, if you have one *(specify name, address, telephone number, and State Bar number below)*:

Name: ______________________________

______________________ ______________ ______ __________
Street *City* *State* *Zip*

Telephone: ____________________ Email: ______________________________

State Bar No. ____________________

2 Eligibility for relief under Penal Code section 1203.4b

a. Petitioner was not convicted of any of the following offenses: murder; kidnapping; rape (as defined in Penal Code section 261(a)(2), (a)(6), or Penal Code section 262(a)(1), (a)(4)); lewd acts on a child under 14 years of age (as defined in Penal Code section 288); any felony punishable by death or imprisonment in the state prison for life; any sex offense requiring registration pursuant to Penal Code section 290; escape from a secure perimeter within the previous 10 years; or arson.

b. While serving a sentence in this case, petitioner successfully participated as a member of a fire camp incarcerated individual hand crew in (*check one):*
- ☐ the California Conservation Camp program (operated by the California Department of Corrections and Rehabilitation)
- ☐ a county incarcerated individual hand crew program *(name of county):* ______________________

c. Petitioner adequately performed the hand crew duties and did not engage in any conduct that warranted removal from the program.

d. Petitioner has been released from custody and has no pending criminal charges.

e. In this case no: ______________________, petitioner is currently on (*check one*):
☐ probation ☐ parole ☐ supervised release ☐ not on supervision

f. ☐ Petitioner requests early termination of: ☐ probation ☐ parole ☐ supervised release

g. Petitioner requests permission to withdraw the plea of guilty or nolo contendere, or that the verdict or finding of guilt be set aside and a plea of not guilty be entered, and that the court dismiss this action under Penal Code section 1203.4b.

I declare that the information provided is true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: ______________________________

Signature: ______________________________
(Petitioner or attorney)

Printed Name: ______________________________
(Petitioner or attorney)

CR-430-INFO Information on Filing a Petition for Dismissal—Incarcerated Individual Hand Crew (Pen. Code, § 1203.4b)

Penal Code §1203.4b allows eligible former inmates to ask the court to dismiss a conviction and take other actions that can improve your criminal record ("record clearing").

Read this information carefully to learn whether you may be eligible for § 1203.4b relief, and how to complete *Petition for Dismissal—Incarcerated Individual Hand Crew (form CR-430)* to request relief. (Form CR-430 is available at www.courts.ca.gov/forms)

1 Who is eligible to apply for relief under Penal Code § 1203.4b?

You must meet ALL of these requirements to be eligible to apply (petition) for relief under Penal Code § 1203.4b:

a. You were incarcerated in state prison or county jail.

b. While in state prison or in county jail, you successfully participated as a hand crew member ("grade eligible") in a California Conservation Camp program operated by the California Department of Corrections and Rehabilitation (CDCR);

OR

While in county jail, you successfully participated in an incarcerated individual fire camp hand crew program operated by a county agency (for example, the sheriff's department).

c. You have been released from custody.

d. You are not currently charged with committing any offense.

NOTE: You are NOT eligible for Penal Code § 1203.4 relief if your conviction was for any of these offenses: murder; kidnapping; rape (as defined in Penal Code §§ 261 (a)(2), (6) or 262(a)(1), (4)); a violation of Penal Code § 288 (specified sex offenses); any felony punishable by death or imprisonment in the state prison for life; any sex offense requiring registration under Penal Code § 290; escape from a secure perimeter within the previous 10 years; or arson.

2 I'm still on probation, parole, or supervised release. Can I apply for § 1203.4b relief now?

- **Yes,** you can still petition for a § 1203.4b dismissal even if you are on a term of probation, parole, or supervised release. The law says that you are *not* required to complete your term of supervision before you can ask the court to dismiss your conviction.
- If you have violated any term or condition of your supervision before or during the time the court is reviewing your petition, then the court will NOT grant your petition for dismissal.
- If you have no violations, the court may grant your petition *and* order early termination of probation, parole, or supervised release.

3 What information do I need to include on my petition?

Form CR-430 is the form for requesting § 1203.4b relief. It is available at *www.courts.ca.gov/forms*. You do not have to use form CR-430 for your petition, but it helps organize the information for the court.

You will need to file a separate petition for each case. You will need to list on your petition:

- The case number; and
- Your local identifying number (if any, and if known).

It is helpful to provide details about your participation in a CDCR fire camp program:

- The CDCR number you had while participating in fire camp;
- The name of the fire camp; and
- The approximate dates that you were in fire camp.
  For Example: CDCR No. TK12345;
  Eel River Camp, August – November, 2020

You are *not* required by law to provide this information in your petition. It can help speed up the court's decision on your request by making it easier for CDCR to locate and confirm your participation in fire camp and report back to the court.

Tip: If you were a county jail inmate and participated in a fire camp, it is *very likely* the fire camp was operated by CDCR. You would have been given a CDCR number during your time in fire camp.

4 Where and how do I file my § 1203.4b petition with the court?

a. **You must file your petition with the court. File in the county where you were sentenced for the conviction you want the court to dismiss.**
First, check with that court to see whether there are any local rules about filing and service of the petition.

- In many counties, you must serve the original § 1203.4b petition with the court, have the court file-stamp one copy, and then you must serve the file-stamped copy of the petition on the prosecuting attorney.
- If you "file first," as described in b. and c. below, the court has a chance to add a hearing date to the petition before you serve it.
- Some courts require you to first serve *a copy* of the §1203.4b petition on the district attorney and *then* file the original petition with the court, together with a completed and signed proof of service. (See 5 and 6 for information on service and proof of service.)

b. Fill out the petition form, CR-430, *and make at least 2 copies*. You will use one copy to notify the district attorney. Be sure to keep the other copy for your own records.

c. File the original §1203.4b petition with the court by:

- taking the original petition and a copy to the court in person and handing it to the court clerk; *or*
- mailing the petition and a copy to the court; *or*
- filing the petition electronically, if the local court rules permit this type of filing.

d. When the court files the original petition, ask the court clerk to file-stamp the copy of the petition and return it to you. *This is an important step because the file-stamped copy must be served on the district attorney*. If you file the petition by mail, include the copy for the court clerk to file-stamp and then return to you. Include a self-addressed, stamped envelope for the clerk to use to mail the file-stamped copy back to you.

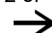
5 How do I "serve" a copy of my § 1203.4b petition on the district attorney?

a. "Serving" a petition means delivering a copy of the petition to the district attorney or other agency that prosecuted your case.

b. You must serve a copy of your § 1203.4b petition on the district attorney or other agency in the county where you filed your petition with the court.

c. You can serve the petition by:

- **Personal service:** You *or another person over age 18* go in person to hand-deliver the file-stamped copy of the petition to the district attorney's office during business hours by handing it to an employee. Be sure to get the name of the employee for your proof of service.
- **Service by mail:** Mail the file-stamped copy of the petition to the district attorney's office. You may mail the petition by first-class mail or by certified mail with a return receipt requested.
- **Electronic service:** Contact the district attorney's office to see if they accept electronic service. If they do, the court may require proof of their consent to electronic service. You can use *Consent to Electronic Service and Notice of Electronic Service Address* (form EFS-005-CV), available at *www.courts.ca.gov/forms.*



6 How do I prove that I served my § 1203.4b petition on the district attorney?

a. It is very important that you properly serve your § 1203.4b petition and then file proof with the court. This "proof of service" tells the court that you gave the district attorney the required notice of your § 1203.4b petition.

b. You will need to confirm that you served the petition by filing a proof of service form that describes who, when, where, and how you served your § 1203.4b petition. You can use *Proof of Service—Criminal Record Clearing (form CR-106)* for this purpose.

c. Fill out form CR-106. (Follow the directions on form CR-106-INFO. Both forms are available at *www.courts.ca.gov/forms*). Form CR-106 has spaces for you to write how you served the district attorney with your § 1203.4b petition. If you had someone else help you serve the petition on the district attorney, that person will have to fill out the proof of service form.

d. After filling out the proof of service (form CR-106), make a copy for you to keep.

e. You must file the original proof of service with the court to prove that you gave the district attorney the required notice of your § 1203.4b petition. You can file the proof of service form the same way you filed the petition.

7 What happens next?

a. **The court will not grant your petition unless the prosecuting attorney has had at least 15 days from the date you served the § 1203.4b petition to object to your petition. The prosecuting attorney can object to your petition at any time before the court grants or denies the petition.**

b. If the district attorney does object, you will receive a copy of the objection in the mail and the court will schedule a hearing. (See 10 for more information about the hearing.)

c. Before the court decides whether to grant your § 1203.4b petition, the court must get certification of your participation in fire camp from CDCR or the appropriate county authority.

8 What is "certification" by the CDCR or the appropriate county authority?

a. In order for the court to decide whether to grant your § 1203.4b petition, the court must have "certification" from CDCR or the county authority that:
- you successfully participated in fire camp as a hand crew member; AND
- you participated in fire camp during the time you were incarcerated for the conviction you are asking the court to dismiss.

b. After you file your § 1203.4b petition, the court will contact CDCR or the appropriate county authority and ask for a written statement that confirms ("certifies") your successful participation in fire camp.

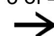
c. "Successful participation" in fire camp means that you adequately performed your hand crew duties and did not have any violations that could have led to your removal from fire camp.

9 When will the court make a decision?

a. The court will not make a decision until it hears from CDCR or the appropriate county agency certifying participation.

b. The law does not set a time frame, but the court may ask CDCR or the appropriate county authority to respond to a request for certification by a certain date.

c. After CDCR or the appropriate county authority certifies whether your participation in fire camp was successful, the court likely will contact you and the district attorney. But the law does not require the court to contact you, so you may want to check with the court to confirm that the certification has been received.



10 Will I have to attend a hearing?

a. The law does not *require* the court to hold a hearing in order to make a decision on your § 1203.4b petition. The court can make a decision on your petition without holding a hearing. But the law allows the court to hold a hearing if it chooses to do so.

b. The law allows the district attorney to request a hearing and to ask the court to deny the relief requested in your § 1203.4b petition.

c. If the court schedules a hearing, you will be notified of the hearing date and time. You have a right to attend the hearing and to explain why your § 1203.4b petition should be granted and your conviction dismissed.

d. *Note:* Even if the district attorney does not object to your § 1203.4b petition, the court may ask the district attorney to tell the court whether there is anything it should consider when deciding whether to grant your petition.

11 How will the court make its decision?

a. If you meet all of the eligibility factors, and the court receives certification of your successful participation in fire camp, the court may grant your § 1203.4b petition *if it is in the interests of justice.*

b. If the court determines that it's not in the interests of justice to grant relief, the court can deny your petition even if you meet all the eligibility requirements.

c. Once the court makes a decision on your § 1203.4b petition, it will issue an Order (usually issued on form CR-432) that states whether the court granted or denied your petition. If the court grants your petition, the Order will state which convictions have been dismissed and whether supervision has been terminated. The court will also report this change in your record to the Department of Justice so that your statewide criminal history summary can be updated.

12 If the court grants relief, what happens to my conviction?

a. If the court grants relief and dismisses the conviction, you will be released from most of the penalties and restrictions that are connected to the conviction. The law keeps certain penalties in place.

b. A dismissal will NOT:

- Automatically reinstate your right to possess firearms.
- Prevent suspension of your driver's license in some cases.
- Allow you to omit the conviction from applications for the California Commission on Teacher Credentialing, a position as a peace officer, public officer, or for contracting with the California State Lottery Commission.
- Permit you to hold public office if the law prohibits people from holding public office as a result of that conviction.
- Seal or remove the court file from public inspection.
- Prevent the conviction from being used as a "prior" in the future.
- Remove from your record the fact that an arrest occurred.

CR-431 **Court Cover Letter and Agency Certification—Incarcerated Individual Hand Crew (Pen. Code, § 1203.4b)**

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

☐ **Secretary, California Department of Corrections and Rehabilitation**
c/o Camp Liaison Captain
1515 S Street, 330 N-113
Sacramento, California 95811

☐ **Appropriate county authority** ***(name)*****:** ______________________
Address:
____
____
____

Superior Court of California, County of

Case Number:

Attached is a copy of a petition for relief under Penal Code section 1203.4b filed by:

Name: ______________________
First *Middle* *Last*

Date of birth: ______________ *(mm/dd/yyyy)*

CDCR No. *(while in fire camp, if known):* ______________________

Name of fire camp, if known: ______________________

Approximate dates in fire camp: ____________ to ____________
(month/year) *(month/year)*

Please certify, by ***(date)****:* ______________________, whether the petitioner successfully participated as a hand crew member in the CDCR incarcerated individual conservation camp program, or successfully participated as a member of a county incarcerated individual hand crew, and has been released from custody.

Date: ______________________

Court Clerk: ______________________ Court Contact Information *(optional)*: ______________________

Agency Certification

NOTE TO CERTIFYING AGENCY: Please fill out this certification and mail this form to the court at the address above.

☐ The Secretary of the California Department of Corrections and Rehabilitation or the appropriate county authority certifies that, on case number: ______________________ *(check one):*

☐ The petitioner successfully participated as a hand crew member in the CDCR incarcerated individual conservation camp program, or as a member of a county incarcerated individual hand crew, and has been released from custody. Dates of participation: ____________ to ____________
(month/year) *(month/year)*

☐ The petitioner participated but was not successful as a hand crew member in the CDCR incarcerated individual conservation camp program, or as a member of a county incarcerated individual hand crew.

☐ The petitioner did not participate as a hand crew member in the CDCR incarcerated individual conservation camp program, or as a member of a county incarcerated individual hand crew.

Date: ______________________ ______________________
Signature of Agency Representative

Agency: ______________________ Printed Name: ______________________

CR-432 Order on Petition—Incarcerated Individual Hand Crew (Pen. Code, § 1203.4b)

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

Superior Court of California, County of

Case Number:

For Court use only:
Date:
Time:
Department:

(1) Name: ______________________
First *Middle* *Last*

Mailing address: ______________________
Street

______________________ ______ ______
City *State* *Zip*

CDCR No. *(if known):* ______________________

Name of fire camp *(if known):* ______________________

(2) **The court finds:**

☐ The Secretary of the California Department of Corrections and Rehabilitation has certified to the court that the petitioner successfully participated as a hand crew member in the CDCR incarcerated individual conservation camp program.

☐ The appropriate county authority has certified to the court that the petitioner successfully participated as a member of a county incarcerated individual hand crew.

☐ The prosecuting attorney has been given 15 days' notice of the petition for relief.

☐ The petitioner has not violated any terms or conditions of probation, parole, or supervised release prior to, and during the pendency of, the petition for relief under Penal Code section 1203.4b. The court orders early termination of (*check one*): ☐ probation ☐ parole ☐ supervised release.

☐ It is in the interests of justice to dismiss the accusations or information against the petitioner and release the petitioner from all penalties and disabilities resulting from the offense of which the petitioner has been convicted, except as provided in Section 13555 of the Vehicle Code.

(3) The court **GRANTS** the petition for dismissal regarding the following convictions under Penal Code section 1203.4b *(check one)*:

☐ for all convictions in case no.: ______________ or ☐ only the following convictions in case no.: ______________ (*specify charges and date of conviction*): ______________

____

____

____

____

____

Case Number:

It is ordered that the petitioner's plea of guilty or nolo contendere be withdrawn and a plea of not guilty be entered, or the verdict of guilt be set aside. The court dismisses the accusations or information against the petitioner.

Petitioner is released from all penalties and disabilities resulting from the convictions in this case for which the court is granting relief, except as follows:

- Suspension of petitioner's driver's license except as provided in Vehicle Code section 13555.
- In any subsequent prosecution, this conviction may have the same effect as if the accusation or information had not been dismissed.
- Petitioner must still disclose the conviction in response to any direct question in any questionnaire or application for licensure by the California Commission on Teacher Credentialing, for a position as a peace officer, for public office, or for contracting with the California State Lottery Commission.
- Petitioner may still be prohibited from owning, possessing, or having in petitioner's custody or control any firearm.
- Petitioner may still be prohibited from holding public office as a result of the dismissed conviction.

4 ☐ The court **DENIES** the petition because petitioner's conviction is for an offense that is ineligible for relief under Penal Code section 1203.4b(a)(1)(A)–(H).

☐ The court **DENIES** the petition without prejudice *(check all that apply):*

a. ☐ Petitioner is in custody.

b. ☐ Petitioner is currently charged with the commission of any other offense.

c. ☐ The Secretary of the Department of Corrections and Rehabilitation did not certify to the court that petitioner successfully participated as a hand crew member in the CDCR incarcerated individual conservation camp program, or the appropriate county authority did not certify to the court that the petitioner successfully participated in the county incarcerated individual hand crew program.

d. ☐ Petitioner was not serving a sentence for this conviction at the time of participation in fire camp.

e. ☐ The court finds that granting relief would not serve the interests of justice because:

f. ☐ Other:

Date: ______________________________

____
Signature of Judicial Officer

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee action requested [Choose from drop down menu below]**:**
Circulate for comment (January 1 cycle)

Rules Committee Meeting Date: 4/14/2021

Title of proposal: Criminal Forms: Commitment Orders for Sexually Violent Predators

Proposed rules, forms, or standards *(include amend/revise/adopt/approve):*
Revise form CR-173; revoke form CR-174

Committee or other entity submitting the proposal:
Criminal Law Advisory Committee

Staff contact (name, phone and e-mail): Sarah Fleischer-Ihn, 5-7702, sarah.fleischer-ihn@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by Rules Committee date: November 3, 2020
Project description from annual agenda: Revise Order for Commitment (Sexually Violent Predator) (form CR-173)

: Revise form CR-173 to reflect statutory changes to Welfare and Institutions Code sections 6600 and 6604 and replace gender specific pronouns.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

JUDICIAL COUNCIL OF CALIFORNIA

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

INVITATION TO COMMENT

SPR21-__

Title
Criminal Forms: Commitment Orders for Sexually Violent Predators

Action Requested
Review and submit comments by May 27, 2021

Proposed Rules, Forms, Standards, or Statutes
Revise form CR-173; revoke form CR-174

Proposed Effective Date
January 1, 2022

Proposed by
Criminal Law Advisory Committee
Hon. Brian M. Hoffstadt, Chair

Contact
Sarah Fleischer-Ihn, 415-865-7702
Sarah.Fleischer-Ihn@jud.ca.gov

Executive Summary and Origin

The Criminal Law Advisory Committee recommends revising *Order for Commitment* (form CR-173) and revoking *Order for Extended Commitment* (form CR-174) to incorporate changes to the statutes governing sexually violent predator proceedings (Welf. & Inst. Code, § 6600 et seq.), replace gender-specific pronouns, and incorporate revisions for procedural efficiency, accuracy, and clarity.

Background

The Judicial Council approved two optional forms, *Order for Commitment* (form CR-173) and *Order for Extended Commitment* (form CR-174), effective January 1, 2005, to provide increased uniformity of commitment forms for people determined to be sexually violent predators under the Welfare and Institutions Code. The forms were most recently amended, effective January 1, 2018, for renumbering, but have not been substantively revised to incorporate statutory changes to Welfare and Institutions Code section 6600 et seq. by Senate Bill 1128 (Stats. 2006, ch. 337), the Sexual Predator Punishment and Control Act (Proposition 83), and Assembly Bill 1470 (Stats. 2012, ch. 24). The committee also recommends replacing gender-specific pronouns and revising the form for procedural efficiency, accuracy, and clarity.

The Proposal

The proposal would revise *Order for Commitment* (form CR-173) based on statutory changes, as follows:

- Revise the findings section to require one or more convictions of a qualifying offense to reflect Welfare and Institutions Code section 6600, which defines a sexually violent

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee. It is circulated for comment purposes only.

predator, in part, as a person who has been convicted of a sexually violent offense against one or more victims;
- Revise the reference to sexually violent predatory criminal behavior to exclude the term "predatory," to reflect the statutory language of Welfare and Institutions Code section 6600;
- Replace references to the California Department of Mental Health with the California Department of State Hospitals, to reflect the transfer of duties regarding sexually violent predators made by AB 1470; and
- Replace references to the two-year custody limit with an indeterminate term, and eliminate references to extended commitment requirements, to reflect statutory changes to custody terms made by SB 1128 and Prop. 83.

The committee also recommends the following revisions:

- Replace gender-specific pronouns;
- Identify the county of domicile for purposes of discharge under Welfare and Institutions Code section 6608.5, to promote court efficiencies by having the identification occur at an earlier stage of the proceedings;
- Eliminate references to confinement at a specific state hospital, to reflect that some respondents may be released to community treatment under the custody of the Department of State Hospitals; and
- Order a specific entity to transport the respondent, to provide clarity about the agency responsible for transportation.

The proposal would also revoke *Order for Extended Commitment* (form CR-174). A prior version of Welfare and Institutions Code section 6604 stated that if a person was determined by the court or jury to be a sexually violent predator, that person must be committed for two years to the custody of the Department of State Hospitals and could not be kept in actual custody longer than two years unless a subsequent extended commitment was obtained from the court. SB 1128 and Prop. 83 amended section 6604 to change the two-year custody limit to an indeterminate term and deleted the extended commitment requirement.

Alternatives Considered

Because the form revision and revocation are largely necessitated by statutory changes, the committee did not consider any alternatives to those revisions. The committee unanimously agreed on the revisions based on procedural efficiency, accuracy, and clarity and thought they were appropriate to recommend at the same time as the revisions based on statutory changes.

Fiscal and Operational Impacts

Expected costs are limited to training, possible case management system updates, and the production of new forms. No other implementation requirements or operational impacts are expected.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- 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?
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Form CR-173, at page 4
2. Form CR-174, at page 5
3. Link A: Welf. & Inst. Code, § 6600, *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=6600.&lawCode=WIC*
4. Link B: Welf. & Inst. Code, § 6604, *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=6604.&lawCode=WIC*
5. Link C: Welf. & Inst. Code, § 6608.5, *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=6608.5.&lawCode=WIC*
6. Link D: Sen. Bill 1128 (Stats. 2006, ch. 337), *https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=200520060SB1128*
7. Link E: Assem. Bill 1470 (Stats. 2012, ch. 24), *https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201120120AB1470*

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	*FOR COURT USE ONLY* DRAFT Not approved by the Judicial Council
PEOPLE OF THE STATE OF CALIFORNIA v. Defendant:	
ORDER FOR COMMITMENT (Sexually Violent Predator)	CASE NUMBER:

After the trial in the above captioned matter on *(date):* the allegations in the petition were found true beyond a reasonable doubt. At the trial the ☐ court ☐ jury found

1. that the respondent has suffered one or more convictions for violations of *(specify code sections):*

   and

2. that the respondent has a diagnosed mental disorder that makes the respondent a danger to the health and safety of others in that it is likely that respondent will engage in sexually violent criminal behavior; and

3. thus, that the respondent is a "sexually violent predator" as defined in Welfare and Institutions Code section 6600.

The court finds that the county of domicile for purposes of discharge under provisions of Welfare and Institutions Code section 6608.5 is the county of: .

THEREFORE, THE COURT ORDERS

4. The respondent is to be committed to the custody of the California Department of State Hospitals for appropriate treatment under the provisions of Welfare and Institutions Code section 6604 for an indeterminate term commencing *(date):*

5. The respondent is to be transported immediately to the custody of the California Department of State Hospitals by *(agency)*:

Date: ______________________________

____
(JUDICIAL OFFICER)

Form Approved for Optional Use
Judicial Council of California
CR-173 [Rev. January 1, 2022]

Welfare and Institutions Code, §§ 6600, 6604
www.courts.ca.gov

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

STREET ADDRESS:

MAILING ADDRESS:

CITY AND ZIP CODE:

BRANCH NAME:

FOR COURT USE ONLY

DRAFT

Not approved by the Judicial Council

PEOPLE OF THE STATE OF CALIFORNIA
v.
Defendant:

ORDER FOR EXTENDED COMMITMENT
(Sexually Violent Predator)

CASE NUMBER:

1. After a trial in the above captioned matter, the ☐ court ☐ jury found that the respondent, by reason of a diagnosed mental disorder, continues to be a sexually violent predator as defined in section 6600 of the Welfare and Institutions Code and remains a danger in that he or she is likely to engage in acts of sexual violence if released from custody.

THE COURT ORDERS

2. Respondent is recommitted under Welfare and Institutions Code 6604 for a period of two years at *(name):*
State Hospital and will be transported to the facility immediately.

3. Under Welfare and Institutions Code section 6604.1, the time of recommitment begins to run on the date the original commitment terminates, *(date):*

REVOKED

Date: ______________________

____
(JUDICIAL OFFICER)

Item number: 14

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee action requested [Choose from drop down menu below]**:**
Submit to JC (without circulating for comment)

Rules Committee Meeting Date: April 14, 2021

Title of proposal: Family Law: Technical Changes to Summary Dissolution Forms

Proposed rules, forms, or standards *(include amend/revise/adopt/approve):*
Revise forms FL-800 and FL-810

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee

Staff contact (name, phone and e-mail): Gabrielle Selden, 415-865-8085, gabrielle.selden@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by Rules Committee date: November 2, 2020
Project description from annual agenda: Item 11 of the annual agenda. Project Summary: Update to reflect change in cost of living per Family Code section 2400(b) as a technical change. Status/Timeline: Ongoing requirement to adjust every other year, next adjustment to be effective September 1, 2021 (last adjustment approved by the Judicial Council 3/19/19 in a technical report).

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

Information for JC Staff regarding form translations:

- *List any amended forms in this proposal that have already been translated:* FL-810
- *List any new forms that require translation by statute or that you will request to be translated:* n/a

JUDICIAL COUNCIL OF CALIFORNIA

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

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REPORT TO THE JUDICIAL COUNCIL

Item No.:
For business meeting on: May 20–21, 2021

Title
Family Law: Technical Changes to Summary Dissolution Forms

Rules, Forms, Standards, or Statutes Affected
Revise forms FL-800 and FL-810

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Agenda Item Type
Action Required

Effective Date
September 1, 2021

Date of Report
April 2, 2021

Contact
Gabrielle D. Selden, 415-865-8085
gabrielle.selden@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends technical revisions to two family law summary dissolution forms. The technical changes are mandated by Family Code section 2400 to reflect an increase in the cost of living based on changes to the California Consumer Price Index. Additional technical changes are included to promote gender neutrality and consistency in the reference to the complete term “domestic partner” in Judicial Council forms, and to correct clerical errors.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective September 1, 2021:

1. Approve and adopt the calculations attached at page 6, which demonstrate an increase required to the maximum dollar amounts for community and separate property assets in summary dissolution forms FL-800 and FL-810.

2. Revise *Joint Petition for Summary Dissolution* (form FL-800) to:

   a. Reflect an increase in the limitations for community and separate property assets under Family Code section 2400(a)(7)[1] from $45,000 to $47,000.

   b. Make items 15a. and 15b. gender neutral by deleting “his or her” in item 15 and stating that a party desires to have “a former name restored.”

   c. Correct the reference to “partner support” in item 17 so that it appears as “domestic partner support.”

3. Revise the instructional booklet titled *Summary Dissolution Information* (form FL-810) to:

   a. Reflect the same changes to the dollar figures in form FL-800.[2] The Spanish translation of the booklet (form FL-810 S) will also be updated.

   b. Correct all references to “partner” and “partner support,” so that they appear as “domestic partner” and “domestic partner support.”

   c. Change the sample property settlement agreement and other pages that reference specific dates to make those dates more recent.

   d. Make the form easier to find by replacing the link to the general website on the cover page with specific links to form FL-810 and the Spanish translation (form FL-810S).

   e. Make minor corrections to pages 13 and 15 so that the form’s content is internally consistent.

Revised form FL-800 is attached at pages 7–8. Form FL-810 is included as Attachment A.

Relevant Previous Council Action

Effective September 1, 2019, the Judicial Council revised forms FL-800 and FL-810 to reflect an increase solely in the maximum limits for community and separate property assets under Family Code section 2400(a)(7), from $43,000 to $45,000. No adjustment was required for community debts, which remained at $6,000.

Analysis/Rationale

Adjust maximum dollar amounts

Family Code section 2400(b) requires that on January 1 of each odd-numbered year, the dollar limitations on items indicated in Family Code section 2400(a)(6) and (a)(7) be adjusted to reflect

---

[1] The total fair market value of community property and separate property assets, excluding all encumbrances and automobiles, including any deferred compensation or retirement plan.

[2] The changes to form FL-810 are highlighted in Attachment A on form pages 3, and 5–9.

any change in the value of the dollar.[3] Section 2400(b) requires that the Judicial Council compute and publish the adjusted amounts. The adjustments are computed by multiplying the base amount by the percentage change in the California Consumer Price Index. The calculation is attached at page 5 (Attachment 1).[4] The results are then rounded to the nearest thousand dollars and published in summary dissolution forms FL-800 (Attachment 2) and FL-810 (Attachment A).

Currently, to use the summary dissolution process, the parties' unpaid community obligations must not exceed $6000, and their community property and separate property assets must not exceed $45,000, respectively.

Forms FL-800 and FL-810 must be revised to reflect a 4.7% increase in the annual averages of the California Consumer Price Index between 2018 and 2020. Specifically:

- No change is required to the maximum dollar amount for unpaid obligations incurred by either or both of the parties after their date of marriage, excluding the amount of any unpaid obligation with respect to automobile community debts; and

- A $2,000 adjustment (from $45,000 to $47,000) is required for the total fair market value of community and separate property assets.

Additional technical changes

The committee also recommends that all references to "partner" and "partner support" in forms FL-800 and FL-810 be changed to reflect the correct legal term of "domestic partner" and "domestic partner support." This change will be made to item 17 on form FL-800. It will also affect 13 pages in form FL-810.

Further, the committee recommends revising item 15a and 15b in form FL-800 by deleting the reference to "his or her." In this request for a party to have the court restore "his or her former name restored," the committee recommends that the form provide that the party "desires to have a former name restored," followed by the blank space for the party to specify the name. This change conforms to the ongoing project identified in item 15 of the Family and Juvenile Law Advisory Committee's Annual Agenda dated November 2, 2020 to "[r]evise all gendered terms or gender identity questions to conform to legislative changes providing for nonbinary gender identity if those forms are being revised for other reasons."[5]

In addition, the committee recommends that references to specific, fictitious dates be updated in the sample property settlement agreement on pages 13 and 15 of form FL-810. Specifically, the

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[3] Since the January 1 figures only become available in February, these biannual modifications are made for the September 1 forms cycle.

[4] The Consumer Price Index is found online at: *https://www.dir.ca.gov/oprl/CPI/EntireCCPI.PDF*.

[5] The annual agenda is found online at: *https://www.courts.ca.gov/documents/famjuv-annual.pdf*

parties' date of separation would be changed to 2019 instead of 2016. Updating these years would make the information more relevant to current form users.

Finally, the committee recommends other minor technical changes to:

- make the form easier to find by replacing the general link to the court's website on the cover page with specific links to the form itself, including the link to the Spanish translation;
- at item VI in the table of contents, add the word "Sample" at the beginning of each of the titles to match the name of the sample worksheets on pages 6, 8, and 10;
- avoid redundancy by deleting an extra reference to footnote 1 in the first paragraph on page 13; and
- on page 15, change the year of the model for each of the automobiles listed in the fictitious settlement agreement from 2003 to 2013 to be consistent with the same vehicles shown on page 14.

Policy implications

The recommendations in this report merely implement statutory requirements and implements the previously stated Judicial Council policy of gender neutrality.

Comments

This proposal was not circulated for comment. Under rule 10.22(d)(2) of the California Rules of Court, the adjustments proposed to forms FL-800 and FL-810 are minor substantive changes and are unlikely to create controversy. In addition, the adjustments to forms FL-800 and FL-810 are required by statute.

Alternatives considered

Given the statutory requirement relating to the summary dissolution forms, no alternative actions were considered with respect to the consumer price index. The committee considered whether the other technical changes should be made.

With respect to correcting the terms partner and partner support, the committee decided that changing the terms to "domestic partner" and "partner support" are important to include, as they are consistent with the corrections made to the following forms approved and adopted by the Judicial Council, effective January 1, 2021: *Spousal or Domestic Partner Support Declaration Attachment* (form FL-157); *Spousal, Domestic Partner, or Family Support Order Attachment* (form FL-343); and *Spousal or Domestic Partner Support Factors Under Family Code Section 4320—Attachment* (form FL-349).[6]

[6] The Judicial Council report is found online at: *https://jcc.legistar.com/View.ashx?M=F&ID=8771154&GUID=244A4AF3-B883-4F56-9AE6-05E92F2D24C8*.

Fiscal and Operational Impacts

Implementation of the revisions will require courts to incur standard reproduction costs for the forms.

Attachments and Links

1. Asset and Debt Limits in Summary Dissolution Proceedings (Fam. Code, § 2400), at page 6
2. Form FL-800, at pages 7–8
3. Attachment A: *Summary Dissolution Information* (form FL-810)

Asset and Debt Limits in Summary Dissolution Proceedings
(Fam. Code, § 2400)

Formula

Under Family Code section 2400(b), the dollar limits for community property debts and community and separate property assets in actions for summary dissolution shall be adjusted by multiplying the base amount by the percentage change in the California Consumer Price Index as compiled by the Department of Industrial Relations, with the result rounded to the nearest thousand dollars.

$$\textit{Adjusted limit} = \left[\frac{\textit{CCPI(AA) 2020} - \textit{CCPI(AA) 2018}}{\textit{CCPI(AA) 2018}} + 1 \right] \times \textit{Published limit}$$

Definition

CCPI(AA) is the California Consumer Price Index, Annual Average, as established by the California Department of Industrial Relations.

September 1, 2021, calculation and adjustment for community debts

Under Family Code section 2400(a)(6), effective September 1, 2021, there is no increase in the maximum dollar amount for unpaid obligations incurred by either or both of the parties after their date of marriage, excluding the amount of any unpaid obligation with respect to automobile community debts. The calculation is as follows:

$$\$\mathbf{6{,}281.93} = \left[\frac{285.315 - 272.510}{272.510} + 1 \right] \times \$6{,}000.00$$

The adjusted limit under Family Code section 2400(b), when rounded to the nearest thousand dollars, remains $6,000.

September 1, 2021, calculation and adjustment for community and separate property assets

Under Family Code section 2400(a)(7), effective September 1, 2021, there is a $2,000 increase in the total fair market value of community and separate property assets, excluding all encumbrances and automobiles, including any deferred compensation or retirement plan. The calculation is as follows:

$$\mathbf{\$47{,}114.51} = \left[\frac{285.315 - 272.510}{272.510} + 1 \right] \times \$45{,}000.00$$

The adjusted limit under Family Code section 2400(b), when rounded to the nearest thousand dollars, increases the current published limit to $47,000.

PARTY WITHOUT ATTORNEY OR ATTORNEY: STATE BAR NO:	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:	
MARRIAGE OR PARTNERSHIP OF	
PETITIONER 1:	
PETITIONER 2:	
JOINT PETITION FOR SUMMARY DISSOLUTION ☐ MARRIAGE ☐ DOMESTIC PARTNERSHIP	CASE NUMBER:

We petition for a summary dissolution of marriage, registered domestic partnership, or both and declare that all the following conditions exist on the date this petition is filed with the court:

1. We have read and understand the *Summary Dissolution Information* booklet (form FL-810).
2. a. ☐ We were married on *(date):*
   b. ☐ We registered as domestic partners on *(date):*
3. ☐ We separated on *(date):*
4. Less than five years have passed between the date of our marriage and/or registration of our domestic partnership and the date of our separation.
5. a. ☐ One of us has lived in California for at least six months and in the county of filing for at least the three months preceding the date of filing. Or we are only asking to end a domestic partnership registered in California.
   b. ☐ We are the same sex and were married in California but are not residents of California. Neither of us lives in a place that will allow us to divorce. We are filing this case in the county in which we married.
6. There are no minor children who were born of our relationship before or during our marriage or domestic partnership or adopted by us during our marriage or domestic partnership. Neither one of us, to our knowledge, is pregnant.
7. Neither of us has an interest in any real property anywhere. **(You may have a lease for a residence in which one of you lives. It must terminate within a year from the date of filing this petition. The lease must not include an option to purchase.)**
8. Except for obligations with respect to cars, on obligations incurred by either or both of us during our marriage or domestic partnership, we owe no more than $6,000.
9. The total fair market value of community property assets, not including what we owe on those assets and not including cars, is less than $47,000.
10. Neither of us has separate property assets, not including what we owe on those assets and not including cars, in excess of $47,000.
11. We each have filled out and given the other an *Income and Expense Declaration* (form FL-150).
12. We have complied with the preliminary disclosure requirements as follows:
    a. We each have disclosed information about the value and division of our property by filling out and giving each other copies of the documents listed in (1) or (2) below (specify):
       (1) ☐ The worksheets on pages 7, 9, and 11 of the *Summary Dissolution Information* booklet (form FL-810).
       (2) ☐ A *Declaration of Disclosure* (form FL-140), a *Schedule of Assets and Debts* (formFL-142), or *Property Declaration* (form FL-160), and all attachments to these forms.
    b. We have told each other in writing about any investment, business, or other income-producing opportunities that came up after we were separated based on investments made or work done during the marriage or domestic partnership and before our separation.
    c. We have exchanged all tax returns each of us has filed within the two years before disclosing the information described in 12a.

Form Adopted for Mandatory Use
Judicial Council of California
FL-800 [Rev. September 1, 2021]

JOINT PETITION FOR SUMMARY DISSOLUTION
(Family Law—Summary Dissolution)

Family Code, § 299, 2109, 2320, 2400-2406
www.courts.ca.gov

PETITIONER 1: PETITIONER 2:	CASE NUMBER:

13. *(Check whichever statement is true.)*
    a. ☐ We have no community assets or liabilities.
    b. ☐ We have signed an agreement listing and dividing all our community assets and liabilities and have signed all the papers necessary to carry out our agreement. A copy of our agreement is attached to the *Judgment of Dissolution and Notice of Entry of Judgment* (form FL-825).
14. Irreconcilable differences have caused the irremediable breakdown of our marriage and/or domestic partnership, and each of us wishes to have the court dissolve our marriage and/or domestic partnership without our appearing before a judge.
15. a. ☐ Petitioner 1 desires to have a former name restored. That name is *(specify):*
    b. ☐ Petitioner 2 desires to have a former name restored. That name is *(specify):*
16. We each give up our rights to appeal and to move for a new trial after the effective date of our *Judgment of Dissolution*.
17. **Each of us forever gives up any right to spousal or domestic partner support from the other.**
18. We each agree to keep the court and each other informed of any change of mailing address or phone number occurring within six months from the filing of this joint petition using the *Notice of Change of Address or Other Contact Information* (form MC-040).
19. We are submitting the original and three copies of the proposed *Judgment of Dissolution and Notice of Entry of Judgment* (form FL-825) and two stamped envelopes together with this petition. One envelope is addressed to Petitioner 1 and the other to Petitioner 2.
20. We agree that this matter may be determined by a commissioner sitting as a temporary judge.

21. **Mailing address of Petitioner 1**
    Name:
    Address:
    City:
    State:
    Zip Code:

22. **Mailing address of Petitioner 2**
    Name:
    Address:
    City:
    State:
    Zip Code:

23. Number of pages attached: ______________

I declare under penalty of perjury under the laws of the State of California that the foregoing and all attached documents are true and correct.

Date:

(SIGNATURE OF PETITIONER 1)

I declare under penalty of perjury under the laws of the State of California that the foregoing and all attached documents are true and correct.

Date:

(SIGNATURE OF PETITIONER 2)

NOTICES

Your marriage and/or domestic partnership will end six months from the date of filing this joint petition. Both petitioners will receive a stamped copy from the court of the *Judgment of Dissolution and Notice of Entry of Judgment* (from FL-825) stating the effective date of your dissolution. Until the effective date specified on form FL-825 for the dissolution of your marriage and/or domestic partnership, either one of you can stop this joint petition by filing a *Notice of Revocation of Petition for Summary Dissolution* (form FL-830). If you stop this joint petition, you will STILL be married or in a domestic partnership.

Dissolution may automatically cancel the rights of a spouse or domestic partner under the other spouse's or domestic partner's will, trust, retirement plan, power of attorney, pay-on-death bank account, transfer-on-death vehicle registration, survivorship rights to any property owned in joint tenancy, and any other similar instrument. It does not automatically cancel the rights of a spouse or domestic partner as beneficiary of the other spouse's or domestic partner's life insurance policy. You should review these matters, as well as any credit card accounts, other credit accounts, insurance policies, and credit reports to determine whether they should be changed or whether you should take any other actions. However, some changes may require the agreement of your spouse or domestic partner or a court order. (See Fam. Code, §§ 231–235.)

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Print this form | Save this form | Clear this form

SUMMARY DISSOLUTION INFORMATION

DRAFT

NOT APPROVED BY THE
JUDICIAL COUNCIL

This booklet is available in English and Spanish from the office of the court clerk in the superior court of each county in California, or at *www.courts.ca.gov/documents/fl810.pdf* and *www.courts.ca.gov/documents/fl810s.pdf*.

Este folleto puede obtenerse en inglés y en español en la Dirección de Registro Público del Condado (Office of the Court Clerk) o en la Corte Superior (Superior Court) de cada condado en el estado de California o en el sitio *www.courts.ca.gov/documents/fl810.pdf* y *www.courts.ca.gov/documents/fl810s.pdf*.

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I. WHAT IS THIS BOOKLET ABOUT?

This booklet describes a way to end a marriage, a domestic partnership, or both through a kind of divorce called **summary dissolution.**

The official word for **divorce** in California is **dissolution.** There are two ways of getting a divorce, or dissolution, in California. The usual way is called a **regular dissolution.**

Summary dissolution is a shorter and easier way. But not everybody can use it. Briefly, a summary dissolution is possible for couples who

1. have no children together;
2. have been married and/or in a domestic partnership five years or less (this means that the time between the date you married or registered your domestic partnership and the date you separated from your spouse or domestic partner is five years or less);
3. do not own very much;
4. do not owe very much;
5. do not want spousal or domestic partner support from each other; and
6. have no disagreements about how their belongings and their debts are going to be divided up once they are no longer married to or in a domestic partnership with each other.

With this procedure, you will not have to appear in court. You may not need a lawyer, but it is in your best interest to see a lawyer about the ending of your marriage or domestic partnership. See page 19 for more details about how a lawyer can help you.

For a summary dissolution, you prepare and file a *Joint Petition for Summary Dissolution* (form FL-800), together with a property settlement agreement,* with the superior court clerk in your county. You will also prepare and turn in a *Judgment of Dissolution and Notice of Entry of Judgment* (form FL-825). Your divorce, ending your marriage and/or your domestic partnership, will be final six months after you file your *Joint Petition for Summary Dissolution.* During the six months while you wait for your divorce to become final, either of you can stop the process of summary dissolution if you change your mind. One of you can file a *Notice of Revocation of Petition for Summary Dissolution* (form FL-830), and that will stop the divorce. If either one of you still wants to get divorced, then that person will have to file for a regular dissolution with a *Petition—Marriage/Domestic Partnership* (form FL-100) unless you both agree to start a new summary dissolution process.

IMPORTANT! Domestic partners who qualify for a summary dissolution can choose to use the process described in this booklet OR a special summary dissolution for domestic partners through the California Secretary of State. You can find the California Secretary of State forms at *www.sos.ca.gov*. **There is no filing fee for this process.** If you choose to file to terminate your domestic partnership through the Secretary of State, do not use this guide.

This booklet will tell you

1. who can use the summary dissolution procedure;
2. what steps you must take to get a summary dissolution;
3. when it would help to see a lawyer; and
4. what risks you take when you use this procedure rather than the regular dissolution procedure.

If you wish to use the summary dissolution procedure, you must, at the time you file the joint petition, sign a statement that says you have read and understood this booklet. It is important for you to read the whole booklet very carefully.

Save this booklet for at least six months if you decide to start a summary dissolution. If you decide you want to stop the summary dissolution process and revoke your petition, it will tell you how to do that.

SPECIAL WARNING

If you are an undocumented person who became a lawful permanent resident on the basis of your marriage to a U.S. citizen or to a lawful permanent resident, obtaining a dissolution within two years of your marriage may lead to your deportation. You should consult a lawyer before obtaining a divorce.

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* A property settlement agreement is an agreement that the two of you write or have someone write for you after you fill out the worksheets in this booklet. The agreement spells out how you will divide what you own and what you owe.

II. SOME TERMS YOU NEED TO KNOW

In the following pages, you will often see the terms *community property, separate property,* and *community obligations.* Those terms are explained in this section.

As a married couple or domestic partners, the two of you are, in the eyes of the law, a single unit. There are certain things that you **own together** rather than separately. And there may be certain debts that you **owe together.** If one of you borrows money or buys something on credit, the other one can be made to pay.

If your marriage or domestic partnership breaks up, you become two separate individuals again. Before that can happen, you have to decide what to do with the things you *own* as a couple and the money you *owe* as a couple.

The laws that cover these questions contain the terms *community property, separate property,* and *community obligations.* To understand what these terms mean, you should have a clear idea of the **length of time you lived together as spouses or domestic partners.** This is the period between the day you married or registered your domestic partnership and the day you separated.

It may not be easy to decide exactly when you separated. In most cases, the day of the separation is the day the couple stopped living together. However, you may want to choose the day when you definitely decided to get a divorce and took some action to show this (like telling your spouse or domestic partner that you wanted a divorce).

Community Property

Community property is everything spouses or registered domestic partners **own together.**

In most cases that includes

1. money you now have that either of you earned during the time you were living together as spouses or domestic partners; and
2. anything either of you bought with money earned during that period. It does not matter if only one of you earned or spent the money.

Separate Property

Separate property is everything spouses or registered domestic partners **own separately from each other.**

In most cases that includes

1. anything either of you owned before you got married or registered your domestic partnership;
2. anything either of you earned or received after your separation; and
3. anything either of you received, as a gift or by inheritance, at any time.

Community Obligations

Community obligations are the debts spouses or registered domestic partners **owe together.**

In most cases that includes anything you still owe on any debts either of you acquired during the time you were living together as spouses or registered domestic partners. (For instance, if you bought furniture on credit while you were married or domestic partners and living together, the unpaid balance is a part of your community obligations.) It usually does not matter if the debt was in the name of one spouse or domestic partner only, like on a credit card.

NOTE: If you have any questions about your separation date or about your property, it would be good to see a lawyer as these issues can be complicated. Also, if you lived together before your marriage or domestic partnership, you may wish to see a lawyer about possible additional rights either of you may have.

III. WHO CAN USE THE SUMMARY DISSOLUTION PROCEDURE?

You can use the summary dissolution procedure only if **all** of the following statements are true about you at the time you file the *Joint Petition for Summary Dissolution* (form FL-800). Check this list very carefully. If even *one* of these statements is not true for you, you cannot get a divorce in this way.

____ 1. We have both read this booklet, and we both understand it.

____ 2. We have been married or registered as domestic partners five years or less between the date that we got married and/or registered our domestic partnership and the date we separated. *(Note that if you are trying to end both a marriage AND a domestic partnership at the same time through a summary dissolution, both your marriage and domestic partnership must have lasted five years or less.)*

____ 3. No children were born to the two of us together before or during our marriage and/or domestic partnership.

____ 4. We have no adopted children under 18 years of age.

____ 5. Neither one of us is pregnant.

____ 6. Neither of us owns any part of any land or buildings.

____ 7. Our community property is not worth more than $47,000. (Do not count cars in this total.)

____ 8. Neither of us has separate property worth more than $47,000. (Do not count cars in this total.)

____ 9. The total of our community obligations (other than cars) is $6,000 or less.**

For deciding on statements 7, 8, and 9, use the guide on pages 5–11.

____ 10. a. At least one of us has lived in California for the past six months or longer *and* has lived in the county where we are filing for dissolution for the past three months or longer; or

b. We are only asking to end a domestic partnership registered in California; or

c. We are the same sex and were married in California but are not residents of California. Neither of us lives in a place that will allow us to divorce. We are filing this case in the county in which we married.

____ 11. We have prepared and signed an agreement that states how we want our possessions and debts to be divided between us (or states that we have no community property or community obligations).

____ 12. We have both signed the joint petition and all other papers needed to carry out this agreement.

____ 13. Together with the joint petition, we will turn in the judgment of dissolution forms and two self-addressed stamped envelopes to the superior court.

____ 14. We both want to end the marriage and/or domestic partnership because of serious, permanent differences.

____ 15. We have both agreed to use the summary dissolution procedure rather than the regular dissolution procedure.

____ 16. We are both aware of the following facts:

a. There is a six-month waiting period, and either of us can stop the divorce at any time during this period.

b. The date that appears on the *Judgment of Dissolution of Marriage and Notice of Entry of Judgment* (form FL-825) we receive from the court as the "effective date" of the dissolution is the date our divorce will be final, unless one of us has asked to stop the divorce prior to that effective date.

c. After the dissolution becomes final, neither of us has any right to expect money or support from the other except that which is included in the property settlement agreement.

d. By choosing the summary dissolution procedure, we give up certain legal rights that we would have if we had used the regular dissolution procedure. These rights are explained on page 4.

IV. AN IMPORTANT DIFFERENCE BETWEEN SUMMARY DISSOLUTION AND REGULAR DISSOLUTION

With a regular dissolution, either spouse or domestic partner can ask for a court hearing or trial. And with a regular dissolution, if either spouse or domestic partner is unhappy with the judge's final decision, it is possible to challenge that decision. This can be done, for example, by asking for a new trial. It is also possible to **appeal** the decision by taking the case to a higher court.

With a summary dissolution, there is no trial or hearing. Couples who choose this method of getting a divorce do not have the right to ask for a new trial (since there is no trial) or the right to appeal the case to a higher court.

There are, however, some cases in which a divorce agreement under a summary dissolution can be challenged. You will have to see a lawyer about this. The court *may* have the power to set aside the divorce if you can show that one of the following things happened:

1. **You were treated unfairly in the property settlement agreement.**
   This is possible if you find out that the things you agreed to give your spouse or domestic partner were much more valuable than you thought at the time of the dissolution.

2. **You went through the dissolution procedure against your will.**
   This is possible if you can show that your spouse or domestic partner used threats or other kinds of unfair pressure to get you to go along with the divorce.

3. **There are serious mistakes in the original agreement.**
   Some kinds of mistakes can make the dissolution invalid, but you will have to go to court to prove the mistakes. It may be that one or both of you had a lot of property that you had forgotten about when you drew up the property settlement agreement. Or maybe a bank account mentioned in the agreement had much more money or much less money in it than your agreement states.

4. **Neither of you complied with preliminary disclosure requirements.**

   California law requires that you fully share all information about your property and debts as well as your income. You have to share this information before you sign your property settlement agreement.

   In summary dissolution cases, this means that you and your spouse or domestic partner must each complete and exchange: (1) an *Income and Expense Declaration* (form FL-150), (2) all tax returns you filed in the last two years, and (3) the property worksheets on pages 7, 9, and 11 (or a *Declaration of Disclosure* (form FL-140 and either a *Schedule of Assets and Debts* (form FL-142) or a *Property Declaration* (form FL-160)).

   In addition, each spouse or domestic partner must complete and give to the other spouse or domestic partner a written statement about any investment opportunity, business opportunity, or other income-producing opportunity that developed since the date you separated which was based on any investment made, significant business done, or other income-producing opportunity that was presented to you between the date you married or became domestic partners and the date you separated.

Correcting mistakes and unfairness in a summary dissolution proceeding can be expensive, time-consuming, and difficult. It is very important for both of you to be honest, cooperative, and careful when you or your lawyers do the paperwork for the dissolution.

V. HOW DO YOU FIGURE OUT THE VALUE OF YOUR PROPERTY AND THE AMOUNT OF YOUR DEBTS?

Section III, page 3, lists statements that must be true if you want to use the summary dissolution procedure.

Statement 7 reads: "Our community property is not worth more than $47,000."

Your community property is the money and things you own jointly as spouses or domestic partners. This was explained on page 2. The value of your community property is determined by adding together (1) the amount of **money** you have as community property and (2) the "fair market value" of the **possessions** you have as community property.

The **fair market value** is an estimate of the amount of money you could get if you sold these items to a stranger—for example, through a classified ad in the newspaper. It does **not** mean what you paid for it originally, and it does **not** mean how much it would cost you to replace it if you lost it.

One way of estimating the fair market value of your goods is to use prices for equivalent items in other people's classified ads for secondhand goods.

Three kinds of items go into figuring out your community property:

1. Money (as in bank accounts and credit union accounts);
2. Things you own outright (furniture that is already paid for, for example); and
3. Things you are buying on credit.

When you include things you still owe money on, subtract the amount of money you still owe on them from the fair market value.

You should not include the value of a car in this list.

Statement 8 reads: "Neither of us has separate property worth more than $47,000."

Separate property is property that each spouse or domestic partner owns separately. The term is explained on page 2. Separate property includes the same kinds of things used in determining community property. And again, you should not include cars in this list.

Statement 9 reads: "The total of our community obligations (other than cars) is $6,000 or less."

Your community obligations are the debts that you and your spouse or domestic partner owe jointly. The term is explained on page 2. List all the debts you have that you took on while you were living together as spouses or domestic partners. If you borrowed money before you got married or registered your domestic partnership, you do **not** have to include that in your community obligations. If you bought furniture on credit after you got married or registered your domestic partnership but before you separated, you **have to** include the amount of money you still owe on the furniture. If you bought a stereo after you separated, you do **not** have to include that.

Do not include car loans in this list.

NOTICE: The law for summary dissolution allows you to leave out cars when you figure out whether you are **eligible** for this kind of divorce. But if you do have cars as part of your community property, you still have to decide who is going to own them (and who is going to pay for them) after your divorce. You must include them in your property settlement agreement.

Worksheets to help you figure out these amounts are found on pages 6–11. You may use the following forms in this booklet to figure out the total of your community and separate property assets and obligations: (1) the worksheet on pages 7 (Value of Separate Property), (2) the worksheet on page 9 (Value and Division of Community Property), and (3) the worksheet on page 11 (Community Obligations and Their Division). Sample forms showing how to fill out those worksheets are on pages 6, 8, and 10.

PETITIONER 1: Pat PETITIONER 2: Chris	CASE NUMBER:

VI. SAMPLE WORKSHEET FOR DETERMINING VALUE OF SEPARATE PROPERTY

This worksheet will help you determine whether you are eligible to use the summary dissolution procedure. The total fair market value of the **separate property of one spouse/domestic partner** cannot be more than $47,000. The total fair market value of the **separate property of the other spouse/domestic partner** cannot be more than $47,000. Separate property is anything that either of you owned or earned before you got married or registered your domestic partnership, anything you earned or bought after your separation, and anything that was given to just one of you as a gift during your marriage or domestic partnership. Do not include cars.

Note: The information on this form is for an imaginary couple, Pat and Chris, who are married. (When you fill out your worksheet, use your information.)

A. Bank accounts, credit union accounts, retirement funds, cash value of insurance policies, etc.

Item	Pat's Property—Fair Market Value	Chris' s Property—Fair Market Value
Credit union savings—Pat (before marriage)	420	
Savings bonds—Chris (bought before marriage)		250
Pension plan benefits—Pat (before marriage and after separation)	1500	
Pension plan benefits—Chris (before marriage and after separation)		1300

B. Items owned outright

Item	Pat's Property—Fair Market Value	Chris' s Property—Fair Market Value
Clothes—Pat (bought before marriage)	350	
Stocks—Pat (birthday present from father)	375	
Furniture—Pat (owned before marriage)	460	
Camera—Chris (owned before marriage)		229
Wristwatch—Chris (bought after separation)		142
Clothes—Chris (bought after separation)		250

C. Items being bought on credit

Item	Fair Market Value	Minus What's Owed =	Pat's Property—Fair Market Value	Chris' s Property—Fair Market Value
TV set—Pat (after separation)	400	350	50	
Clothes—Pat (after separation)	220	170	50	

GRAND TOTALS: Pat and Chris SEPARATE PROPERTY	3205	2171

PETITIONER 1: PETITIONER 2:	CASE NUMBER:

VI. WORKSHEET FOR DETERMINING VALUE OF SEPARATE PROPERTY

This worksheet will help you determine whether you are eligible to use the summary dissolution procedure. The total fair market value of the **separate property of one spouse/domestic partner** cannot be more than $47,000. The total fair market value of the **separate property of the other spouse/domestic partner** cannot be more than $47,000. Separate property is anything that either of you owned or earned before you got married or registered your domestic partnership, anything you earned or bought after your separation, and anything that was given to just one of you as a gift during your marriage or domestic partnership. Do not include cars.

A. Bank accounts, credit union accounts, retirement funds, cash value of insurance policies, etc. **Item**			**PETITIONER 1 Property— Fair Market Value**	**PETITIONER 2 Property— Fair Market Value**
B. Items owned outright **Item**				
C. Items being bought on credit				
Item	**Fair Market Value**	**Minus What's Owed =**		
GRAND TOTALS: PETITIONER 1'S AND PETITIONER 2'S SEPARATE PROPERTY				

PETITIONER 1: Pat PETITIONER 2: Chris	CASE NUMBER:

VI. SAMPLE WORKSHEET FOR DETERMINING VALUE AND DIVISION OF COMMUNITY PROPERTY

Note: The information on this form is for an imaginary couple, Pat and Chris, who are married. (When you fill out your worksheet, use your information.)

This side of the sheet will help you determine whether you are **eligible** to use the summary dissolution procedure. The grand total value of your community property cannot be more than $47,000.

This side of the sheet will help you decide on a fair division of your property. It will help you prepare your property settlement agreement.

A. Bank accounts, credit union accounts, retirement funds, cash value of insurance policies, etc.

Item	Amount	Pat Receives	Chris Receives
Savings account	150	150	
Life insurance (cash value)	250	250	
Pension plan—Pat	600	600	
Pension plan—Chris	500		500
Checking account	180		180
Subtotal A	1680	1000	680

B. Items you own outright (for example, stocks and bonds, sports gear, furniture, household items, tools, interests in businesses, jewelry; do not include cars)

Item	Fair Market Value	Pat Receives	Chris Receives
Furniture & furnishings— Pat's apartment	775	775	
Furniture & furnishings—Chris's apartment	300		300
Terriers season tickets	285		285
Savings bonds	200	200	
Jewelry—Pat	200	200	
Pet parrot and cage	40		40
Subtotal B	1800	1175	625

C. Items you are buying on credit (for example, stereo equipment, appliances, furniture, tools; do not include cars)

Item	Fair Market Value	Minus Amount Owed	= Net Fair Market Value	Pat Receives	Chris Receives
Stereo set	305	150	155		155
Color television	400	100	300		300
Golf clubs	350	50	300		300
		Subtotal C	755	0	755
Grand total value of community property = A + B + C			4235	2175	2060

PETITIONER 1: PETITIONER 2:	CASE NUMBER:

VI. WORKSHEET FOR DETERMINING VALUE AND DIVISION OF COMMUNITY PROPERTY

This side of the sheet will help you determine whether you are **eligible** to use the summary dissolution procedure. The grand total value of your community property cannot be more than $47,000.

This side of the sheet will help you decide on a fair division of your property. It will help you prepare your property settlement agreement.

A. Bank accounts, credit union accounts, retirement funds, cash value of insurance policies, etc.

Item	Amount	PETITIONER 1 Receives	PETITIONER 2 Receives
Subtotal A			

B. Items you own outright (for example, stocks and bonds, sports gear, furniture, household items, tools, interests in businesses, jewelry; do not include cars)

Item	Fair Market Value	PETITIONER 1 Receives	PETITIONER 2 Receives
Subtotal B			

C. Items you are buying on credit (for example, stereo equipment, appliances, furniture, tools; do not include cars)

Item	Fair Market Value	Minus Amount Owed =	Net Fair Market Value	PETITIONER 1 Receives	PETITIONER 2 Receives
		Subtotal C			
Grand total value of community property = A + B + C					

PETITIONER 1: Pat PETITIONER 2: Chris	CASE NUMBER:

VI. SAMPLE WORKSHEET FOR DETERMINING COMMUNITY OBLIGATIONS AND THEIR DIVISION

Note: The information on this form is for an imaginary couple, Pat and Chris, who are married. (When you fill out your worksheet, use your information and make sure you indicate if you are married, in a domestic partnership, or both.

This side of the worksheet will help you determine whether you are **eligible** to use the summary dissolution procedure. The total amount of your community obligations (debts) cannot be more than $6,000. Do not include car loans. Be sure you include any other debts you took on while you were living together as spouses or domestic partners. List the amount you owe on the items from your **Worksheet for Determining Value and Division of Community Property**. Then add all other debts and bills, including loans, charge accounts, medical bills, and taxes you owe.

This side of the worksheet will help you decide on a fair way to divide up your community obligations. You will use this information in preparing a **property settlement agreement.**

Item	Amount Owed	Pat Will Pay	Chris Will Pay
Stereo set	150		150
Color TV	100		100
Golf clubs	50		50
Dr. R.C. Himple	74		74
Sam's Drugs	32		32
College loan	500		500
Cogwell's charge account	275	275	
Mister Charge account	68		68
Green's Furniture	123	123	
Dr. Irving Roberts	37	37	
Pat's parents	150	150	
TOTAL	1559	585	974
		Pat's Share of Community Obligations	**Chris's Share of Community Obligations**

PETITIONER 1: PETITIONER 2:	CASE NUMBER:

VI. WORKSHEET FOR DETERMINING COMMUNITY OBLIGATIONS AND THEIR DIVISION

This side of the worksheet will help you determine whether you are **eligible** to use the summary dissolution procedure. The total amount of your community obligations (debts) cannot be more than $6,000. Do not include car loans. Be sure you include any other debts you took on while you were living together as spouses or domestic partners. List the amount you owe on the items from your **Worksheet for Determining Value and Division of Community Property**. Then add all other debts and bills, including loans, charge accounts, medical bills, and taxes you owe.

This side of the worksheet will help you decide on a fair way to divide up your community obligations. You will use this information in preparing a **property settlement agreement.**

Item	Amount Owed	Petitioner 1 Will Pay	Petitioner 2 Will Pay
TOTAL			
		Petitioner 1 Share of Community Obligations	Petitioner 2 Share of Community Obligations

VII. WHAT SHOULD BE INCLUDED IN THE PROPERTY SETTLEMENT AGREEMENT?

A property settlement agreement should contain at least five parts:

I. **Preliminary Statement**
This part identifies the spouses or domestic partners, states that the marriage and/or domestic partnership is being ended, and states that both spouses or domestic partners agree on the details of the agreement.

II. **Division of Community Property**
This part has two sections:
1. What the one spouse or domestic partner receives; and
2. What the other spouse or domestic partner receives.

III. **Division of Community Obligations**
This part has two sections:
1. The amount one spouse or domestic partner must pay and whom he or she must pay it to.
2. The amount the other spouse or domestic partner must pay and whom he or she must pay it to.

IV. **Waiver of Spousal Support**
This part states that each spouse or domestic partner gives up all rights of financial support from the other.

V. **Date and Signature**
Both spouses or domestic partners must write the date and sign the agreement.

An example of a property settlement agreement is found on pages 13–15.

VIII. SAMPLE PROPERTY SETTLEMENT AGREEMENT

Below is a sample of an acceptable **property settlement agreement.** You may use it as a model for your own agreement if you wish. You can find a fill-in-the blanks version of this agreement at *www.courts.ca.gov/selfhelp* in the section on summary dissolution.

- The parts that are underlined will fit most cases. You can copy these parts for your own agreement. Since many of the words have special meanings in the law, you may wish to talk to a lawyer if you want to change the words.
- The parts printed in regular type (not underlined) are based on an imaginary couple. You will need to replace these parts with items that apply to your situation.
- The numbered notes in *italics* in the right-hand column are **not** part of the agreement. They are there to help you understand it. (You will not need the small [1] and [2] in the sample for your agreement.)
- The sample below is for a married couple, so it refers to marriage. If you are ending a domestic partnership, you should say that in your agreement. If you are ending both a marriage and a domestic partnership with the same person, say both and write in the dates of both your marriage and the registration of your domestic partnership.

Remember, you can divide the items any way you want. As long as you both agree, the court will accept it. If you cannot agree about the division of your property and debts, you should file a regular dissolution.*

PROPERTY SETTLEMENT AGREEMENT

1. We are Chris P. Smedlap, hereafter called Chris, and Pat T. Smedlap, hereafter called Pat.[1] We were married on October 7, 2015, and separated on December 5, 2019. Because irreconcilable differences[2] have caused the permanent breakdown of our marriage, we have made this agreement together to settle once and for all what we owe to each other and what we can expect from each other. Each of us states here that nothing has been held back and that we have honestly included everything we could think of in listing the money and goods that we own; and each of us states here that we believe the other has been open and honest in writing this agreement. Each of us agrees to sign and exchange any papers that might be needed to complete this agreement.

[1] *If you prefer, you can also write "hereafter called "Wife" or "Husband" or "Partner A" or "Partner B" whichever applies. Just make sure it is clear to whom you are referring.*

[2] *This means there are problems in your marriage or domestic partnership that you think can never be solved.* ***Irreconcilable differences*** *is the only legal grounds for getting a* ***summary dissolution.***

* At the trial in a regular dissolution, a judge would set a value on and divide community property and debts into two approximately equal parts as provided by California law.

Each of us also understands that even after a *Joint Petition for Summary Dissolution* is filed, this entire agreement will be canceled if either of us revokes the dissolution proceeding.[3]

II. Division of Community Property[4]

We divide our community property as follows:

1. Chris transfers to Pat as Pat's sole and separate property:

A. All household furniture and furnishings located at the apartment at 180 Needlepoint Way, San Francisco.[5]

B. All rights to cash in savings account at Home Savings.

C. All cash value in life insurance policy insuring life of Pat through Sun Valley Life Insurance.

D. All retirement and pension plan benefits earned by Pat during marriage.

E. Two U.S. Savings Bonds, Series E.

F. Pat's jewelry.

G. 2013 Chevrolet 4-door sedan.

2. Pat transfers to Chris as Chris's sole and separate property:

A. All household furniture and furnishings located at the apartment on 222 Bond Street, San Francisco.

B. All retirement and pension plan benefits earned by Chris during marriage.

C. Season tickets to Golden State Terriers basketball games.

D. One stereo set.

E. One set of Jock Nicklaus golf clubs.

F. One RAC color television.

G. 2013 Ford station wagon.

H. One pet parrot named Arthur, plus cage and parrot food.

I. All rights to cash in checking account in Bank of America.

[3] *This means that the property agreement is a part of the dissolution proceeding. If either of you decides to stop the dissolution proceeding by turning in a* Notice of Revocation of Petition for Summary Dissolution *(form FL-830) (see page 18), this entire agreement will be canceled.*

[4] *Community property is property that you own as a couple (see page 2).*

If you have no community property, replace Part II with the simple statement ***"We have no community property."***

[5] *If the furniture and household goods in one apartment are to be divided, they may have to be listed item by item.*

III. Division of Community Property (Debts)[6]

1. Chris will pay the following debts and will not at any time hold Pat responsible for them:

   A. Mister Charge account.

   B. Debt to Dr. R.C. Himple.

   C. Debt to Sam's Drugs.

   D. Debt to UC Berkeley for college education loan to Chris.[7]

   E. Debt to Golf Store for golf clubs.

   F. Debt to Everything Electronics for color TV and stereo set.

   G. Debt to Used Ford Store for 2013 Ford.

2. Pat will pay the following debts and will not at any time hold Chris responsible for them:

   A. Cogwell's charge account.

   B. Debt to Pat's parents, Mr. and Mrs. Joseph Smith.

   C. Debt to Green's Furniture.

   D. Debt to Dr. Irving Roberts.

   E. Debt to Friendly Finance Company for 2013 Chevrolet 4-door Sedan.

IV. Waiver of Spousal/Partner Support[8]

Each of us waives any claim for spousal/domestic partner support now and for all time.

V. Dated: Dated:

________________________ ________________________

Chris P. Smedlap Pat T. Smedlap

[6] *If you have no unpaid debts, replace Part III with the simple statement* ***"We have no unpaid community obligations."***

[7] *A general rule for dividing debts is to give the debt over to the person who benefited more from the item. In the sample agreement, because Chris received the education, Chris should pay off the loan.*

[8] *You each give up the right to have your spouse or partner support you.*

IX. WHAT STEPS DO YOU HAVE TO TAKE TO GET A SUMMARY DISSOLUTION?

If after reviewing the information in this booklet, you feel your marriage or your domestic partnership will qualify for a summary dissolution, you should carefully go through the following 15 steps. You can fill out the forms, worksheets, and agreements in the summary dissolution section

- online, for free, at *www.courts.ca.gov/selfhelp;*
- with a typewriter; or
- with neat printing.

1. _____ Complete and give your spouse or domestic partner a list of community and separate property assets and obligations. This information is needed to comply with the requirement to exchange a preliminary declaration of disclosure in summary dissolution cases. Use the forms listed below in 1a or 1b for this purpose.

    a. _____ A *Declaration of Disclosure* (form FL-140) and a *Schedule of Assets and Debts* (form FL-142) (or a *Property Declaration* (form FL-160)). These forms are not included in this booklet. You may find them online at *www.courts.ca.gov/forms.htm.* Give one copy to your spouse or domestic partner and keep one for your records; or

    b. _____ The worksheets in this booklet on pages 7, 9, and 11.

        (1) _____ Turn to page 7 and complete the Worksheet for Determining Value of Separate Property. See page 6 for an example. Make one extra copy of your worksheet after it has been completed. Give one copy to your spouse or domestic partner and keep one for your records.

        (2) _____ Turn to page 9 and complete the Worksheet for Determining Value and Division of Community Property. See page 8 for an example. Make one extra copy of your worksheet after it has been completed. Give one copy to your spouse or domestic partner and keep one for your records.

        (3) _____ Turn to page 11 and complete the Worksheet for Determining Community Obligations and Their Division. See page 10 for an example. Make one extra copy of your worksheet after it has been completed. Give one copy to your spouse or domestic partner and keep one for your records.

2. _____ Along with the documents listed in 1, give your spouse or domestic partner all tax returns you filed in the last two years. Give one copy to your spouse or domestic partner and keep one copy for your records.

3. _____ Fill out an *Income and Expense Declaration* (form FL-150). You each need to fill out this form and give it to your spouse or domestic partner before you sign your property settlement agreement or complete your divorce. Make one extra copy of your form after it has been completed. Give one copy to your spouse or partner and keep one for your records.

4. _____ Complete a written statement about business and investments opportunities and give it to your spouse or domestic partner before you sign a property settlement agreement or complete your divorce. Keep a copy for your records.

    Note: The written statement must describe any investment opportunity, business opportunity, or other income-producing opportunity that developed since the date you separated which was based on any investment made, significant business done, or other income-producing opportunity that was presented to you between the date you married or became domestic partners and the date you separated (there is no specific form for this purpose).

5. _____ Type or print your property settlement agreement if you have any property or debts to divide. Both of you must date and sign it. Make two extra copies. See pages 12–15 for an example and instructions. You can also find a version that you can fill in online at *www.courts.ca.gov/selfhelp* in the information on summary dissolution at *http://courts.ca.gov/1241.htm*.

6. _____ Fill out a *Joint Petition for Summary Dissolution* (form FL-800). *Both* of you must sign and date this petition. Make two extra copies of this form. (This is the form you need to ***START*** the process.)

    Note: *When signing your joint petition and your property settlement agreement, you are signing these documents under penalty of perjury under the laws of the State of California, which is the same as being sworn to testify in court.*

    You may not sign each other's name.

7. _____ Make three sets of forms that include copies of your property settlement agreement and a copy of your *Joint Petition for Summary Dissolution* (form FL-800). Staple each set together.

8. _____ Fill out the top portion of the *Judgment of Dissolution and Notice of Entry of Judgment* (form FL-825) and make three copies of it.

9. _____ Make one extra copy of a blank *Notice of Revocation of Petition for Summary Dissolution* (form FL-830) so each of you has one, and hold on to it. This is the form you would need to **STOP** the process. You may wish to use it during the waiting period if you change your mind and want to stop the process. You should keep one copy. See page 18 for more information.

10 _____ Take your *Joint Petition for Summary Dissolution* (form FL-800), *Judgment of Dissolution and Notice of Entry of Judgment* (form FL-825), and all of your copies to the superior court clerk's office together with two self-addressed, stamped envelopes (one addressed to each spouse or domestic partner). The location of your superior court clerk's office can be found in the phone book or online at *www.courts.ca.gov/find-my-court.htm.* The clerk will stamp the date on all copies, will keep one copy of each document, and will return the other two to you. One copy is for each spouse or domestic partner.

11. _____ Pay the superior court clerk's filing fee. If you cannot afford to pay the filing fee, you may qualify for a fee waiver based on your income. If one of you qualifies for a fee waiver but the other one does not, the one who does not qualify will have to pay the filing fee. To request a fee waiver, see *Information Sheet on Waiver of Court Fees and Costs* (form FW-001-INFO). You will need to prepare a *Request to Waive Court Fees* (form FW-001) and an *Order on Court Fee Waiver* (form FW-003).

12. _____ The clerk will file your joint petition and return the copies to you and your spouse or partner. The court may also process the *Judgment of Dissolution* at that time, in the next few weeks, or after the six-month waiting period has expired and give or mail it to you and your spouse or domestic partner. The *Judgment of Dissolution and Notice of Entry of Judgment* (form FL-825) will have a date on which the dissolution ending your marriage, domestic partnership, or both will be final. That is the effective date of your dissolution and it will be six months from the date you file your joint petition. The six-month waiting period is mandated by law.

13. _____ Put your copies of all documents in a safe place.

14. _____ Wait for six months. If either one of you wants to stop the summary dissolution case, fill out and file a *Notice of Revocation of Petition for Summary Dissolution* (form FL-830) before the six months run out.

15. _____ On the day that appears on your *Judgment of Dissolution* and *Notice of Entry of Judgment* (form FL-825) as the effective date of your dissolution:

   a. Your marriage or domestic partnership (or both) is ended;
   b. The agreements you made in your property settlement agreement are binding—you will then own the property assigned to you, and you will have to pay the bills assigned to you;
   c. Except for those agreements, you and your spouse or domestic partner have no further obligations to each other; and
   d. You are legally free to remarry or register a new domestic partnership.

REMEMBER: Either of you can stop the process by filling out a *Notice of Revocation of Petition for Summary Dissolution* (form FL-830) and bringing it to the superior court clerk during the six-month waiting period before the date your dissolution is effective according to the *Judgment of Dissolution and Notice of Entry of Judgment* (form FL-825) that you received from the court.

X. WHAT YOU SHOULD KNOW ABOUT REVOCATION

It is important to realize that the *Notice of Revocation of Petition for Summary Dissolution* (form FL-830) is not just another form you are supposed to fill out and turn in.

Do not fill it out and do not bring it to the superior court clerk unless you want to stop the divorce!

What is the notice of revocation for?
This is the form you need if you want to stop the divorce. **Revoking** the agreement is canceling or stopping it.

What reasons are there for revoking?

There are three reasons you might have for wanting to stop the summary dissolution:

1. You have decided to return to your spouse or domestic partner and continue the marriage or domestic partnership;
2. You want to change over to the regular dissolution as a better way of getting your divorce; or
3. You learn that one of you is pregnant.

Why might you want to change over to the regular dissolution?
You may come to believe that you will get a better settlement if you go to court than with the agreement you originally made with your spouse or domestic partner. (Maybe, after thinking it over, you feel you are not receiving a fair share of the community property.)

How do you do it?
At the time you picked up the joint petition forms, you and your spouse or partner also received a blank *Notice of Revocation of Petition for Summary Dissolution* (form FL-830). Fill out the form, sign it, make two copies, and bring them to the superior court clerk's office. You must also send a copy of form FL-830 to your spouse or domestic partner by first-class mail, postage prepaid, to his or her last known address. You can do this alone. This form does not need your spouse's or partner's signature.

If you do this at any time during the six-month waiting period, before the effective date of your dissolution, you will stop this divorce proceeding.

Can the dissolution be stopped once the waiting period is over?
NO. After the date the court wrote on your *Judgment of Dissolution and Notice of Entry of Judgment* (form FL-825) as the date your marriage or domestic partnership is ended (the date the divorce is effective), you can no longer revoke the dissolution by filing the revocation form. You may have other legal options, but you will need to talk to a lawyer about them.

If you change over to a regular dissolution, what happens to the part of the waiting period that has passed? You can apply the amount of time you waited on the summary dissolution to your regular dissolution. For example, if four months went by before you decided to revoke the summary dissolution, the waiting period for the regular dissolution will be shortened by four months.

However, you can save this time **only** if you file for a regular dissolution within 90 days of revoking the summary dissolution.

XI. SHOULD YOU SEE A LAWYER?

Must you have a lawyer to use the summary dissolution procedure?

No. You can do the whole thing by yourselves. But it would be wise to see a lawyer before you decide to do it yourselves. You should not rely on this booklet only. It is not intended to take the place of a lawyer.

If you want legal advice, does that mean you have to hire a lawyer?

No. You may hire a lawyer, of course, but you can also just visit a lawyer once or twice for advice on how to carry out the dissolution proceeding. Do not be afraid to ask the lawyer in advance what fee will be charged. It may be surprisingly inexpensive to have a lawyer handle your divorce.

Do you have to accept your lawyer's advice?

No, you do not. And if you are not pleased with what one lawyer advises, you can feel free to go to another one.

How can a lawyer help you with the summary dissolution procedure?

First, a lawyer can advise you, on the basis of your personal situation, whether you ought to use the regular dissolution procedure rather than the summary dissolution procedure.

Second, a lawyer can read your property settlement agreement to help you figure out if you have thought of everything you should have. (It is easy to forget things you do not see very often, such as savings bonds and safe deposit boxes.)

Third, in many situations it is not easy to figure out what should count as community property and what should count as separate property. Suppose one of you had money before the marriage (or domestic partnership) and put it into a bank account in both of your names and then both of you used money from that account. It may not be easy to decide how the money remaining in that account should be divided. A lawyer can advise you on how to make these decisions.

Fourth, there may be special situations in which your property settlement is not covered by the sample agreement on pages 13–15.

A lawyer can help you put the agreement in words that are legally precise and cannot be challenged or misinterpreted later.

Where can you find a lawyer?

You can locate organizations that can help you find a lawyer in the yellow pages of your telephone directory under "Attorneys," "Attorney Referral Service," or "Lawyer Referral Service." In many cases you will be able to find an attorney who will charge only a small fee for your first visit. You can get information about free or low-cost legal services through the county bar association in your county. You can find information about certified lawyer referral services at *www.courts.ca.gov/selfhelp* or on the State Bar website at *www.calbar.ca.gov.*

XII. SOME GENERAL INFORMATION

What about income taxes?
If you have filed a joint tax return, both of you will still be responsible for paying any unpaid taxes even after your divorce.

If you are receiving a tax refund, you should agree in the property settlement agreement on how it should be divided.

The amount of money that you will owe, or that will be taken out of your paycheck, for income taxes may be greater after you are single again. If that is the case, you should prepare yourself for a bigger tax obligation.

It would be a good idea to consult the Internal Revenue Service or a tax expert on how the divorce is going to affect your taxes. You should probably do this before you make your property settlement agreement.

What about bank accounts and credit cards?
If you have a joint bank account, it may be a good idea to close it when you separate and get two individual bank accounts. That way it will be easier to keep your money separate.

If you have credit card accounts that you both have been using, you should destroy the cards and take out separate accounts.

What about cars?
If both of your names are on a title to a car and you agree that one of you is going to own the car, you need to take action to change the ownership. You should call or visit the Department of Motor Vehicles to find out how to do that. You should also talk to the lender to get the debt into one person's name and change the insurance coverage after both the title and debt are transferred.

What if your spouse or domestic partner does not pay his or her debts?
If your spouse or domestic partner does not pay a debt that is his or her responsibility, the person who loaned the money may be able to collect it from you. But then a court may order your spouse or domestic partner to reimburse you. If you have any reason to worry about this, a lawyer can explain your rights to you.

Can you take back your former name?
If you changed your name when you were married or registered your domestic partnership, you have the right to give up that name and get your former name back. You can do this by requesting it in the joint petition. If you do not request this in the joint petition, you can file a form called *Ex Parte Application for Restoration of Former Name After Entry of Judgment and Order* (form FL-395). Your spouse or domestic partner cannot make you change your name.

What if I am not happy with my final judgment?
When your divorce is final, all your rights and duties connected with your marriage or domestic partnership have ended and you cannot appeal. But if you decide later that you were cheated or pressured by your spouse or domestic partner, or if you believe that a mistake was made in the paperwork connected with the divorce, the court may be able to set aside the divorce. A lawyer can explain your rights.

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Print this form | Save this form | Clear this form

Item number: 15

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee action requested [Choose from drop down menu below]**:**
Submit to JC (without circulating for comment)

Rules Committee Meeting Date: April 14, 2021

Title of proposal: Child Support: Revise Income Withholding for Support and Related Instructions

Proposed rules, forms, or standards *(include amend/revise/adopt/approve):*
Revise forms FL-195 and FL-196

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee

Staff contact (name, phone and e-mail): John Henzl, 415-865-7607, john.henzl@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by Rules Committee date: November 2, 2020
Project description from annual agenda: Item 16, Develop rule and form changes as necessary to correct technical errors meeting the criteria of rule 10.22(d)(2).

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

Information for JC Staff regarding form translations:

- *List any amended forms in this proposal that have already been translated:*
- *List any new forms that require translation by statute or that you will request to be translated:*

JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

Item No.:
For business meeting on: May 20–21, 2021

Title
Child Support: Revise Income Withholding for Support and Related Instructions

Rules, Forms, Standards, or Statutes Affected
Revise forms FL-195 and FL-196

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Agenda Item Type
Action Required

Effective Date
September 1, 2021

Date of Report
April 6, 2021

Contact
John Henzl, 415-865-7607
john.henzl@jud.ca.gov

DRAFT

Executive Summary

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council approve revisions to *Income Withholding for Support* (form FL-195) and *Income Withholding for Support—Instructions* (form FL-196) to comply with Family Code section 5208 and federal law.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective September 1, 2021, approve revisions to *Income Withholding for Support* (form FL-195) and *Income Withholding for Support—Instructions* (form FL-196) to comply with Family Code section 5208 and federal law.

The revised forms are attached at pages 5–15.

Relevant Previous Council Action

Income Withholding for Support and *Income Withholding for Support—Instructions* were developed by the federal Office of Child Support Enforcement (OCSE) and were adopted by the Judicial Council on December 2, 1999. Effective January 1, 2003, the *Income Withholding for*

Support form was renumbered as FL-195, and the corresponding instruction sheet was renumbered as form FL-196.

The federal Office of Management and Budget (OMB) has since revised both forms several times, with the Judicial Council revising forms FL-195 and FL-196 accordingly. Most recently, the OMB revised both forms on August 31, 2017, and the Judicial Council revised forms FL-195 and FL-196 consistent with the changes, without circulating the forms for public comment, effective January 1, 2018.

Analysis/Rationale

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (Pub.L. No. 104-193) instituted welfare reform, which included a requirement that OCSE develop a standardized form to collect child support payments in all IV-D cases and in non-IV-D cases with orders initially issued in the state on or after January 1, 1994.[1] Local child support agencies and the courts that are authorized under state law to issue Income Withholding Orders (IWOs) must use the OMB–approved IWO for all child support withheld by employers.

Family Code section 5208 was amended in 1999 to comply with this federal mandate and required that the federal form, *Order/Notice to Withhold Income for Child Support*,[2] be used as the IWO in any action in which child or family support is ordered.[3] Under Family Code section 5208, the Judicial Council must adopt the federal form without any modifications. Significant amounts of federal funding for both welfare and child support programs are contingent on compliance with federal child support program regulations. Thus, it is important that state forms and procedures comply with these regulations.

However, California courts and the public are provided an opportunity to comment when the OCSE solicits comments for revisions to the form via the *Federal Register*. Specifically, a notice for public comments regarding revisions to the *Income Withholding for Support* form was published in the *Federal Register* on June 15, 2020.[4]

The comments were reviewed and many of the recommended changes were incorporated into the revised form. The revised *Income Withholding for Support* form was issued on October 1, 2020, and became effective immediately, but states are allowed until September 30, 2021, to

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[1] Under Fam. Code § 5212 a "IV-D case" is "any case being established, modified, or enforced by the local child support agency."

[2] In 2007, the federal form was renamed Income Withholding for Support.

[3] PRWORA requires that states transmit orders and notices for income withholding to employers using uniform formats prescribed by the Secretary of Health and Human Services. (42 U.S.C. § 666(b)(6)(A)(ii).) A copy of title 42 of United States Code section 666(b) can be found at *https://www.law.cornell.edu/uscode/text/42/666*. Family Code section 5208 is available at *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=FAM§ionNum=5208*.

[4] The request for comment on the *Federal Register* is available at *https://www.govinfo.gov/content/pkg/FR-2020-06-15/pdf/2020-12795.pdf*.

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implement the changes to the form. The committee recommends updating forms FL-195 and FL-196 to remain consistent with the revised federal forms. These minor changes include:

- Changing the effective date from a calendar date to a text entry in the Remittance Information (section V of form FL-195), which clarifies that IWOs are effective on either the date of mailing, receipt, or service to the employer;
- Simplifying and consolidating wording of required advice to employers, and moving some of the language from Additional Information into Remittance Information; and
- Moving a link to the Child Support Portal within Additional Information to Lump Sum Payments and adding a link to Notice of Employment Termination or Income Status.

This proposal would *not* change the remittance section on page 2 of form FL-195, which the committee recommends continue to be prepopulated with the address of the California State Disbursement Unit (SDU). While the federal form cannot prepopulate the address, which is different for every state, form FL-195 has had a prepopulated address since January 1, 2015. This ensures compliance with federal and state law requiring employers to send all earnings withheld pursuant to the terms of an earnings assignment order to the SDU for disbursement to the obligee, whether the local child support agency is providing services or not.

In some rare circumstances, an attorney or litigant may need to submit an IWO dictating that child support payments should *not* be sent to the California SDU. These circumstances include an attorney who is assisting someone who resides in another state or members of a tribe who have a title IV-D program. In both circumstances, the payments are still required to be sent to an SDU, but not California's. In these uncommon situations, an IWO without the California SDU's prepopulated address could be obtained directly from the OCSE's website.[5] Since these instances are rare, the Family and Juvenile Law Advisory Committee recommends continuing to prepopulate form FL-195 with the address of the California SDU.

The federal *Income Withholding for Support* continues to require that the employee's social security number be included on the form. The intention of this requirement is that employers can do their due diligence in making sure the IWO received is for the correct employee. There may be some concerns regarding confidentiality. However, because this is a mandatory federal form, it cannot be revised to remove this item or provide further instruction to the person completing the form. Nevertheless, rule 1.201(a)(1) of the California Rules of Court provides, "If an individual's social security number is required in a pleading or other paper filed in the public file, only the last four digits of that number may be used." Compliance with this rule by the person filling out the form will protect the obligor's confidential information, while still providing sufficient information for the employer and substantially adhering to the federal form.

[5] The unedited federal forms, *Income Withholding for Support* and *Income Withholding for Support—Instructions*, are available at *https://www.acf.hhs.gov/css/resource/income-withholding-for-support-form*.

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Policy implications

None.

Comments

The Family and Juvenile Law Advisory Committee did not circulate forms FL-195 or FL-196 for comment because these forms must be implemented as approved by the OMB without any local changes. As the revisions are not substantive and are technical in nature, it is recommended that the proposal be approved without being circulated for comment under California Rules of Court, rule 10.22(d)(2). The federal forms approval process included (1) a public comment period and stakeholder input through an OCSE workgroup, (2) review of the forms and recommendations for changes by the U.S. Government Accountability Office, and (3) approval by OMB.

Alternatives considered

Because the recommended revisions to forms FL-195 and FL-196 are necessary to comply with federal requirements, no alternative actions were considered.

Fiscal and Operational Impacts

The committee is not aware of any implementation requirements, costs, or operational impacts affecting the local courts that will result from approval of the proposed forms other than standard reproduction costs and training court staff regarding changes to the revised forms. The forms will be posted on the California Courts website. Courts will not incur costs beyond those that they may incur if they provide the forms to the public.

Attachments and Links

1. Forms FL-195 and FL-196, at pages 5–15

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INCOME WITHHOLDING FOR SUPPORT

I. Sender Information: (Completed by the Sender)

Date: ____________________

☐ INCOME WITHHOLDING ORDER/NOTICE FOR SUPPORT (IWO) ☐ AMENDED IWO

☐ ONE-TIME ORDER/NOTICE FOR LUMP SUM PAYMENT ☐ TERMINATION OF IWO

☐ Child Support Enforcement (CSE) Agency ☐ Court ☐ Attorney ☐ Private Individual/Entity (Check One)

NOTE: This IWO must be regular on its face. Under certain circumstances you must reject this IWO and return it to the sender (see IWO instructions www.acf.hhs.gov/css/resource/income-withholding-for-support-instructions). If you receive this document from someone other than a state or tribal CSE agency or a court, a copy of the underlying support order must be attached.

State/Tribe/Territory ____________________ Remittance ID (include w/payment) ____________________

City/County/Dist./Tribe ____________________ Order ID ____________________

Private Individual/Entity ____________________ Case ID ____________________

II. Employer and Case Information: (Completed by the Sender)

____________________ RE: ____________________

Employer/Income Withholder's Name Employee/Obligor's Name (Last, First, Middle)

____

Employee/Obligor's Date of Birth

____________________ ____________________

Employer/Income Withholder's Address Custodial Party/Obligee's Name (Last, First, Middle)

Employer/Income Withholder's FEIN ____________________

Child(ren)'s Name(s) (Last, First, Middle)	Child(ren)'s Birth Date(s)

III. Order Information: (Completed by the Sender)

This document is based on the support order from ____________________ (State/Tribe).

You are required by law to deduct these amounts from the employee/obligor's income until further notice.

$__________ Per __________ current child support

$__________ Per __________ past-due child support - **Arrears greater than 12 weeks?** ☐ Yes ☐ No

$__________ Per __________ current cash medical support

$__________ Per __________ past-due cash medical support

$__________ Per __________ current spousal support

$__________ Per __________ past-due spousal support

$__________ Per __________ other (must specify) ____________________ .

for a **Total Amount to Withhold** of **$** __________ per __________ .

IV. Amounts to Withhold: (Completed by the Sender)

You do not have to vary your pay cycle to be in compliance with the *Order Information*. If your pay cycle does not match the ordered payment cycle, withhold one of the following amounts:

$__________ per weekly pay period $__________ per semimonthly pay period (twice a month)

$__________ per biweekly pay period (every two weeks) $__________ per monthly pay period

$__________ **Lump Sum Payment:** Do not stop any existing IWO unless you receive a termination order.

PAPERWORK REDUCTION ACT OF 1995 (Pub. L. 104-13) STATEMENT OF PUBLIC BURDEN: The purpose of this information collection is to provide uniformity and standardization. Public reporting burden for this collection of information is estimated to average two to five minutes per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information. This is a mandatory collection of information in accordance with 45 CFR 303.100 of the Child Support Enforcement Program. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995, unless it displays a currently valid OMB control number. If you have any comments on this collection of information, please contact the Employer Services Team by email at employerservices@acf.hhs.gov.

Document Tracking ID ____________________

Employer/ Income Withholder's Name: ______________________ Employer/ Income Withholder FEIN: ______________

Employee/Obligor's Name: ______________________________________ SSN: ____________________

Case ID: ______________________________ Order ID: ____

V. Remittance Information: (Completed by the Sender except for the "Return to Sender" check box.)

If the employee/obligor's principal place of employment is ____________________ (State/Tribe), you must begin withholding no later than the first pay period that occurs ___ days after the date of ________ of the order/notice. Send payment within ____ business days of the pay date. If you cannot withhold the full amount of support for any or all orders for this employee/obligor, withhold ____ % of disposable income for all orders. If the employee/obligor's principal place of employment is not ____________________________ (State/Tribe), obtain withholding limitations, time requirements, the appropriate method to allocate among multiple child support cases/orders and any allowable employer fees from the jurisdiction of the employee/obligor's principal place of employment.

State-specific withholding limit information is available at www.acf.hhs.gov/css/resource/state-income-withholdingcontacts-and-program-requirements. For tribe-specific contacts, payment addresses, and withholding limitations, please contact the tribe at www.acf.hhs.gov/sites/default/files/programs/csstribal_agency_contacts_printable_pdf.pdf or www.bia.gov/tribalmap/DataDotGovSamples/tld_map.html .

You may not withhold more than the lesser of: 1) the amounts allowed by the Federal Consumer Credit Protection Act (CCPA) [15 USC §1673 (b)]; or 2) the amounts allowed by the law of the state of the employee/obligor's principal place of employment if the place of employment is in a state; or the tribal law of the employee/obligor's principal place of employment if the place of employment is under tribal jurisdiction. The CCPA is available at www.dol.gov/sites/dolgov/files/WHD/legacy/files/garn01.pdf . If the Order Information section does not indicate that the arrears are greater than 12 weeks, then the employer should calculate the CCPA limit using the lower percentage.

If there is more than one IWO against this employee/obligor and you are unable to fully honor all IWOs due to federal, state, or tribal withholding limits, you must honor all IWOs to the greatest extent possible, giving priority to current support before payment of any past-due support.

If the obligor is a nonemployee, obtain withholding limits from the **Supplemental Information** section in this IWO. This information is also available at www.acf.hhs.gov/css/resource/state-income-withholding-contacts-and-programrequirements.

Remit payment to California State Disbursement Unit (SDU/Tribal Order Payee)
at P.O. Box 989067, West Sacramento, CA 95798-9067 (SDU/Tribal Payee Address)

Include the Remittance ID with the payment and if necessary this locator code of the SDU/Tribal order payee __________ on the payment.

To set up electronic payments or to learn state requirements for checks, contact the State Disbursement Unit (SDU). Contacts and information are found at www.acf.hhs.gov/css/resource/sdu-eft-contacts-and-program-requirements.

☐ **Return to Sender (Completed by Employer/Income Withholder).** Payment must be directed to an SDU in accordance with sections 466(b)(5) and (6) of the Social Security Act or Tribal Payee (see Payments in Section VI below). If payment is not directed to an SDU/Tribal Payee or this IWO is not regular on its face, you *must* check this box and return the IWO to the sender.

If Required by State or Tribal Law:
Signature of Judge/Issuing Official: ______________________________
Print Name of Judge/Issuing Official: ______________________________
Title of Judge/Issuing Official: ______________________________
Date of Signature: ______________________________

If the employee/obligor works in a state or for a tribe that is different from the state or tribe that issued this order, a copy of this IWO must be provided to the employee/obligor.

☐ If checked, the employer/income withholder must provide a copy of this form to the employee/obligor.

VI. Additional Information for Employers/Income Withholders: (Completed by the Sender)

Priority: Withholding for support has priority over any other legal process under State law against the same income (section 466(b)(7) of the Social Security Act). If a federal tax levy is in effect, please notify the sender.

Payments: You must send child support payments payable by income withholding to the appropriate State Disbursement Unit or to a tribal CSE agency within 7 business days, or fewer if required by state law, after the date the income would have been paid to the employee/obligor and include the date you withheld the support from his or her income. You may combine withheld amounts from more than one employee/obligor's income in a single payment as long as you separately identify each employee/obligor's portion of the payment. Child support payments may not be made through the federal Office of Child Support Enforcement (OCSE) Child Support Portal.

Lump Sum Payments: You may be required to notify a state or tribal CSE agency of upcoming lump sum payments to this employee/obligor such as bonuses, commissions, or severance pay. Contact the sender to determine if you are required to report and/or withhold lump sum payments. Employers/income withholders may use OCSE's Child Support Portal (ocsp.acf.hhs.gov/csp/) to provide information about employees who are eligible to receive lump sum payments and to provide contacts, addresses, and other information about their companies. Child support payments may not be made through the federal OCSE Child Support Portal.

Liability: If you have any doubts about the validity of this IWO, contact the sender. If you fail to withhold income from the employee/obligor's income as the IWO directs, you are liable for both the accumulated amount you should have withheld and any penalties set by state or tribal law/procedure.

____
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Anti-discrimination: You are subject to a fine determined under state or tribal law for discharging an employee/obligor from employment, refusing to employ, or taking disciplinary action against an employee/obligor because of this IWO.

____
____
____
____

Supplemental Information:

____
____
____
____
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____

Employer's Name: ______________________ Employer FEIN: __________ **FL-195**

Employee/Obligor's Name: ______________________ SSN: __________

Case Identifier: ______________ Order Identifier: ______________

VII. Notification of Employment Termination or Income Status: (Completed by the Employer/Income Withholder)

If this employee/obligor never worked for you or you are no longer withholding income for this employee/obligor, you must promptly notify the CSE agency and/or the sender by returning this form to the address listed in the contact information section below or using OCSE's Child Support Portal (ocsp.acf.hhs.gov/csp/). Please report the new employer or income withholder, if known.

☐ This person has never worked for this employer nor received periodic income.

☐ This person no longer works for this employer nor receives periodic income.

Please provide the following information for the employee/obligor:

Termination date: ______________ Last known telephone number: ______________

Last known address: ______________________________

Final payment date to SDU/Tribal Payee: __________ Final payment amount: __________

New employer's name: ______________________________

New employer's address:

VIII. Contact Information: (Completed by the Sender)

To Employer/Income Withholder: If you have questions, contact ______________ (issuer name)

by telephone: __________, by fax: __________, by email or website: ______________ .

Send termination/income status notice and other correspondence to:

______________________________ (issuer address).

To Employee/Obligor: If the employee/obligor has questions, contact ______________ (issuer name)

by telephone: __________, by fax: __________, by email or website: ______________ .

IMPORTANT: The person completing this form is advised that the information may be shared with the employee/obligor.

Encryption Requirements:

When communicating this form through electronic transmission, precautions must be taken to ensure the security of the data. Child support agencies are encouraged to use the electronic applications provided by the federal Office of Child Support Enforcement. Other electronic means, such as encrypted attachments to emails, may be used if the encryption method is compliant with Federal Information Processing Standard (FIPS) Publication 140-2 (FIPS PUB 140-2).

The Paperwork Reduction Act of 1995

This information collection and associated responses are conducted in accordance with 45 CFR 303.100 of the Child Support Enforcement Program. This form is designed to provide uniformity and standardization. Public reporting for this collection of information is estimated to average two to five minutes per response. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

INCOME WITHHOLDING FOR SUPPORT - Instructions

The Income Withholding for Support (IWO) is the OMB-approved form used for income withholding in:

- Tribal, intrastate, and interstate cases enforced under Title IV-D of the Social Security Act
- All child support orders initially issued in the state on or after January 1, 1994, and
- All child support orders initially issued (or modified) in the state before January 1, 1994 if arrearages occur.

This form is the standard format prescribed by the Secretary in accordance with section 466(b)(6)(a)(ii) of the Social Security Act. **Except as noted, the following information is required and must be included.**

Please note:

- For the purpose of this IWO form and these instructions, "state" is defined as a state or territory.
- Dos and don'ts on using this form are found at www.acf.hhs.gov/css/resource/using-the-income-withholding-for-support-form-dos-and-donts.

I. Sender Information: (Completed by the sender) Check one box for fields 1a-1d.

1a. **Income Withholding Order/Notice for Support (IWO)**. Check the box if this is an initial IWO.

1b. **Amended IWO**. Check the box to indicate that this form amends a previous IWO. Any changes to an IWO must be done through an amended IWO.

1c. **One-Time Order/Notice For Lump Sum Payment.** Check the box when this IWO is to attach a one-time collection of a lump sum payment after receiving notification from an employer/income withholder or other source. When this box is checked, enter the amount in field 14, Lump Sum Payment, in the *Amounts to Withhold* section. Additional IWOs must be issued to collect subsequent lump sum payments.

1d. **Termination of IWO.** Check the box to stop income withholding on a child support order. Complete all applicable identifying information to aid the employer/income withholder in terminating the correct IWO.

1e. **Date.** Date this form is completed and/or signed.

1f. **Child Support Enforcement (CSE) Agency, Court, Attorney, Private Individual/Entity (Check one box).** Check the appropriate box to indicate which entity is sending the IWO. If this IWO is **not** completed by a state or tribal CSE agency, the sender should contact the CSE agency (see www.acf.hhs.gov/programs/css/resource/state-income-withholding-contacts-and-program-requirements) to determine if the CSE agency needs a copy of this form to facilitate payment processing.

NOTE TO EMPLOYER/INCOME WITHHOLDER: This IWO must be regular on its face. The IWO must be rejected and returned to sender under the following circumstances:

- IWO instructs the employer/income withholder to send a payment to an entity other than a state disbursement unit (for example, payable to the custodial party, court, or attorney). Each state is required to operate a state disbursement unit (SDU), which is a centralized facility for collection and disbursement of child support payments. Exception: If this IWO is issued by a court, attorney, or private individual/entity and the initial child support order was entered before January 1,1994 or the order was issued by a tribal CSE agency, the employer/income withholder must follow the payment instructions on the form.
- Form does not contain all information necessary for the employer to comply with the withholding.
- Form is altered or contains invalid information.
- Amount to withhold is not a dollar amount.
- Sender has not used the OMB-approved form for the IWO.
- A copy of the underlying order is required and not included. If you receive this document from an attorney or private individual/entity, a copy of the underlying support order containing a provision authorizing income withholding must be attached.

1g. **State/Tribe/Territory.** Name of state or tribe sending this form. This must be a governmental entity of the state or a tribal organization authorized by a tribal government to operate a CSE program. If you are a tribe submitting this form on behalf of another tribe, complete field 1i.

1h. **Remittance ID (include w/payment).** Identifier for the SDU/Tribal Payee designated in the Remittance Information section, field 22, that employers/income withholders must include when sending payments for this IWO. The Remittance ID is entered as the case identifier on the electronic funds transfer/electronic data interchange (EFT/EDI) record.

NOTE TO EMPLOYER/INCOME WITHHOLDER: The employer/income withholder must use the Remittance ID when remitting payments so the SDU or tribe can identify and apply the payment correctly. The Remittance ID is entered as the case identifier on the EFT/EDI record.

1i. **City/County/Dist./Tribe.** ***Optional*** field for the name of the city, county, or district sending this form. If entered, this must be a government entity of the state or the name of the tribe authorized by a tribal government to operate a CSE program for which this form is being sent. If a tribe is submitting this form on behalf of another tribe, enter the name of that tribe.

1j. **Order ID.** ***Optional*** unique identifier associated with a specific child support obligation. It could be a court case number, docket number, or other identifier designated by the sender.

1k. **Private Individual/Entity.** Name of the private individual/entity or non-IV-D tribal CSE organization sending this form.

1l. **Case ID.** Unique identifier assigned to a state or tribal CSE case. In a state IV-D case as defined at 45 Code of Federal Regulations (CFR) 305.1, this is the identifier reported to the Federal Case Registry (FCR). One IWO must be issued for each IV-D case and must use the unique CSE Agency Case ID. For tribes, this would be either the FCR identifier or other applicable identifier.

II. Employer and Case Information: (Completed by the Sender)

2a. **Employer/Income Withholder's Name.** Name of employer or income withholder.

2b. **Employer/Income Withholder's Address.** Employer/income withholder's mailing address including street/PO box, city, state, and zip code. (This may differ from the employee/obligor's work site.) If the employer/income withholder is a federal government agency, the IWO should be sent to the address listed under Federal Agency Income Withholding Contacts and Program Information at www.acf.hhs.gov/css/resource/federal-agency-iwo-and-medical-contact-information.

2c. **Employer/Income Withholder's FEIN.** Employer/income withholder's nine-digit Federal Employer Identification Number (if available).

3a. **Employee/Obligor's Name.** Employee/obligor's last name and first name. A middle name is ***optional***.

3b. **Employee/Obligor's Social Security Number.** Employee/obligor's Social Security number or other taxpayer identification number.

3c. **Employee/Obligor's Date of Birth.** Employee/obligor's date of birth is ***optional***.

3d. **Custodial Party/Obligee's Name.** Custodial party/obligee's last name and first name. A middle name is ***optional***. Enter one custodial party/obligee's name on each IWO form. Multiple custodial parties/obligees are not to be entered on a single IWO. Issue one IWO per state IV-D case as defined at 45 CFR 305.1.

3e. **Child(ren)'s Name(s).** Child(ren)'s last name(s) and first name(s). A middle name(s) is ***optional***. (Note: If there are more than six children for this IWO, list additional children's names and birth dates in the **Supplemental Information** section, field 33). Enter the child(ren) associated with the custodial party/obligee and employee/obligor only. Child(ren) of multiple custodial parties/obligees is not to be entered on an IWO.

3f. **Child(ren)'s Birth Date(s).** Date of birth for each child named.

3g. **Blank box.** Space for court stamps, bar codes, or other information.

III. Order Information: (Completed by the Sender)

The first field identifies which state or tribe issued the order. The other fields identify the dollar amounts for specific kinds of support (taken directly from the support order) and the total amount to withhold for specific time periods.

4. **State/Tribe.** Name of the state or tribe that issued the support order.

5a-b. **Current Child Support.** Dollar amount to be withheld **per** the time period (for example, week, month) specified in the underlying support order.

6a-b. **Past-due Child Support.** Dollar amount to be withheld **per** the time period (for example, week, month) specified in the underlying support order.

6c. **Arrears Greater Than 12 Weeks?** The appropriate box (Yes/No) must be checked indicating whether arrears are greater than 12 weeks.

7a-b. **Current Cash Medical Support.** Dollar amount to be withheld **per** the time period (for example, week, month) specified in the underlying support order.

8a-b. **Past-due Cash Medical Support.** Dollar amount to be withheld **per** the time period (for example, week, month) specified in the underlying support order.

9a-b. **Current Spousal Support.** (Alimony) Dollar amount to be withheld **per** the time period (for example, week, month) specified in the underlying support order.

10a-b. **Past-due Spousal Support.** (Alimony) Dollar amount to be withheld p**er** the time period (for example, week, month) specified in the underlying order.

11a-c. **Other.** Miscellaneous obligations dollar amount to be withheld **per** the time period (for example, week, month) specified in the underlying order. **Must specify** a description of the obligation (for example, court fees).

12a-b. **Total Amount to Withhold.** The total amount of the deductions **per** the corresponding time period. Fields 5a, 6a, 7a, 8a, 9a, 10a, and 11a should total the amount in 12a.

NOTE TO EMPLOYER/INCOME WITHHOLDER: An acceptable method of determining the amount to be paid on a weekly or biweekly basis is to multiply the monthly amount due by 12 and divide that result by the number of pay periods in a year. Additional information about this topic is available in Action Transmittal 16-04, Correctly Withholding Child Support from Weekly and Biweekly Pay Cycles (https://www.acf.hhs.gov/css/resource/correctly-withholding-child-support-from-weekly-and-biweekly-pay-cycles)

IV. Amount to Withold: **(Completed by the Sender)**

Fields 13a through 13d specify the dollar amount to be withheld for this IWO if the employer/income withholder's pay cycle does not correspond with field 12b.

13a. **Per Weekly Pay Period.** Total amount an employer/income withholder should withhold if the employee/obligor is paid weekly.

13b. **Per Semimonthly Pay Period.** Total amount an employer/income withholder should withhold if the employee/obligor is paid twice a month.

13c. **Per Biweekly Pay Period.** Total amount an employer/income withholder should withhold if the employee/obligor is paid every two weeks.

13d. **Per Monthly Pay Period.** Total amount an employer/income withholder should withhold if the employee/obligor is paid once a month.

14. **Lump Sum Payment.** Dollar amount withheld when the IWO is used to attach a lump sum payment. This field should be used when field 1c is checked.

15. **Document Tracking ID. Optional** unique identifier for this form assigned by the sender.

Please Note: Employer/Income Withholder's Name, FEIN, Employee/Obligor's Name and SSN, Case ID, and Order ID must appear in the header on page two and subsequent pages.

V. Remittance Information: **(Completed by the Sender except for the "Return to Sender" check box, field 25. Fields 26-29 are completed only if required by state or tribal law.)**

Payments are forwarded to the SDU in each state, unless the initial child support order was entered by a state before January 1, 1994 and never modified, accrued arrears, or was enforced by a child support agency or by a tribal CSE agency. If the order was issued by a tribal CSE agency, the employer/income withholder must follow the remittance instructions on the form in the Supplemental Information Section.

16. **State/Tribe.** Name of the state or tribe sending this document.

17. **Days.** Number of days after the effective date noted in field 18 in which withholding must begin according to the state or tribal laws/procedures for the employee/obligor's principal place of employment.

18. **Date.** Implementation date of this IWO, expressed as date of "service," "receipt," or "mailing." Only one of the three choices is to be entered in the blank line.

19. **Business Days.** Number of business days within which an employer/income withholder must remit amounts withheld pursuant to the state or tribal laws/procedures of the principal place of employment.

20. **Percentage of Disposable Income.** The percentage of disposable income that may be withheld from the employee/obligor's paycheck. It is the sender's responsibility to determine the percentage an employer/income withholder is required to withhold. Senders must enter a specific percentage and not a range of percentages.

NOTE TO EMPLOYER/INCOME WITHHOLDER: The employer/income withholder may not withhold more than the lesser of: the amounts allowed by the Federal Consumer Credit Protection Act [15 USC §1673 (b)]; or 2) the amounts allowed by the jurisdiction of the employee/obligor's principal place of employment (i.e., the amounts allowed by state law if the employee/obligor's principal place of employment is in a state; or the amounts allowed by tribal law if the employee/obligor's principal place of employment is under tribal jurisdiction).

If permitted by the state or tribe, you may deduct a fee for administrative costs. The combined support amount and fee may not exceed the limit on the IWO.

State-specific withholding limitations, time requirements, and any allowable employer fees are available at www.acf.hhs.gov/css/resource/state-income-withholding-contacts-and-program-requirements. For tribe-specific contacts, payment addresses, and withholding limitations, please contact the tribe at www.acf.hhs.gov/sites/default/files/programs/css/tribal_agency_contacts_printable_pdf.pdf or https://www.bia.gov/tribalmap/DataDotGovSamples/tld_map.html.

Depending on applicable state or tribal law, you may need to consider amounts paid for health care premiums to determine disposable income and apply appropriate withholding limits.

A federal government agency may withhold from a variety of incomes and forms of payment, including voluntary separation incentive payments (buy-out payments), incentive pay, and cash awards. For a more complete list, see 5 CFR 581.103.

21. **State/Tribe.** Name of the state or tribe sending this document.

NOTE TO SENDER: The Sender must designate the correct SDU. In certain cases, the Sender may be required to designate an SDU (field 22), corresponding SDU Address (field 23), and if required Locator Code (field 24) that is different than the Sender's SDU (see OCSE's AT-17-07: Interstate Child Support Payment Processing, https://www.acf.hhs.gov/css/resource/interstate-child-support-payment-processing). The Remittance ID in field 1h must correspond with the SFDU identified in field 22.

22. **SDU/Tribal Order Payee.** Name of SDU (or payee specified in the underlying tribal support order) to which payments must be sent.

23. **SDU/Tribal Payee Address.** Address of the SDU (or payee specified in the underlying tribal support order) to which payments must be sent.

24. **Locator Code.** ***Optional*** code of the SDU payee state where payment is being remitted.Geographic Locator Codes are standard codes for states, counties, and cities issued by the National Institute of Standards and Technology. These were formerly known as Federal Information Processing Standards (FIPS) codes.

25. **Return to Sender Checkbox.** The employer/income withholder should check this box and return the IWO to the sender if this IWO is not payable to an SDU or Tribal Payee or this IWO is not regular on its face as indicated on page 1 of these instructions.

26. **Signature of Judge/Issuing Official.** Signature of the official authorizing this IWO if required by state or tribal law.

27. **Print Name of Judge/Issuing Official.** Name of the official authorizing this IWO if required by state or tribal law.

28. **Title of Judge/Issuing Official.** Title of the official authorizing this IWO if required by state or tribal law.

29. **Date of Signature.** Date the judge/issuing official signs this IWO if required by state or tribal law.

30. **Copy of IWO checkbox.** Check this box for all intergovernmental IWOs. If checked, the employer/income withholder is required to provide a copy of the IWO to the employee/obligor.

VI. Additional Information for Employers/Income Withholders: (Completed by the Sender)

The following fields refer to federal, state, or tribal laws that apply to issuing an IWO to an employer/ income withholder. State- or tribal-specific information may be included only in the fields below.

31. **Liability.** Additional information on the penalty and/or citation of the penalty for an employer/income withholder who fails to comply with the IWO. The state or tribal law/procedures of the employee obligor's principal place of employment govern the penalty.

32. **Anti-discrimination**. Additional information on the penalty and/or citation of the penalty for an employer/income withholder who discharges, refuses to employ, or disciplines an employee/obligor as a result of the IWO. The state or tribal law/procedures of the employee/obligor's principal place of employment govern the penalty.

33. **Supplemental Information**. Any state-specific information needed, such as maximum withholding percentage for nonemployees/independent contractors, fees the employer/income withholder may charge the obligor for income withholding, or children's names and DOBs if there are more than six children on this IWO. Additional information must be consistent with the requirements of the form and the instructions.

VII. Notification of Employment Termination or Income Status: (Completed by the Employer/Income Withholder)

The employer must complete this section when the employee/obligor's employment is terminated, income withholding ceases, or if the employee/obligor has never worked for the employer. The employer/income withholder may report new payment sources such as workers' compensation, if known.

34a-b. **Employment/Income Status Checkbox.** Check the employment/income status of the employee/obligor.

35. **Termination Date.** If applicable, date employee/obligor was terminated.

36. **Last Known Telephone Number.** Last known (hom/cell/other) telephone number of the employee/obligor.

37. **Last Known Address.** Last known home/mailing address of the employee/obligor.

38. **Final Payment Date.** Date employer sent final payment to SDU/Tribal Payee.

39. **Final Payment Amount.** Amount of final payment sent to SDU/Tribal Payee.

40. **New Employer's or Income Withholder's Name.** Name of employee's/obligor's new employer or income withholder (if known).

41. **New Employer's or Income Withholder's Address.** Address of employee's/obligor's new employer or income withholder (if known).

VIII. Contact Information: (Completed by the Sender)

42. **Sender Contact for Employer/Income Withholder.** Name of the person that the employer/income withholder can call for information regarding this IWO. If the sender is a victim of family or domestic violence, rather than including direct contact information, enter contact information for someone else who will communicate for you.

43. **Sender Telephone Number.** Telephone number of the contact person.

44. **Sender Fax Number.** ***Optional*** fax number of the contact person.

45. **Sender Email/Website.** ***Optional*** email or website of the contact person.

46. **Sender Address (Termination/Income Status and Correspondence Address).** Address to which the employer should return the Employment Termination or Income Status notice. It is also the address that the employer should use to correspond with the issuing entity.

47. **Sender Contact for Employee/Obligor.** Name of the contact person that the employee/obligor can call for information.

48. **Sender Telephone Number.** Telephone number of the contact person.

49. **Sender Fax Number.** ***Optional*** fax number of the contact person.

50. **Sender Email/Website.** ***Optional*** email or website of the contact person.

Encryption Requirements:
When communicating the Income Withholding for Support (IWO) through electronic transmission, precautions must be taken to ensure the security of the data. Child support agencies are encouraged to use the electronic applications provided by the federal Office of Child Support Enforcement. Other electronic means, such as encrypted attachments to emails, may be used if the encryption method is compliant with Federal Information Processing Standard (FIPS) Publication 140-2 (FIPS PUB 140-2).

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee action requested [Choose from drop down menu below]**:**
Circulate for comment (January 1 cycle)

Rules Committee Meeting Date: April 14, 2021

Title of proposal: Family Law: Revise Notice Regarding Confidentiality of Child Custody Evaluation Report

Proposed rules, forms, or standards *(include amend/revise/adopt/approve):*
Revise form FL-328

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee

Staff contact (name, phone and e-mail): Gabrielle Selden, 415-865-8085 gabrielle.selden@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by Rules Committee date: Annual Agenda:November 2, 2020)
Project description from annual agenda: Item 6 of the amended annual agenda. Project Summary: Revise form FL-328 to clarify those persons and organizations who have legal access to a child custody evaluation report involving serious allegations of child sexual abuse or child abuse under Family Code section 3118. Status/Timeline: Anticipated effective date of January 1, 2022.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)
On January 6, 2021, the Rules Committee approved amending the November 2, 2020, annual agenda by adding Item 6 to New or One-Time Projects.

Information for JC Staff regarding form translations:

- *List any amended forms in this proposal that have already been translated:* n/a
- *List any new forms that require translation by statute or that you will request to be translated:* n/a

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INVITATION TO COMMENT

SPR21-__

Title
Family Law: Changes to Notice Regarding Confidentiality of Child Custody Evaluation Report

Proposed Rules, Forms, Standards, or Statutes
Revise form FL-328

Proposed by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Action Requested
Review and submit comments by May 27, 2021

Proposed Effective Date
January 1, 2022

Contact
Gabrielle D. Selden, 415-865-8085
gabrielle.selden@jud.ca.gov

Gregory Tanaka, 415-865-7671
gregory.tanaka@jud.ca.gov

Executive Summary and Origin

The Family and Juvenile Law Advisory Committee proposes revising the mandatory coversheet for all child custody evaluation reports. The proposed revisions to form FL-328 are needed to reflect the more stringent limitations on access to child custody evaluation reports involving serious allegations of child sexual abuse or child abuse conducted under Family Code section 3118.[1]

Background

Effective January 1, 2021, the Judicial Council adopted *Confidential Child Custody Evaluation Report* (form FL-329) to serve as the standardized template for all information necessary to provide a full and complete analysis of a child custody evaluation involving serious allegations of child sexual abuse or child abuse under section 3118.[2] The Judicial Council also amended rule 5.220 of the California Rules of Court to differentiate between the requirements for child custody evaluations conducted under section 3111 and those under section 3118.

[1] All further statutory references are to the Family Code.
[2] The report is found at: *https://jcc.legistar.com/View.ashx?M=F&ID=8771124&GUID=146EBAE9-AD1F-4DD3-ACC0-CA59E7F6E939*.

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. It is circulated for comment purposes only.

On further review of the amendments to section 3118, the committee identified changes needed to an additional form—*Notice Regarding Confidentiality of Child Custody Evaluation Report* (form FL-328)—to fully implement the mandate of the statute. Per amended rule 5.220, effective January 1, 2021, this form is required to be used as the coversheet for child custody evaluations conducted under section 3111[3] and section 3118.[4]

Child custody evaluations conducted under sections 3111 and 3118 have different statutory requirements relating to those persons or organizations who can access the report. For example, evaluation reports under section 3111 may be made available as described in subdivision (b):

> The report shall not be made available other than as provided in subdivision (a) [5] or Section 3025.5, or as described in Section 204 of the Welfare and Institutions Code or Section 1514.5 of the Probate Code. Any information obtained from access to a juvenile court case file, as defined in subdivision (e) of Section 827 of the Welfare and Institutions Code, is confidential and shall only be disseminated as provided by paragraph (4) of subdivision (a) of Section 827 of the Welfare and Institutions Code.

For evaluation reports under section 3118, subdivision (b)(6) provides that the evaluator or investigator shall:

> File a confidential written report with the clerk of the court in which the custody hearing will be conducted and which shall be served on the parties or their attorneys at least 10 days prior to the hearing. On and after January 1, 2021, this report shall be made on the form adopted pursuant to subdivision (i). This report may not be made available other than as provided in this subdivision.

The committee proposes revising form FL-328 to reflect these statutory differences, as described in the following section.

The Proposal

The committee proposes revising the content under "Access to the Report" as follows:

- Add a bullet point with the title "Report conducted under Family Code section 3111";

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[3] Section 3111 is found at:
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=3111&lawCode=FAM

[4] Section 3118 is found online
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=3118&lawCode=FAM

[5] Family Code section 3111 (a) provides, in pertinent part, that the child custody evaluation "shall be filed with the clerk of the court in which the custody hearing will be conducted and served on the parties or their attorneys, and any other counsel appointed for the child pursuant to Section 3150."

- Add a second bullet point entitled "Report conducted under Family Code section 3118"; and
- Under each new title, specify to whom the report may be made available.

Section 3111(b)(6) specifies that the evaluator must file the report with the clerk of the court and serve it on the parties or their attorneys. Therefore, the form would provide that the following persons have access to the report: the parties and their attorneys, family court judicial officers, and family court employees. While the statute is silent about counsel appointed to represent a child, section 3150 specifies that the child's counsel must also be served with the report.[6] Thus, form FL-328 would provide that counsel appointed to represent a child also has access to the report.

Other minor revisions would:

- Make the form gender neutral by replacing the reference to "his or her evaluation" in the first sentence of the form with "the evaluation";
- Move the entries for "Monetary Sanctions" and "Attorney's Fees and Costs" under the heading "Potential Consequences for the Unwarranted Disclosure of the Report" to avoid redundancy; and
- Simplify the language under "Unwarranted Disclosure of the Report" to focus on the definition of unwarranted disclosure.

Alternatives Considered

The committee considered delaying proposing changes to form FL-328 until the next spring (2022) cycle. However, the committee agreed that it is imperative that the form be revised to (1) protect the confidential child custody report; (2) advise parties and their attorneys, as well as court employees that they must not disclose the child custody evaluator's report involving serious allegations of child sexual abuse to the same persons or organizations who may receive child custody evaluation reports under section 3111; and (3) identify those persons or organizations who are authorized to receive the report under section 3118.

When considering alternatives, the committee noted the potential consequences for an unwarranted disclosure of the child custody report found in the Family Code and case law. Specifically, section 3118 provides that the court can impose a penalty for the unwarranted disclosure of a child custody evaluation report. Further, the Court of Appeal in *Marriage of Anka & Yeager* (2019) 31 Cal.App.5th 1115, did impose a large monetary sanction ($50,000) against an attorney in the case for the unwarranted disclosure of a child custody evaluation report.

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[6] Family Code section 3150 can be found at: *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=3150&lawCode=FAM*.

As currently drafted, when the child custody evaluator attaches the report involving a serious allegation of child sexual abuse to *mandatory* form FL-328, a party or a court employee is likely to be under the impression that the report may be disclosed to any of the persons or organizations listed on the form (including the juvenile court, social services workers, and law enforcement officers) in the same manner as a report conducted under section 3111; this is incorrect.

Disclosing the section 3118 evaluation report as currently shown in the form could potentially subject the party or court employee to sanctions. Therefore, the committee decided to propose changing the form as previously described. In addition, the committee directed staff from the Center for Families, Children & the Courts to provide education and training to court professionals about the changes needed to form FL-328 for all reports conducted under section 3118.

The committee also considered whether the form should include space for the court's "filed" stamp. Although the child custody evaluator's report under section 3118 (*Confidential Child Custody Evaluation Report* (form FL-329)) includes a space for the court's file stamp, form FL-328 is still required to be the cover page to that report.[7] Thus, some committee members raised concerns that not being able to place a file stamp on form FL-328 could cause confusion for court clerks about how to process the confidential evaluation.

In light of the above, the committee recommended adding a specific question to receive feedback from the courts about whether there is a need for a file stamp on the cover sheet under their current business practices. Given that form FL-328 has not included a file stamp since its adoption on January 1, 2010, it may not be an issue or conflict with existing court procedures for filing the reports. Nonetheless, the committee believes that feedback from the courts would be valuable in terms of developing a form that works well in all courts, whether the confidential report of the evaluation is filed with the clerk at the window or is e-filed with form FL-328 attached.

Fiscal and Operational Impacts

The impact to the courts includes costs to copy the new and revised forms, as well as the cost to educate court-connected child custody evaluators about the changes to form FL-328. These costs are required to have the mandatory form comply with the Family Code.

[7] Form FL-329 is found at: *https://www.courts.ca.gov/documents/fl329.pdf*.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Are there any concerns about the proposed language in form FL-328 regarding those persons who may have access to the evaluation report under Family Code section 3118 (for example, are the proposed revisions consistent with statute)?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Neither the current form nor the proposed revised form includes a file stamp box. Should form FL-328 be revised to include a file stamp box? (For example, does having (or not having) a file stamped box affect efficiency in processing the confidential child custody reports? Would including a file stamp box help improve existing court procedures for filing the reports compared to the current version of form FL-328, that does not include one?)
- Would the proposal provide cost savings? If so, please quantify.
- 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.
- Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Form FL-328, at page 6
2. Link A: Fam. Code, § 3111, *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=FAM§ionNum=3111*
3. Link B: Fam. Code, § 3118, *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=FAM§ionNum=3118*

Draft - Not approved by the Judicial Council

FL-328 Notice Regarding Confidentiality of Child Custody Evaluation Report

1. **Case name:**
2. **Case number:**

If directed by the court, the child custody evaluator must file a written, confidential report of the evaluation. At least 10 days before any hearing regarding custody of the child, the report must be filed with the clerk of the court and served on the parties or their attorneys and counsel appointed for the child.

Important Notice: This form must be attached as the first page of the child custody report. The child custody evaluation report MUST NOT become part of the public court file. It is confidential and private.

THE ENCLOSED CHILD CUSTODY EVALUATION REPORT IS CONFIDENTIAL

Unwarranted Disclosure of the Report

You must not make an unwarranted disclosure of the contents of the child custody evaluation report. A disclosure is unwarranted if it is done either recklessly or maliciously and is not in the best interest of the child.

Potential Consequences for the Unwarranted Disclosure of the Report

- **Monetary Sanctions:** The court may order a fine against the disclosing party in an amount that is large enough to prevent that person from disclosing information in the future.
- **Attorney Fees and Costs:** The sanction may also include reasonable attorney fees, costs incurred, or both, unless the court finds that the disclosing party acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

Access to the Report

- ***Report conducted under Family Code section 3111***

  This report may not be made available to anyone other than the following (Fam. Code, §§ 3025.5, 3111):

  a. The parties and their attorneys (including attorneys from whom the parties seek legal representation) and attorneys appointed to represent the child

  b. Court professionals who would receive it directly from the court to do their job, including:
  - Family court judicial officers
  - Family court employees
  - Family law facilitators
  - Juvenile court judicial officers
  - Juvenile probation officers
  - Child protective services workers
  - Law enforcement officers
  - Probate court judicial officers
  - Guardianship investigators

  c. Others, but only by court order

- ***Report conducted under Family Code section 3118***

  This report of a serious allegation of child sexual abuse or an allegation of child abuse may not be made available to anyone other than the following (Fam. Code, § 3118; Cal. Rules of Court, rule 5.220(g)(2)):
  - The parties and their attorneys
  - Family court judicial officers
  - Family court employees
  - The attorney appointed to represent the child under Family Code section 3150

Information About Child Custody Evaluations

For more information, visit the California Courts Online Self-Help Center: *www.courts.ca.gov/selfhelp*. See also Family Code sections 3110–3118 and 3025.5, and rules 5.220 and 5.225 of the California Rules of Court.

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee action requested [Choose from drop down menu below]**:**
Circulate for comment (January 1 cycle)

Rules Committee Meeting Date: April 14, 2021

Title of proposal: Family Law: Reenactment of Family Code section 4007.5

Proposed rules, forms, or standards *(include amend/revise/adopt/approve):*
Revise forms FL-192, FL-350, FL-490, FL-676, FL-676-INFO, and FL-688

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee

Staff contact (name, phone and e-mail): John Henzl, 415-865-7607, john.henzl@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by Rules Committee date: November 2, 2020
Project description from annual agenda: Item 1(c)
AB 2325 (Carrillo) Child support: suspension (Ch. 217, Stats. of 2020): Reestablishes, until January 1, 2023, a program to suspend a parent's obligation to pay child support if the parent is incarcerated or involuntarily institutionalized, unless they have the means to pay or are incarcerated for domestic violence

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

Information for JC Staff regarding form translations:

- *List any amended forms in this proposal that have already been translated:* FL-192, FL-350, FL-490, FL-676, FL-688
- *List any new forms that require translation by statute or that you will request to be translated:*

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INVITATION TO COMMENT

SPR21-__

Title

Family Law: Reenactment of Family Code section 4007.5

Proposed Rules, Forms, Standards, or Statutes

Revise forms FL-192, FL-350, FL-490, FL-676, FL-676-INFO, and FL-688

Proposed by

Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Action Requested

Review and submit comments by May 27, 2021

Proposed Effective Date

January 1, 2022

Contact

John Henzl, 415-865-7607
john.henzl@jud.ca.gov

Executive Summary and Origin

The Family and Juvenile Law Advisory Committee proposes revising several forms in order to provide court users and the public with information regarding relief available to incarcerated or involuntarily institutionalized child support obligors. The proposed revisions are needed to reflect new law under recently reenacted Family Code section 4007.5.

Background

Family Code section 4007.5,[1] which provides that, by operation of law, any money judgment or order for child support is automatically suspended when an obligor is incarcerated or involuntarily institutionalized for more than 90 consecutive days for the period of time the obligor is confined, was reenacted effective January 1, 2021, by Assembly Bill 2325 (Carrillo; Stats. 2020, ch. 217). This section was originally put into place effective July 1, 2011, but then sunsetted effective June 30, 2015. It was reenacted, effective October 8, 2015, expanding the relief, but was then allowed to sunset a second time, effective January 1, 2020. The relief available in the current version is identical to the prior statute, but now contains a sunset date of January 1, 2023.

The legislation also requires the Department of Child Support Services, in consultation with the Judicial Council, to develop forms to implement section 4007.5. The proposal set forth below,

[1] All further statutory references are to the Family Code.

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee. It is circulated for comment purposes only.

however, solely addresses Judicial Council forms that are integral to the judicial process and provide notice to the parties regarding the provisions of AB 2325.

Various Judicial Council forms relating to child support judgments, orders, and arrears were previously revised multiple times to provide information regarding the relief then available to child support obligors and were then revised again to remove this language at the most recent time section 4007.5 sunsetted.[2]

The Proposal

To comply with recently enacted AB 2325, the committee proposes revising forms FL-192, FL-350, FL-490, FL-676, FL-676-INFO, and FL-688. Specifically, the committee proposes adding the following information regarding the current relief available to child support obligors who become incarcerated or involuntarily institutionalized for longer than 90 days, in plain language, as shown in the screenshot below:

Information About Incarcerated Parents for Support Orders Made or Modified After December 31, 2020

1. Child support. Under current California law, child support automatically stops if the parent who has to pay:

- Is confined against their will, for more than 90 days in a row, in jail, prison, juvenile detention, or a mental health facility.

2. Exceptions. Child support does not automatically stop if the parent who has to pay:

- Is confined for:
  - Domestic violence against the other parent or child; or
  - Failing to pay a child support order; or
- Has money available to pay child support.

3. Timing. Child support will automatically restart at the old amount the first day of the first full month after the parent is released. If you need to change your child support order, see page 2.

4. More info. For more information about child support and incarcerated parents, see Family Code section 4007.5 or talk to the family law facilitator in your county.

Page 1 of 2

Unlike previous proposals where this language was added to multiple child support order and judgment forms, it would instead only be included on *Notice of Rights and Responsibilities (Health-Care Costs and Reimbursement Procedures) and Information Sheet on Changing a Child Support Order* (form FL-192). The information currently on form FL-192 is required to be provided to parties anytime a court makes an order for child support or reimbursement for uninsured medical costs.[3]

However, of the 10 Judicial Council forms related to child support orders or judgments, form FL-192 is required to be attached to eight of those forms. The only two forms that currently do not require form FL-192 to be attached are *Stipulation to Establish or Modify Child Support and Order* (form FL-350) and *Short Form Order After Hearing (Governmental)* (form FL-688).

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[2] *Rules and Forms: Technical Changes Required by Sunsetting of Family Code section 4007.5* (19-215) can be found at *https://jcc.legistar.com/View.ashx?M=F&ID=7693399&GUID=5D192C8D-167D-4360-9F08-DB7FFDB0707F*.

[3] See Fam. Code, §§ 4010, 4063.

Consequently, the committee further proposes that these two forms be revised to include language stating that form FL-192 must also be attached.

Given the costs for courts, legal professionals, self-help centers, and form-generation software developers anytime Judicial Council forms are revised, the committee considers a more prudent approach would be to only include the above language on one form (form FL-192), and requiring that the form be attached to *all* child support order or judgment forms. Additionally, including language about relief in a law that may again sunset on court orders and judgments can lead case participants to believe this relief is available as an order of the court instead of just information about the current state of the law.

Moreover, it is proposed that more substantial revisions be made to form FL-350, including making it gender inclusive and an optional form, and to forms FL-350 and FL-676-INFO to make them more user-friendly for self-represented litigants by incorporating more plain-language concepts found on other Judicial Council family law forms.

Finally, it is proposed that the following three forms also be revised so parties can easily request the relief available under section 4007.5 from the court:

- *Application to Determine Arrears* (form FL-490);
- *Request for Determination of Support Arrears (Governmental)* (form FL-676); and
- *Information Sheet: Request for Determination of Support Arrears (Governmental)* (form FL-676-INFO).

Regarding form FL-676, the Proof of Service section on page 2 of the current version of the form was deleted. Form FL-676 is designed to be used by the party receiving or paying child support, but not the local child support agency. Including the Proof of Service as part of a motion form can be confusing to self-represented litigants. It may create the impression that parties do not need to serve a copy of a filed motion (with a court date listed) on the other party, as parties may believe they need to complete the Proof of Service section on the form first before filing it with the court.

Alternatives Considered

The committee considered not revising any forms as section 4007.5 will sunset again on January 1, 2023 (if not extended). However, the committee instead proposes revising the forms described above in order to provide information to court users—including self-represented litigants—and the public regarding the relief available to child support obligors if they become incarcerated or involuntarily institutionalized for longer than 90 days.

Fiscal and Operational Impacts

The committee anticipates that courts would incur some costs to revise forms and add them to their case management systems, train court staff about the revised forms included in this

proposal, and possibly revise local court rules and forms so they are consistent with the changes adopted by the Judicial Council.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Does adding language only to form FL-192, instead of all 10 child support order or judgment forms, regarding the relief available under Family Code section 4007.5 adequately disseminate this information to case participants?
- Will revising form FL-350 from a mandatory to an optional form create any unintended consequences for case participants or the courts?
- Will removing the Proof of Service section from page 2 of form FL-676 create any unintended consequences for case participants?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- 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?
- Would three (3) months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Forms FL-192, FL-350, FL-490, FL-676, FL-676-INFO, and FL-688, at pages 5–16
2. Link A: Family Code section 4007.5, *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=FAM§ionNum=4007.5.*

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NOTICE OF RIGHTS AND RESPONSIBILITIES
Health-Care Costs and Reimbursement Procedures

IF YOU HAVE A CHILD SUPPORT ORDER THAT INCLUDES A PROVISION FOR THE REIMBURSEMENT OF A PORTION OF THE CHILD'S OR CHILDREN'S HEALTH-CARE COSTS AND THOSE COSTS ARE NOT PAID BY INSURANCE, THE LAW SAYS:

1. Notice. You must give the other parent an itemized statement of the charges that have been billed for any health-care costs not paid by insurance. You must give this statement to the other parent within a reasonable time, but no more than 30 days after those costs were given to you.

2. Proof of full payment. If you have already paid all of the uninsured costs, you must (1) give the other parent proof that you paid them and (2) ask for reimbursement for the other parent's court-ordered share of those costs.

3. Proof of partial payment. If you have paid only your share of the uninsured costs, you must (1) give the other parent proof that you paid your share, (2) ask that the other parent pay his or her share of the costs directly to the health-care provider, and (3) give the other parent the information necessary for that parent to be able to pay the bill.

4. Payment by notified parent. If you receive notice from a parent that an uninsured health-care cost has been incurred, you must pay your share of that cost within the time the court orders; or if the court has not specified a period of time, you must make payment (1) within 30 days from the time you were given notice of the amount due, (2) according to any payment schedule set by the health-care provider, (3) according to a schedule agreed to in writing by you and the other parent, or (4) according to a schedule adopted by the court.

5. Going to court. Sometimes parents get into disagreements about health-care costs. If you and the other parent cannot resolve the situation after talking about it, you can request that the court make a decision.

a. Disputed charges. If you dispute a charge made by the other parent, you may file a request for the court to resolve the dispute, but only if you pay that charge before filing your request.

b. Nonpayment. If you claim that the other parent has failed to pay you back for a payment, or they have failed to make a payment to the provider after proper notice, you may file a request for the court to resolve the dispute. The court will presume that if uninsured costs have been paid, those costs were reasonable.

c. Attorney fees. The court may award attorney fees and costs against a parent who has been unreasonable.

d. Court forms. Use forms FL-300 and FL-490 to get a court date. See form FL-300-INFO for information about completing, filing, and serving your court papers.

6. Court-ordered insurance coverage. If a parent provides health-care insurance as ordered by the court, that insurance must be used at all times to the extent that it is available for health-care costs.

a. Burden to prove. The party claiming that the coverage is inadequate to meet the child's needs has the burden of proving that to the court.

b. Cost of additional coverage. If a parent purchases health-care insurance in addition to that ordered by the court, that parent must pay all the costs of the additional coverage. In addition, if a parent uses alternative coverage that costs more than the coverage provided by court order, that parent must pay the difference.

7. Preferred health providers. If the court-ordered coverage designates a preferred health-care provider, that provider must be used at all times consistent with the terms of the health insurance policy. When any party uses a health-care provider other than the preferred provider, any health-care costs that would have been paid by the preferred health provider if that provider had been used must be the sole responsibility of the party incurring those costs.

Information About Incarcerated Parents for Support Orders Made or Modified After December 31, 2020

1. Child support. Under current California law, child support automatically stops if the parent who has to pay:

- Is confined against their will, for more than 90 days in a row, in jail, prison, juvenile detention, or a mental health facility.

2. Exceptions. Child support does not automatically stop if the parent who has to pay:

- Is confined for:
  - Domestic violence against the other parent or child; or
  - Failing to pay a child support order; or
- Has money available to pay child support.

3. Timing. Child support will automatically restart at the old amount the first day of the first full month after the parent is released. If you need to change your child support order, see page 2.

4. More info. For more information about child support and incarcerated parents, see Family Code section 4007.5 or talk to the family law facilitator in your county.

NOTICE OF RIGHTS AND RESPONSIBILITIES
Information Sheet on Changing a Child Support Order

General Information
The court has made a child support order in your case. This order will remain the same unless a party to the action requests that the support be changed (modified). An order for child support can be modified only by filing a motion to change child support and serving each party involved in your case. If both parents and the local child support agency (if it is involved) agree on a new child support amount, you can complete, have all parties sign, and file with the court a *Stipulation to Establish or Modify Child Support and Order* (form FL-350) or *Stipulation and Order (Governmental)* (form FL-625).

When a Child Support Order May Be Modified
The court takes several things into account when ordering the payment of child support. First, the number of children is considered, along with the percentage of time each parent has physical custody of the children. Next, the net disposable incomes of both parents are determined (which is how much money is left each month after taxes and certain other items like health insurance, union dues, or other child support paid are subtracted from your pay). The court can also look at earning ability if a parent is not working. The court considers both parents' tax filing status and may consider hardships, such as a child of another relationship. An existing order for child support may be modified when the net disposable income of one of the parents changes significantly, the parenting schedule changes significantly, or a new child is born.

Examples
- You have been ordered to pay $500 per month in child support. You lose your job. You will continue to owe $500 per month, plus 10 percent interest on any unpaid support, unless you file a motion to modify your child support to a lower amount and the court orders a reduction.
- You are currently receiving $300 per month in child support from the other parent, whose net income has just increased substantially. You will continue to receive $300 per month unless you file a motion to modify your child support to a higher amount and the court orders an increase.
- You are paying child support based upon having physical custody of your children 30 percent of the time. After several months it turns out that you actually have physical custody of the children 50 percent of the time. You may file a motion to modify child support to a lower amount.

How to Change a Child Support Order
To change a child support order, you must file papers with the court. *Remember:* You must follow the order you have now.

What forms do I need?
If you are asking to change a child support order, you must fill out one of these forms:
- Form FL-300, *Request for Order* ***or***
- Form FL-390, *Notice of Motion and Motion for Simplified Modification of Order for Child, Spousal, or Family Support*

You must also fill out one of these forms:
- Form FL-150, *Income and Expense Declaration* ***or***
- Form FL-155, *Financial Statement (Simplified)*

What if I am not sure which forms to fill out?
Talk to the family law facilitator at your court.

After you fill out the forms, file them with the court clerk and ask for a hearing date. Write the hearing date on the form. The clerk may ask you to pay a filing fee. If you cannot afford the fee, fill out these forms, too:
- Form FW-001, *Request to Waive Court Fees* ***and*** form FW-003, *Order on Court Fee Waiver (Superior Court)*

You must serve the other parent. If the local child support agency is involved, serve it too.

This means someone 18 or over—**not you—**must serve the other parent copies of your filed court forms at least **16 court days** before the hearing. Add **5 calendar days** if you serve by mail within California (see Code of Civil Procedure section 1005 for other situations). **Court days** are weekdays when the court is open for business (Monday through Friday except court holidays). **Calendar days** include all days of the month, including weekends and holidays. To find court holidays, go to *www.courts.ca.gov/holidays.htm*.

The server must also serve blank copies of these forms:
- Form FL-320, *Responsive Declaration to Request for Order* ***and*** form FL-150, *Income and Expense Declaration,* ***or***
- Form FL-155, *Financial Statement (Simplified)*

Then the server fills out and signs a *Proof of Service* (form FL-330 or form FL-335). Take this form to the clerk and file it.

Go to your hearing and ask the judge to change the support. Bring your tax returns from the last two years and your last two months' pay stubs. The judge will look at your information, listen to both parents, and make an order. After the hearing, fill out:
- Form FL-340, *Findings and Order After Hearing* ***and*** form FL-342, *Child Support Information and Order Attachment*

Need help?
Contact the family law facilitator in your county or call your county's bar association and ask for an experienced family lawyer.

PARTY WITHOUT ATTORNEY OR ATTORNEY STATE BAR NUMBER:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT: OTHER PARTY:	
STIPULATION TO ESTABLISH OR MODIFY CHILD SUPPORT AND ORDER	CASE NUMBER:

INSTRUCTIONS

- Use this form if the parents have an agreement about child support. After this form is completed and signed by both parents, it must be filed and approved by the court. A court case (for example, a divorce case) must already be open before this form can be used.
- If the local child support agency is involved in your case, a lawyer from their office must also approve and sign the agreement.
- If the local child support agency is not involved in your case, each parent must also complete and file a *Child Support Case Registry Form* (form FL-191) when submitting this agreement to the court.
- When you file the agreement with the court, the clerk may ask the parents to pay a filing fee. If you cannot afford the fee, you must fill out these forms: *Request to Waive Court Fees* (form FW-001) and *Order on Court Fee Waiver (Superior Court)* (form FW-003).
- For more information about child support, go to: *https://selfhelp.courts.ca.gov/what-know-about-child-support* and for help with completing this form, talk to the family law facilitator or self-help center in your county.

1. The child support orders below are agreed to by:
   a. *(name):* , who is the ☐ Petitioner ☐ Respondent ☐ Other party , and
   b. *(name):* , who is the ☐ Petitioner ☐ Respondent ☐ Other party .

2. We agree that *(name):* must pay to *(name):*
   child support as listed below, beginning on *(date):* .
   a. The children are:

	Name of child	Date of birth	Monthly amount
(1)			
(2)			
(3)			
(4)			

   (5) ☐ Additional children are listed on an attached page.

   Total: $ payable ☐ on the first of the month ☐ other *(specify):*

   b. ☐ The parents agree to pay additional child support as follows:
   Instructions: For each item you select in the table on page 2, you must also tell the court how the expense will be paid each month.
   - *Percentage:* You can select "50% by each parent" or use a different split (for example, *Name 1:* 70%, *Name 2:* 30%).

   -OR-
   - *Dollar amount:* You can input a fixed dollar amount (for example, *Name 2* will pay $150/month for child care costs).

   (**Note:** if the actual monthly cost for that item later changes, you will then also need to change the court order; this will not happen automatically.)

PETITIONER: RESPONDENT: OTHER PARTY:	CASE NUMBER:

✓	Additional child support	Percentage			Dollar amount	
		50% by each parent	*(name):*	*(name):*	*(name):*	*(name):*
☐	Reasonable uninsured medical costs for child	☐	%	%	$ /month	$ /month
☐	Child care costs related to job or job training	☐	%	%	$ /month	$ /month
☐	Educational costs for child	☐	%	%	$ /month	$ /month
☐	Costs for other special needs of child	☐	%	%	$ /month	$ /month
☐	Travel expenses for visitation	☐	%	%	$ /month	$ /month
☐	Other *(specify):*	☐	%	%	$ /month	$ /month

② c. **Total monthly child support.** *(name):* will pay: $, payable

☐ on the first of the month ☐ other *(specify):* .

③ Health insurance for the child will be provided by *(name):* if available at no or reasonable cost from their job or self-employment. The parent ordered to provide health insurance must seek continuation of coverage for the child after the child attains the age when the child is no longer considered eligible for coverage as a dependent under the insurance contract, if the child is incapable of self-sustaining employment because of a physically or mentally disabling injury, illness, or condition and is chiefly dependent upon the parent providing health insurance for support and maintenance.

④ ☐ We have attached a printout of a computer calculation of our financial information. (If you do not attach a printout, fill out items ⑤ and ⑥, and ⑦ if applicable. A free child support calculator is available at: www.childsupport.ca.gov/guideline-calculator.)

-OR-

⑤ ☐ The net monthly disposable income of *(name):* is: $, and
the net monthly disposable income of *(name):* is: $.

(**Note:** child support is based on the *net disposable income* of each parent, which is how much money is left each month after taxes and certain other items like health insurance, union dues, or other child support paid are subtracted from your pay.)

⑥ ☐ Based on our parenting time arrangement, on average the child is with *(name):* % of the time and is with *(name):* % of the time each month.

⑦ ☐ We agree to allow hardships in calculating child support.

a. ☐ *(name):* : $ per month because of *(specify):*

b. ☐ *(name):* : $ per month because of *(specify):*

⑧ Guideline child support is $ per month, payable by *(name):* .

⑨ ☐ We agree to guideline child support.

⑩ ☐ The guideline amount should not be used because of the following:

a. ☐ We agree to child support in the amount of: $ per month; the agreement is in the best interest of the children; the needs of the children will be adequately met by the agreed amount; and application of the guideline would be unjust or inappropriate in this case.

b. ☐ Other reasons why the guideline amount should not be used *(specify):*

⑪ a. ☐ We agree to promptly tell each other our new mailing address if it changes.

b. ☐ We agree to promptly tell each other our new employment information if we change jobs.

⑫ ☐ Other agreements related to child support *(specify):*

PETITIONER: RESPONDENT: OTHER PARTY:	CASE NUMBER:

(13) a. An earnings assignment order is issued. All child support payments must be made through the State Disbursement Unit.

b. ☐ We agree to stay (stop) the service of the earnings assignment because we have made the following alternative arrangements to ensure payment *(specify):* .

(14) We agree that we are fully informed of our rights under the California child support guidelines. This agreement is in the best interest of the child. We make this agreement freely without coercion or duress.

(15) In the event that there is a contract between a parent receiving support and a private child support collector, the parent ordered to pay support must pay the fee charged by the private child support collector. This fee must not exceed 33 1/3 percent of the total amount in arrears nor may it exceed 50 percent of any fee charged by the private child support collector. The money judgment created by this provision is in favor of the private child support collector and the parent receiving support, jointly.

(16) *Notice of Rights and Responsibilities (Health-Care Costs and Reimbursement Procedures) and Information Sheet on Changing a Child Support Order* (form FL-192) must be attached and is incorporated into this order.

(17) a. ☐ The right to support has not been assigned to any county, and no application for public assistance is pending.

b. ☐ The right to support has been assigned or an application for public assistance is pending.

If you checked b, a lawyer from the local child support agency must also approve and sign the agreement.

(18) ☐ The local child support agency has reviewed and approves of this agreement.

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF ATTORNEY FOR LOCAL CHILD SUPPORT AGENCY)

NOTICE: Any parent required to pay child support must pay interest on overdue amounts at the "legal" rate, which is currently 10 percent per year. If the parents agree to a child support order less than the guideline amount, the order can be modified without showing a change of circumstances. If the order is above the guideline, a change of circumstances will be required to modify the order. This form must be signed by all parties and the court to be effective.

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF ☐ PETITIONER ☐ RESPONDENT ☐ OTHER PARTY)

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF ☐ PETITIONER ☐ RESPONDENT ☐ OTHER PARTY)

Date:

(TYPE OR PRINT NAME) ▶ (ATTORNEY FOR ☐ PETITIONER ☐ RESPONDENT ☐ OTHER PARTY)

Date:

(TYPE OR PRINT NAME) ▶ (ATTORNEY FOR ☐ PETITIONER ☐ RESPONDENT ☐ OTHER PARTY)

THE COURT ORDERS

(19) a. ☐ The guideline child support amount in item (8) is rebutted by the factors stated in item (10).

b. Items (1) through (3) and items (11) through (13) are ordered. All child support payments must continue until further order of the court, or until the child marries, dies, is emancipated, or reaches age 18. The duty of support continues as to an unmarried child who has attained the age of 18 years, is a full-time high school student, and resides with a parent, until the time the child completes the 12th grade or attains the age of 19 years, whichever first occurs. Except as modified by this agreement, all provisions of any previous orders made in this action will remain in effect.

Date:

JUDICIAL OFFICER

PETITIONER: RESPONDENT: OTHER PARTY:	CASE NUMBER: **DRAFT**

Not approved by the Judicial Council

APPLICATION TO DETERMINE ARREARS

Attachment to *Request for Order* (form FL-300)

☐ **Child Support** ☐ **Spousal or partner support** ☐ **Family support** ☐ **Medical support**
☐ **Unreimbursed expenses** ☐ **Unreimbursed medical expenses** ☐ **Other** ***(specify):***

1. I ask that the amount of past due support payments (arrears) be decided in this case.
   a. ☐ I have already paid ☐ some ☐ all of the support ordered. Proof of payment is attached.
   b. ☐ The children for whom support is to be paid were living with me full time for the period from to: . I provided all of their support during that period. I am attaching a detailed declaration explaining these facts and supporting documentation, including any proof that the children were living with me.
   c. ☐ I could not pay child support because:
      (1) I was confined against my will, for more than 90 days in a row, in jail, prison, juvenile detention, or a mental health facility (*attach proof*):
         (a) Start date:
         (b) End date:
      (2) I was not confined for:
         (a) Domestic violence against the other parent or our child; or
         (b) Failing to pay a child support order.
      (3) I had no money available to pay child support while I was confined.
      (4) My child support order was entered or modified after **December 31, 2020**.
   d. ☐ Other *(specify):*

2. ☐ I have previously asked the other parent for payment and provided the other parent with an itemized statement of the unreimbursed ☐ childcare expense ☐ medical expense. *(Attach copies of all bills being claimed and proof of any payments that you have made on these bills.)*
3. ☐ I am asking the other person to pay ☐ attorney fees ☐ costs.
   My *Income and Expense Declaration* (form FL-150) is attached.
4. I have attached *(check all that apply):*
   a. ☐ a *Declaration of Payment History* (form FL-420).
   b. ☐ a *Payment History Attachment* (form FL-421).
   c. ☐ Other *(specify):*
5. Facts in support of the relief requested are *(specify):*

   ☐ contained in the attached declaration.

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date:

(TYPE OR PRINT NAME)	▶ (SIGNATURE OF DECLARANT)
	☐ Petitioner/plaintiff ☐ Respondent/defendant ☐ Other parent/party ☐ Other *(specify):*

NOTICE: This form must be attached to *Request for Order* (FL-300)

NOT A COURT ORDER

PARTY WITHOUT ATTORNEY OR ATTORNEY *(name, state bar number, and address):*	FOR COURT USE ONLY
NAME: STATE BAR NO.: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT: OTHER PARTY:	
REQUEST FOR DETERMINATION OF SUPPORT ARREARS	CASE NUMBER:

INSTRUCTIONS

- Use this form if you disagree with the local child support agency about how much back support (arrears) is owed.
- Complete items 4–6. For more information about completing this form, see *Information Sheet: Request for Determination of Support Arrears* (form FL-676-INFO).
- After you fill out the request and any attachments, take the originals plus three copies to the court clerk to file.
- After you file, copies of your court papers must be "served" on the local child support agency and the other party in the case, and you must file a proof of service with the court. See form FL-676-INFO for more information about serving the request.
- Make sure you go to the court hearing listed in item 1.

NOTICE OF HEARING

1. A hearing on this application will be held as follows:
   a. Date: Time: Dept: Div: Room:
   b. The address of the court is ☐ same as noted above ☐ Other *(specify):*

2. **WARNING to the person served with this request:** The court may make the requested orders without you if you do not file a *Response to Governmental Notice of Motion or Order to Show Cause* (form FL-685), and appear at the hearing. See form FL-676-INFO for more information about filing a response.

3. The local child support agency is providing support enforcement services in this case.

4. a. I ☐ did ☐ did not request an administrative review of support received by the local child support agency.
   b. A printout listing support payments received by the local child support agency ☐ is ☐ is not attached.

5. I ask that the amount of past due support payments (arrears) be adjusted in this case.
   a. ☐ I disagree with how much support the local child support agency says was paid. I am attaching my own payment history with a monthly breakdown of how much was ordered and how much was paid.

PETITIONER:	CASE NUMBER:
RESPONDENT:	
OTHER PARTY:	

5. b. ☐ I could not pay child support because:

   (1) I was confined against my will, for more than 90 days in a row, in jail, prison, juvenile detention, or a mental health facility (*attach proof*):
      (a) Start date:
      (b) End date:

   (2) I was not confined for:
      (a) Domestic violence against the other parent or our child; or
      (b) Failing to pay a child support order.

   (3) I had no money available to pay child support while I was confined.

   (4) My child support order was entered or modified after **December 31, 2020**.

   c. ☐ Other *(specify):*

6. I have attached *(check all that apply):*

   a. ☐ a *Declaration of Payment History* (form FL-420).

   b. ☐ a *Payment History Attachment* (form FL-421).

   c. ☐ a printout listing support payments received by the local child support agency.

   d. ☐ Other *(specify):*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE)

This case may be referred to a court commissioner for hearing. By law, court commissioners do not have the authority to issue final orders and judgments in contested cases unless they are acting as temporary judges. The court commissioner in your case will act as a temporary judge unless, *before the hearing*, you or any other party objects to the commissioner's acting as a temporary judge. If you or the other party objects, the court commissioner may still hear your case to make findings and a recommended order to a judge. If you do not like the recommended order, you must object to it within **10 court days** in writing (use *Notice of Objection (Governmental)* (form FL-666)); otherwise, the recommended order will become a final order of the court. If you object to the recommended order, a judge will make a temporary order and set a new hearing.

DRAFT. Not approved by the Judicial Council

When do I use form FL-676?

Use this form if the local child support agency is involved in your child support case and you:

- Disagree with how much in back support (arrears) they say is owed; or
- They refused to adjust the back support (arrears) for the time you were in jail, prison, juvenile detention, or a mental health facility for longer than 90 days and couldn't pay support.

Do NOT use form FL-676 to change the order.

If you want to change the support order, you need to file a *Request for Order* (form FL-300) and an *Income and Expense Declaration* (form FL-150). See form FL-300-INFO for more information.

How do I get a court date?

Step 1: Fill out the form (in black ink)

❶ Put your name, address, and contact information at the top of the form. Next, enter the court name and address. Then insert the names of the Petitioner, Respondent, and Other Party, and the case number. (You can find this information on your child support order.)

❷ Start with Item 4 to tell the court why you want the back support (arrears) changed.

- Item 4(a): Tell the court if you asked for the local child support agency to conduct an administrative review of support payments received.*
- Item 4(b): Tell the court if you've attached a printout listing payments received by the local child support agency.*

(***Note:** You can file this request without first asking for an administrative review or attaching a printout from the local child support agency.)

- Item 5(a): Attach your own support payment history, breaking down how much was owed and how much was paid each month. (You can use forms FL-420 and FL-421 for this purpose.)
- Item 5(b): Attach proof to show the court you were in jail, prison, juvenile detention, or a mental health facility against your will for longer than 90 days and had no other money available to pay child support during that time. (**Note:** This relief can only be requested for orders made or modified after December 31, 2020.)
- Item 5(c): If 5(a) or 5(b) don't apply, tell the court why the back support (arrears) should be adjusted.
- Item 6: Tell the court what paperwork (evidence) you have attached to your request.

❸ Enter the date, print your name, and sign the form to tell the court that everything in your paperwork is true and correct.

Step 2: Make copies of your court papers

Make 3 sets of copies of your request, including any attachments, and keep the signed originals.

Step 3: File your request with the court

❶ Take your originals, plus the 3 sets of copies, and file them with the court clerk. Find your court here: *www.courts.ca.gov/find-my-court.htm*.

❷ The court clerk will fill out Item 1 with information about your court hearing date and return the 3 sets of copies to you with a "filed" stamp in the top right corner.

Tip: Check your local court's website to see if you can file your request electronically (e-file).

❸ You will not be charged a fee to file this request.

Step 4: Have someone "serve" your request

❶ Service is the act of giving your court papers to the local child support agency and the other party in your case. Service can be done in person or by U.S. mail.

❷ A "server" (someone else 18 years or older) must serve your request. You can not serve your own court papers.

❸ Give 2 sets of copies of your request, plus any attachments, to your server.

❹ There are two options for service:

Option 1	Option 2
Your server must hand-deliver or mail both sets of copies to the local child support agency, who will then send one set to the other party. To do this option, your server must deliver the papers at least **30 days** before the court date.	Your server must hand-deliver or mail one set of copies to the local child support agency and one set to the other party. To do this option, your server must deliver the papers at least **16 court days** before the court date (Add **5 more days** if served by mail.)

❺ Your server must then complete, sign, and date a *Proof of Service* form to tell the court where and when your request was delivered.

In person: Have your server fill out form FL-330.

By mail: Have your server fill out form FL-335.

❻ Double check the *Proof of Service* form to make sure your server correctly completed and signed the form. File the original form, plus one copy, with the court at least one week before your court date.

Go to your court hearing

❶ You must appear at your court hearing or else your request can be denied. Check your local court's website to see if they are conducting hearings in person or remotely (by videoconference). Complete and file form FL-679 if you want to appear by phone.

❷ For information about what to expect at the hearing: *www.selfhelp.courts.ca.gov/prepare-your-court-date*.

Free help

Every county has a family law facilitator that can:

- Explain the legal process;
- Give you free legal forms; and
- Help you fill out court papers.

Depending on your county, the facilitator may help you in person, online, or by phone. Talk to the facilitator in your county for more information.

Disability Accommodation Request

If you have a disability and need an accommodation while you are at court, you can use form MC-410 to make your request. For more information, see form form MC-410-INFO.

Court interpreters

If you don't speak or understand English very well, you may need a court interpreter to help you in court. You can use form INT-300 to request an interpreter for your court hearing. Ask the court clerk or family law facilitator in your county for more information.

I got served with a Request for Determination of Support Arrears, now what?

If you disagree with the requests made by the other party in form FL-676, you need to:

- File and serve your own court papers, at least **9 court days** before the court date; and
- Appear at the court hearing.

To respond to the request, file and serve:

- *Response to Governmental Notice of Motion or Order to Show Cause* (form FL-685); and
- Your own payment history. (You can use forms FL-420 and FL-421 for this purpose.)

See Step 4 for more information about serving court papers and use Option 2.

GOVERNMENTAL AGENCY *(under Family Code, §§ 17400, 17406)*: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	*FOR COURT USE ONLY* **DRAFT Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	
SHORT FORM ORDER AFTER HEARING	CASE NUMBER:

1. **This matter proceeded as follows:** ☐ Uncontested ☐ By stipulation ☐ Contested
   a. Date: Dept: Judicial Officer:
   b. ☐ Petitioner/plaintiff present ☐ Attorney present *(name)*:
   c. ☐ Respondent/defendant present ☐ Attorney present *(name)*:
   d. ☐ Other parent/party present ☐ Attorney present *(name)*:
   e. Attorney for local child support agency present under Family Code sections 17400 and 17406 by *(name)*:
   f. ☐ Other *(specify)*:

2. **THE COURT FINDS,** based upon the moving papers:
   a. *(Name)*: is the parent ordered to pay support in this proceeding.
   b. ☐ The parent ordered to pay support has no ability to pay support because *(specify)*:
   c. ☐ Health insurance coverage at no or reasonable cost is currently not available to the parent ordered to pay support to cover the minor children in this action.

3. **THE COURT ORDERS**
   a. All orders previously made in this action will remain in full force and effect except as specifically modified below.
   b. ☐ This matter is continued to: in Dept.: for the following purposes only:
   c. ☐ The parent ordered to pay support is ordered to appear on the continuance date.
   d. ☐ Current child support is modified to: $ per month beginning *(date)*:
   e. ☐ The court retains jurisdiction to order support retroactive to:
      (1) ☐ *(Specify date)*:
      (2) ☐ The date the parent ordered to pay support becomes employed or otherwise has the ability to pay support.
      (3) ☐ The date the parent ordered to pay support abandons or separates from the children at issue in this case.
   f. ☐ Any order to liquidate the support arrearage is suspended until further order of this court.
   g. In the event that there is a contract between a party receiving support and a private child support collector, the party ordered to pay support must pay the fee charged by the private child support collector. This fee must not exceed 33 1/3 percent of the total amount of past due support nor may it exceed 50 percent of any fee charged by the private child support collector. The money judgment created by this provision is in favor of the private child support collector and the party receiving support, jointly.
   h. The parents must notify the local child support agency in writing within 10 days of any change in residence or employment.

PETITIONER/PLAINTIFF:	CASE NUMBER:
RESPONDENT/DEFENDANT:	
OTHER PARENT/PARTY:	

3. i. ☐ The parent ordered to pay support is ordered to obtain health insurance coverage for the children in this action if it becomes available at no or reasonable cost. The party ordered to provide health insurance must seek continuation of coverage for the child after the child attains the age when the child is no longer considered eligible for coverage as a dependent under the insurance contract, if the child is incapable of self-sustaining employment because of a physically or mentally disabling injury, illness or condition and is chiefly dependent upon the parent providing health insurance for support and maintenance.

   j. *Notice of Rights and Responsibilities (Health-Care Costs and Reimbursement Procedures) and Information Sheet on Changing a Child Support Order* (form FL-192) must be attached and is incorporated into this order.

   k. ☐ Other *(specify):*

4. Number of pages attached: ________

Approved as conforming to court order.

Date:

(SIGNATURE OF ATTORNEY FOR THE PARENT ORDERED TO PAY SUPPORT)

Date:

____
JUDICIAL OFFICER

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee action requested [Choose from drop down menu below]**:**
Circulate for comment (January 1 cycle)

Rules Committee Meeting Date: 4/14/2021

Title of proposal: Juvenile Law: Sealing of Records

Proposed rules, forms, or standards *(include amend/revise/adopt/approve):*
Amend Cal. Rules of Court, rule 5.850; approve forms JV 581, JV 582, and JV 589; revise forms JV 595-INFO, JV 596-INFO, and JV 597

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee

Staff contact (name, phone and e-mail): Tracy Kenny, 916-263-2838, tracy.kenny@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by Rules Committee date: 11/2/2020
Project description from annual agenda: Project Summary: As directed by the Judicial Council, review legislation identified by Governmental Affairs that may have an impact on family and juvenile law issues within the advisory committee's purview. The committee will review the legislation below, and any other identified legislation, and propose rules and forms as may be appropriate for the council's consideration and will take action only where necessary to allow courts to implement the legislation efficiently.
k. AB 2321 (Jones-Sawyer) Juvenile court records: access (Ch. 329, Stats. of 2020)
Authorizes a judge or prosecutor to access specified sealed juvenile records for the limited purpose of certifying victim helpfulness on specified forms required in order to apply for a U- or T-Visa.

l. AB 2425 (Stone) Juvenile police records (Ch. 330, Stats. of 2020)
Limits the ability of a law enforcement agency to release a copy of a juvenile police record, as specified, and to prohibit the release of information by the arresting law enforcement agency when a juvenile has successfully completed a program of diversion or supervision.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

JUDICIAL COUNCIL OF CALIFORNIA

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

INVITATION TO COMMENT

SPR21-11

Title
Juvenile Law: Sealing of Records

Proposed Rules, Forms, Standards, or Statutes
Amend Cal. Rules of Court, rule 5.850; approve forms JV-581, JV-582, and JV-589; revise forms JV-595-INFO, JV-596-INFO, and JV-597

Proposed by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Action Requested
Review and submit comments by May 27, 2021

Proposed Effective Date
January 1, 2022

Contact
Tracy Kenny, 916-263-2838, tracy.kenny@jud.ca.gov

Executive Summary and Origin

The Family and Juvenile Law Advisory Committee proposes amending a rule of court, revising three forms, and approving three new optional forms to implement recent legislative changes concerning the sealing of juvenile records. The legislative changes allow access to sealed records for two additional purposes and expand sealing of records for youth diverted from the juvenile courts.

Background

In 2014, the Legislature enacted Welfare and Institutions Code section 786[1] to require the sealing and dismissal of specified juvenile petitions when a child has satisfactorily completed probation. In that legislation and numerous subsequent bills, the Legislature has sought to provide access to those records for a variety of purposes. In 2020, Senate Bill 1126 (Jones; Stats. 2020, ch. 338) enacted an additional provision allowing access to the records by the probation department, prosecuting attorney, attorney for the child, or the court when a new petition has been filed and the issue of competency has been raised. In addition, Assembly Bill 2321 (Jones-Sawyer; Stats. 2020, ch. 329) was enacted to allow access to records sealed under section 786 or section 781 (sealing at the request of the subject of the records) by the court or a prosecutor in order to certify victim helpfulness for specified immigration relief purposes. These expansions of

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee. It is circulated for comment purposes only.

access need to be reflected on existing information forms that explain who can access sealed juvenile court records.

In 2017, the Legislature enacted legislation[2] to provide a mechanism to seal the records for youth who were referred by the prosecutor or the probation department to a pre-petition informal program pursuant to section 654. That legislation provided for the sealing of records relating to the arrest and diversion program for successful completion of the program by the probation department and any public or private agency that provided diversion or supervision services. The Judicial Council adopted California Rules of Court, rule 5.850 and two optional forms (JV-597 and JV-598) to assist with the implementation of that legislation, in part because the legislation allows a participant whose completion is found not satisfactory to petition the court for a review of that determination. In 2020, the Legislature enacted Assembly Bill 2425 (Stone; Stats. 2020, ch. 330) to amend section 786.5 to provide that records be sealed by the arresting law enforcement agency as well and requiring that the probation department receive confirmation of the sealing and communicate that to the participant. In addition, that legislation provides that law enforcement agencies that divert youth in lieu of arrest must also seal records and directs the Judicial Council to develop forms to assist with this responsibility.

The Proposal

The committee proposes modifying the two information forms on sealing of records to incorporate the new access provisions. The committee proposes revising the current rule and notification form and approving a new optional acknowledgment of sealing of records to implement the expansion of sealing of records for pre-petition diversion. Finally, the committee, in consultation with the California Law Enforcement Association of Records Supervisors, Inc. (CLEARS), proposes approving two forms to be used by law enforcement to implement sealing in pre-arrest diversion cases.

New forms to implement law enforcement duties to seal pre-arrest diversion records

Newly enacted section 827.95 requires law enforcement agencies to seal the records of youth: (1) who have been diverted prior to arrest or referral to probation and who have satisfactorily completed their diversion program; or (2) who have been counseled and released and have not been referred in the subsequent 60 days; or (3) who are not subject to the jurisdiction of the juvenile court. The statute requires the Judicial Council, in consultation with CLEARS, to develop forms to implement these requirements. The proposal includes two optional forms, *Law Enforcement Notice on Sealing of Records* (form JV-581) and *Petition to Seal Juvenile Police Records* (form JV-582), to use to notify youth and relevant agencies about the sealing, as well as a petition form to request reconsideration of a denial of sealing by the law enforcement agency. These forms would be used by law enforcement agencies and would not be filed with the court.

[2] Assem. Bill 529; Stats. 2017, ch. 685.

Modifications to information forms to reflect new access provisions

The committee proposes amending *How to Ask the Court to Seal Your Records* (form JV-595-INFO) to add a bullet point to the section entitled "Who can see your sealed records?" to explain that records may be accessed to allow a court or prosecutor to certify victim helpfulness for immigration relief purposes. The committee also proposes deleting a redundant bullet point on access by the person whose records have been sealed. The committee would also modify the analogous section on *Sealing of Records for Satisfactory Completion of Probation* (form JV-596-INFO) to include the victim helpfulness provision, as well as a new provision allowing access to competency-related records when a new petition has been filed and competency is at issue.

Implementation of expanded pre-petition diversion sealing

Rule 5.850 amendments

Because the juvenile court is authorized to review a determination by the probation department that a diversion program has been satisfactorily completed, the council adopted rule 5.850 of the California Rules of Court to implement section 786.5. That rule also specifies the procedures for the probation department to follow if section 654 diversion programs are satisfactorily completed. Because AB 2425 has expanded and revised those requirements, the proposal would amend that rule to reflect the current requirements on timing and who must be notified about the obligation to seal. In addition, the rule has been amended to make it gender neutral, and to use "youth" instead of "child" consistent with the new definition in rule 5.502.

Revisions to existing form, and new optional form to acknowledge sealing of records

To assist probation departments in carrying out the expanded sealing requirements added to section 786.5, the proposal includes modifications to the existing *Probation Department Notice on Sealing of Records After Diversion Program* (form JV-597) to provide for the sealing of arrest records by law enforcement. It also includes a new optional *Acknowledgment of Juvenile Diversion Record Sealed* (form JV-589) for those agencies that must seal the diversion records to acknowledge that sealing has been completed so that the probation department can comply with its new duty to confirm that task and notify the subject of the records.

Alternatives Considered

The committee considered not revising the existing informational forms to include the new access provisions but was concerned that not revising them would make them legally inaccurate. The committee considered not proposing a new form for use by probation agencies to receive acknowledgment that diversion records have been sealed, but determined that without such an optional form, the existing optional forms would be incomplete.

Fiscal and Operational Impacts

Printing costs may be incurred by courts to provide the revised mandatory information forms. In addition, because the information forms will need to be made available in other languages, there will be costs to translate the revised forms. All of these impacts are a result of legislative changes and are necessary to make the forms legally accurate. The approval of the optional forms should

make it easier for probation departments and law enforcement agencies to comply with their statutory duties.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Is the new optional probation form (form JV-589) useful to probation departments?
- Will the new optional law enforcement forms (forms JV-581 and JV-582) assist law enforcement in implementing section 827.95?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- 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?
- Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Rules of Court, rule 5.850, at pages 5–6
2. Forms JV-581, JV-582, JV-589, JV-595-INFO, JV-596-INFO, and JV-597, at pages 7–19
3. Link A: Assembly Bill 2321, *http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB2321*
4. Link B: Assembly Bill 2425, *http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB2425*
5. Link C: Senate Bill 1126, *http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB1126*

Rule 5.850 of the California Rules of Court would be amended, effective January 1, 2022, to read:

Rule 5.850. Sealing of records by probation in diversion cases (§ 786.5)

(a) Applicability

This rule states the procedures to seal the records of persons who are subject to section 786.5.

(b) Sealing of records

Upon satisfactory completion of a program of diversion or supervision under a referral by the probation officer or the prosecutor instead of filing a petition to adjudge the person a ward of the juvenile court, including a program of informal supervision under section 654, the probation department must seal the arrest and other records in its custody relating to the arrest or referral and participation in the program. The probation department must notify the arresting law enforcement agency to seal the records relating to the arrest and referral, and the arresting law enforcement agency must seal the records in its custody relating to the arrest, no later than 60 days from the date of the notification. Upon sealing, the law enforcement agency must notify the probation department that the records have been sealed. The probation department must also notify the public or private agency operating the diversion program to which the person has been referred to seal any records in its custody relating to the arrest or referral and participation in the program, and the operator of the program must do so ~~promptly~~ no later than 60 days from the date of the notification by the probation department. Upon sealing, the public or private agency must notify the probation department that the records have been sealed.

(c) Notice to participant

Within 60 days of the ~~satisfactory~~ completion of the program or a determination that the program has not been completed, the probation department must determine whether the participant satisfactorily completed a program subject to this rule~~,~~ . Within 30 days from receipt of the notification by the arresting law enforcement agency that the records have been sealed, the probation department must notify the person in writing that ~~his or her~~ the records have been sealed. If the probation department determines that the program has not been completed satisfactorily, it must notify the person in writing of the reason or reasons for not sealing the record and provide the person with a copy of the *Petition to Review Denial of Sealing of Records After Diversion Program* (form JV-598) or similar local form to allow the person to seek court review of the probation department's determination within 60 days of making that determination, as well as a copy of *How to Ask the Court to*

Seal Your Records (form JV-595-INFO) or other information on how to petition the court directly to seal arrest and other related records.

(d) Review of unsatisfactory completion of program by the juvenile court

A person who receives notice from the probation department that ~~he or she has not satisfactorily completed~~ the program has not been satisfactorily completed and that ~~his or her~~ the records have not been sealed may seek review of that determination by the court by submitting a petition to the probation department on the *Petition to Review Denial of Sealing of Records After Diversion Program* (form JV-598) or similar local form, and the probation department must file that petition with the court for a hearing to review whether ~~he or she has met~~ the satisfactory completion requirement has been met and ~~is eligible for record~~ the records are eligible for sealing by the probation department. The petition must be provided to the probation department within 60 days of the date the notice from the probation department was sent, and must include a copy of that notice. The probation department must file the petition with the juvenile court in the county that issued the notice within 30 days of receiving it. The clerk of the court must set the matter for hearing and notify the petitioner and the probation department of the date, time, and location of the hearing. The court must appoint counsel to represent the ~~child~~ youth before or at the hearing unless the court finds that the ~~child~~ youth has made an intelligent waiver of the right to counsel under section 634 or is already represented. If the court finds after the hearing that the petitioner is eligible to have the records sealed under section 786.5, it must order the probation department to promptly comply with the sealing and notice requirements of this rule.

LAW ENFORCEMENT NOTICE ON SEALING OF RECORDS (Welf. & Inst. Code, § 827.95)	Law Enforcement Agency: **DRAFT—Not approved by the Judicial Council JV-581.v2.032121.cz**
YOUTH'S NAME:	

1. Name of subject youth: Date of birth:

2. **RECORDS ARE SEALED**

☐ The subject youth has satisfactorily completed a program of diversion from arrest, citation, or referral to probation or the prosecutor.

The law enforcement agency hereby notifies the following public or private agencies operating the diversion program to which the youth was referred that it must promptly seal any records in its custody relating to the juvenile's arrest or referral or participation in the program and release them only to the subject youth and the youth's parent or guardian as provided in Welfare and Institutions Code section 827.95(c):

(*Specify agency*):
(*Specify agency report or reference number(s)*):

☐ The subject youth was counseled and released by police officers without an arrest, citation, detention, or referral to probation or the prosecutor, and the department has verified that no referral has been made for this youth within 60 days of the release.

☐ The subject youth does not fall within the jurisdiction of the juvenile delinquency court under current state law.

All police records relating to the arrest or referral and participation in the program related to the following law enforcement agency report or reference number(s): date of report(s):
in the department's custody have been sealed, and the arrest is deemed never to have occurred. Upon request, a copy of the police records must be released to the youth and the youth's parent or guardian if identifying information pertaining to any other juvenile has been removed.

☐ The subject youth is a dependent of the juvenile court and the youth's social worker:
is hereby notified that any records in the social worker's custody pertaining to the law enforcement contact or referral must be sealed.

3. **RECORDS ARE NOT SEALED**

☐ The law enforcement agency has determined that sealing is inappropriate because the diversion program was not satisfactorily completed for the reasons stated below and has not sealed the youth's records.

☐ The subject youth was referred to probation or the prosecutor on (*date*):
which is less than 60 days from when the youth was released.

A copy of form JV-582, *Petition to Seal Juvenile Police Records,* or comparable local form has been provided to the youth to allow the youth to request reconsideration of this determination.

YOUTH'S NAME:	Law Enforcement Agency:

4. The law enforcement agency must send a copy of this notice to the youth and the agencies and officials listed in item 2 within the time frames set forth in Welfare and Institutions Code section 827.95.

Date:

SIGNATURE OF LAW ENFORCEMENT OFFICER

PETITION TO SEAL JUVENILE POLICE RECORDS (Welf. & Inst. Code § 827.95)	Law Enforcement Agency:
YOUTH'S NAME:	JV-582.v4.032121.cz

INSTRUCTIONS

Use this form if you received a notice from law enforcement saying that your juvenile police records were not sealed because you did not satisfactorily complete your diversion program, or because you were referred to probation or the prosecutor within 60 days of being released from law enforcement custody.

How to fill out the form:

a. Put your name and contact information in the box at the top of the form and in item 1 below.

b. In item 2, put the reasons why you think that your records should be sealed; these may include reasons why you think you did satisfactorily complete your diversion program or that you were not referred to probation or the prosecutor. You may also attach any documents that you think show that your records should be sealed.

c. Attach a copy of the notice from law enforcement telling you that your juvenile police records were not sealed.

d. Return the completed form to the law enforcement agency listed above.

For information about juvenile record sealing, go to www.courts.ca.gov/28120.htm.

1. **MY INFORMATION**
   My name is:
   I was born on (*date*):
   My address is:

2. **WHY MY JUVENILE POLICE RECORDS ARE ELIGIBLE TO BE SEALED**

   ☐ For the reasons stated below, I believe that I satisfactorily complied with the reasonable terms of program participation that were within my capacity to perform.

   ☐ For the reasons stated below, I think the determination that I was referred to probation or the prosecutor is not accurate.

YOUTH'S NAME:	Law Enforcement Agency:

5. **ATTACHMENT OF LAW ENFORCEMENT NOTICE**
I have attached a copy of the notice from the law enforcement agency stating that my records were not sealed (form JV-581 or similar local form) to this form.

6. **ATTACHMENT OF OTHER DOCUMENTATION**
☐ I have attached other documentation in support of my petition.

Date:

(SIGNATURE OF PETITIONER)

INSTRUCTIONS—AFTER YOU COMPLETE THIS FORM

Give this form, the attached copy of the notice from law enforcement, and any supporting documentation to the law enforcement agency that gave you the notice.

How to Ask the Court to Seal Your Records

JV595INFO.v4.032121.cz

If you were arrested or subject to a court proceeding or had contact with the juvenile justice system when you were under 18, there may be records kept by courts, police, schools, or other public agencies about what you did. If the court (makes them private) sealed, it could be easier for you to:

- Find a job.
- Get a driver's license.
- Get a loan.
- Rent an apartment.
- Go to college.

If the court sealed your records when probation was terminated, you do not need to ask for them to be sealed.

There are now three ways that records may be sealed in California. As of January 1, 2015, courts are required to seal records in certain cases when the court finds that probation (formal or informal) is satisfactorily completed or if your case was otherwise dismissed after the petition was filed. If the court sealed all of your records at the end of your case, you should have received a copy of the sealing order, and you do not need to ask the court to seal the records in that sealing order.

For more information about when the court seals your records at the completion of probation, see Sealing of Records for Satisfsfactory Completion of Probation (form **JV-596-INFO).**

If probation sealed your diversion records for satisfactory completion, you may wish to ask the court to seal any remaining records of your behavior.

As of January 1, 2018, if you participate in a diversion program or other supervision program instead of going to court, and the probation department determines that you satisfactorily completed that program, the probation department will seal your probation department records and the records for any program you were required to complete. If the probation department determines that you did not satisfactorily complete the program, it will not seal those records, but will give you a form to tell you why and a form that you can use to tell the court why you think you did satisfactorily complete the program. If the court agrees with you, it will order your probation and program records sealed. Because probation did not seal any arrest records at this time, you may want to ask the court to seal any other records relating to this conduct when you are eligible to ask for record sealing as explained on this form.

If you have more than one juvenile case or contact and/or are unsure if your records were sealed by the court, ask your attorney or probation officer or the juvenile court clerk in the county where you had a case or contact.

Who qualifies to ask the court to seal their juvenile records?

If the court has not already sealed your records, you can ask the court to make that order if:

- You are at least **18** or it has been at least five years since your case was closed; and
- You have been rehabilitated to the satisfaction of the court.

What if I owe restitution or fines?

The court may seal your records even if you have not paid your full restitution order to the victim.

The court will not consider outstanding fines and court-ordered fees when deciding whether to seal your records, but you are still required to pay the restitution, fines, and fees, and your records can be looked at to enforce those orders.

Who does not qualify to have their records sealed?

- You do not qualify to have your records sealed if you were convicted as an adult of an offense involving moral turpitude, such as:
  - A sex or serious drug crime;
  - Murder or other violent crime; or
  - Forgery, welfare fraud, or other crime of dishonesty.
- You do not qualify to have your records sealed if, when you were 14 or older, the court found that you committed a sex offense listed in Welfare and Institutions Code section 707(b) for which you must register under Penal Code section 290.008 because you were paroled from the Department of Justice facilities.

If you are unsure if you qualify, ask your attorney.

Who can see my sealed records?

- The Department of Motor Vehicles can see your vehicle and traffic records and share them with insurance companies.
- The court may see your records if you are a witness or involved in a defamation case.
- If you apply for benefits as a nonminor dependent, the court may see your records.

- A prosecuting attorney may see your records that were sealed for an offense listed under Welfare and Institutions Code section 707(b) in a later proceeding for the reasons listed in section 781(d).
- If your sealed record was for a section 707(b) offense when you were 14 or older, the prosecutor, probation, and the court may unseal your records if you are charged with a later felony.
- If a judge or prosecutor needs to determine if a victim of certain offenses was helpful in investigation or prosecution of the offense when the victim is seeking certification in connection with an immigration matter.
- If a prosecutor thinks something in your record would be helpful to the defense of someone who is charged with a crime in another case, the prosecutor can ask the court to provide that information.
- If you want to see your records or allow someone else to see them, you can ask the court to unseal them.

Can employers see my records if they are not sealed?

Juvenile records are not allowed to be disclosed to most employers, and employers are not allowed to ask about or consider your juvenile history in most cases. There are exceptions to this rule if you are applying to be a peace officer or to work in health settings. Also, federal employers may still have access to your juvenile history. You should seek legal advice if you have questions about what an employer can ask about you.

How do I ask to have my records sealed?

1. You must fill out a court form. Form JV-595, *Request to Seal Juvenile Records,* at *www.courts.ca.gov/forms.htm*, can be used, or your court may have a local form.
2. When you file your petition, the probation department will compile a list of every law enforcement agency, entity, or person the probation department knows has a record of your case, as well as a list of any prior contacts with law enforcement or probation, and attach will attach it to your petition.
3. If you think there are agencies that might have records on you that were never sent to probation, you need to name those agencies, or the court will not know to seal those records.

   If you are not sure what contacts you might have had with law enforcement, you can get your criminal history record from the Department of Justice. See http://oag.ca.gov/fingerprints/security for more information.
4. Take your completed form to the probation department where you were on probation. (If you were not on probation, take your form to any county probation office where you have a juvenile record.) *Note*: A small number of counties require you to take your form to the court. More information on each county's specific requirements is available at www.courts.ca.gov/28120.htm.
5. Probation will review your form and submit it to the court within 90 days, or 180 days if you have records in two or more counties.
6. The court will review your petition. The court may decide right away to seal your juvenile records, or the court may order a hearing. If there is a hearing, you will receive a notice in the mail with the date, time, and location of the hearing. If the notice says your hearing is "unopposed" (meaning there is no disagreement with your request), you may choose not to go.
7. If you qualify to have your juvenile records sealed, the court will make an order to seal the eligible records listed on your petition.

   ***Important!* The court can seal only records it knows about. Make sure you list *all* records from *all* counties where you have any records. The court will tell you if it does not seal records from another court that were listed on your petition, and you will need to file a petition in that county to seal those records.**
8. If the court grants your request, it will order each agency, entity, or person on your list to seal your records. The court will also order the records destroyed by a certain date. If the sealed records are for a section 707(b) offense committed when you were 14 or older, the court will not order those records destroyed.
9. The court will provide you with a copy of its order. Be sure to keep it in a safe place.

What about sex offender registration? (Penal Code, § 290)

If the court seals a record that required you to register as a sex offender, the order will say you do **not** have to continue to register.

If my records are sealed, do I have to report the offenses in the sealed records on job, school, or other applications?

No. Once your records are sealed, the law treats those offenses as if they did not occur and you do not need to report them. **However**, the military and some federal agencies may not recognize sealing of records and may be aware of your juvenile justice history, even if your records are sealed. If you want to enlist in the military or apply for a job requiring you to provide information about your juvenile records, seek legal advice about this issue.

Questions

If you are not sure if you qualify to seal your records or if you have other questions, talk to a lawyer. The court is not allowed to give you legal advice. More information about sealing your records can be found at *www.courts.ca.gov/28120.htm*.

In many cases, the court will seal your juvenile records if you satisfactorily complete probation (formal or informal supervision).

If your case is terminated by the juvenile court after January 1, 2015, because you satisfactorily completed your probation (formal or informal), or if your case was otherwise dismissed after the petition was filed, in many cases the court will have dismissed the petition(s) and sealed your records. If the court sealed your records for this reason, you should have received a copy of the sealing order with this form.

If the court finds you have not satisfactorily completed your probation, it will not dismiss your case and will not seal your records at termination. If you want to have your records sealed in this situation, you will need to ask the court to seal your records at a later date (**see *How to Ask* the Court to Seal Your Records (form JV-595-INFO)).** for information about asking the court to seal your records).

The court will not seal your records at the end of your case if you were found to have committed an offense listed in Welfare and Institutions Code section 707(b) (a violent offense such as murder, rape, or kidnapping, and some offenses involving drugs or weapons) when you were 14 or older unless it was dismissed or reduced to a misdemeanor or a lesser offense not listed in 707(b). Unless you were found to have committed one or more of certain sex offenses, you can ask the court to seal your records at age 18 (or age 21 if you were committed to the Division of Juvenile Justice Facilities).

How will the court decide if probation is satisfactorily completed?

If you have done what you were ordered to do while on probation and have not been found to have committed any further crimes (felonies or misdemeanor crimes involving moral turpitude, such as a sex crime or a crime involving dishonesty), the court will find that your probation was satisfactorily completed even if you still owe restitution, court ordered fees, and fines, **BUT...**

Restitution and court fines must still be paid.

Even if your records are sealed, you must still pay your restitution and court-ordered fines. Your sealed records can be looked at to enforce those orders.

Which records will be sealed?

The court will order your court, probation, Department of Justice, and law enforcement agency records sealed for the case the court is closing, and earlier cases, if the court determines you are eligible. If you or your attorney ask the court, it can also seal records of other agencies (such as the District Attorney's office) if it finds that doing so would help you to be rehabilitated.

If you have more than one juvenile case and are unsure which records were sealed, ask your attorney or probation officer.

Who can see my sealed records?

- If your records were sealed by the court at termination, the prosecutor and others can look at your record to determine if you are eligible to participate in a deferred entry of judgment or informal supervision program.
- If you apply for benefits as a nonminor dependent, the court may see your records.
- If a new petition is filed against you for a felony offense, probation can look at what programs you were in but cannot use that information to keep you in juvenile hall or to punish you.
- If the juvenile court finds you have committed a felony, your sealed records can be viewed to decide what disposition (sentence) the court should order.
- If you are arrested for a new offense and the prosecuting attorney asks the court to transfer you to adult court, your record can be reviewed to decide if transfer is appropriate.
- If you are in foster care, the child welfare agency can look at your records to determine where you should live and what services you need.
- If your case was dismissed before you became a ward, the prosecutor can look at your records for six months after the dismissal in order to refile the dismissed petition based on new information or evidence.
- If you are not allowed to have a gun because of your offense, the Department of Justice can look at your records to make sure you do not buy or own a gun.
- If a prosecutor thinks something in your record would be helpful to someone who is charged with a crime in another case, the prosecutor can ask the court to provide that information. If this request is made, the court will let you know. You and your attorney may object.

- If a new petition is filed against you and the issue of your competency to participate in your new case is raised, the probation department, prosecutor, your attorney, and the court can look at your prior competency-related records to assess your current ability to understand and participate in the juvenile court proceedings.
- If a judge or prosecutor needs to determine if a victim of certain offenses was helpful in the investigation or prosecution of the offense when the victim is seeking certification in connection with an immigration matter.
- If you want to see your records or allow someone else to see them, you can ask the court to unseal them.

  NOTE: Even if someone looks at your records in one of these situations, your records will stay sealed and you do not need to ask the court to seal them again.

Do I have to report the offenses in the sealed records on job, school, or other applications?

No. Once your records are sealed, the law treats those offenses as if they did not occur and you do not need to report them. **However,** the military and some federal agencies may not recognize sealing of records and may be aware of your juvenile justice history, even if your records are sealed. If you want to enlist in the military or apply for a job that asks you to provide information about your juvenile records, seek legal advice about this issue.

Can employers see my records if they are not sealed?

Juvenile records are not allowed to be disclosed to most employers, and employers are not allowed to ask about or consider your juvenile history in most cases. There are exceptions to this rule if you are applying to be a peace officer or to work in health settings. Also, federal employers may still have access to your juvenile history. You should seek legal advice if you have questions about what an employer can ask.

PROBATION DEPARTMENT NOTICE ON SEALING OF RECORDS AFTER DIVERSION PROGRAM (Welf. & Inst. Code, § 786.5)	Probation Dept., County of: JV-597.v3.032121.cz
YOUTH'S NAME:	

1. Name of subject youth: Date of birth:

2. a. Date of completion of diversion program: or date diversion program was not satisfactorily completed:

   b. ☐ Probation officer *(name):*

3. **RECORDS ARE SEALED**

   ☐ The subject youth has successfully completed a program of diversion or supervision after referral by the probation officer or prosecutor instead of the filing of a petition to adjudge the youth a ward of the juvenile court. All records in the department's custody relating to the arrest or referral and participation in the program for an alleged violation of
   (specify offense(s)): *(date of offense):*
   have been sealed, and the arrest is deemed never to have occurred, except that a probation department responsible for the supervision of a person may access this record for the purpose of complying with Welfare and Institutions Code section 654.3(e).

   The probation department hereby notifies the law enforcement agency that arrested the youth that it must seal any records in its custody relating to the juvenile's arrest no later than 60 days from the date of this notification and notify the probation department that the records have been sealed:
   (Specify agency):
   (Specify agency report or reference number (s)):
   The probation department hereby notifies the following public or private agencies operating the diversion program to which the youth was referred that it must promptly seal any records in its custody relating to the juvenile's arrest or referral or participation in the program no later than 60 days from the date of this notification and notify the probation department that the records have been sealed:
   (*Specify agency*):
   (Specify agency report or reference number(s)):

4. **PROGRAM COMPLETION IS UNSATISFACTORY—RECORDS ARE NOT SEALED**

   ☐ The probation department has determined that sealing is inappropriate because the program was not satisfactorily completed for the reasons stated below and has not sealed the youth's records. A copy of form JV-598, *Petition to Review Denial of Sealing of Records After Diversion Program,* has been provided to the youth to allow the youth to seek juvenile court review of this determination.

YOUTH'S NAME:	Probation Dept., County of:

5. If the records are to be sealed, the probation department must send a copy of this notice to the youth, the youth's attorney, and the agencies and officials listed in item 3 within 60 days of the completion of the program, and a copy of the acknowledgment that the records have been sealed within 30 days of receipt of the acknowledgement.

6. If the records are not sealed, the probation department must send a copy of this notice to the youth and the youth's attorney within 60 days of completion of the program or 60 days of determining that the program has not been completed.

Date:

(SIGNATURE OF PROBATION OFFICER)

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee action requested [Choose from drop down menu below]**:**
Circulate for comment (January 1 cycle)

Rules Committee Meeting Date: 04/14/2021

Title of proposal: Juvenile Law: Short-Term Residential Therapeutic Program Placement

Proposed rules, forms, or standards *(include amend/revise/adopt/approve):*
Adopt Cal. Rules of Court, rule 5.618; amend rule 5.697; adopt forms JV-235, JV-236, JV-237, JV-238, JV-239; revise forms JV-410, JV-421, JV-461(A), JV-642, JV-667

Committee or other entity submitting the proposal:
Family & Juvenile Law Advisory Committee

Staff contact (name, phone and e-mail): Daniel Richardson, 415-865-7619, daniel.richardson@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by Rules Committee date: 11/02/2020
Project description from annual agenda: Family First Prevention Services Act Implementation: Monitor implementation of the Family First Prevention Services Act (FFPSA), which reforms federal child welfare financing streams, Title IV-E and Title IV-B of the Social Security Act, to provide services to families who are at risk of entering the child welfare system. The committee may be asked to provide input on required changes to California law or to develop rules and forms.

If requesting July 1 or out of cycle, explain:
Requesting to be sent out for comment during spring cycle, but have an effective date of October 1, 2021 as opposed to January 1, 2022. The legislation is expected to be effective October 1, 2021, and the committee would like to have rules and forms in place when the legislation takes effect.

Additional Information: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)
Note: This proposal is to implement a bill that has not yet been enacted. Proposal addresses the implementation of a pending trailer bill which implements part IV of the federal Family First Prevention Services Act. The committee elected to have rules and forms ready for an effective date of October 1, 2021, when federal law requires states to implement the requirements contained in the trailer bill, found here: https://esd.dof.ca.gov/dofpublic/public/trailerBill/pdf/343

JUDICIAL COUNCIL OF CALIFORNIA

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

INVITATION TO COMMENT

SPR21-12

Title
Juvenile Law: Short-Term Residential Therapeutic Program Placement

Proposed Rules, Forms, Standards, or Statutes
Adopt Cal. Rules of Court, rule 5.618; amend rule 5.697; adopt forms JV-235, JV-236, JV-237, JV-238, JV-239; revise forms JV-410, JV-421, JV-461(A), JV-642, JV-667

Proposed by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Action Requested
Review and submit comments by May 27, 2021

Proposed Effective Date
October 1, 2021

Contact
Daniel Richardson, 415-865-7619
daniel.richardson@jud.ca.gov

Executive Summary and Origin

To coincide with the effective date of a *pending* budget trailer bill, the Family and Juvenile Law Advisory Committee proposes that the Judicial Council adopt a new rule of the California Rules of Court, amend a rule, adopt five new Judicial Council forms, and revise five Judicial Council forms, effective October 1, 2021. If enacted, the trailer bill would implement part IV of the federal Family First Preservation and Services Act, with an expected effective date of October 1, 2021. The trailer bill would create a new court hearing in which the juvenile court will be required to approve or deny any new placement of a child or nonminor dependent in a short-term residential therapeutic program (STRTP) after receiving a report that includes an assessment from a statutorily defined "qualified individual." While this bill makes its way through the budget process, the committee is concurrently circulating this rules and forms proposal to have implementing rules and forms available if this language is in the enacted budget trailer bill.

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee. It is circulated for comment purposes only.

Background

A trailer bill[1] has recently been introduced to implement part IV of the federal Family First Prevention Services Act.[2] Part IV[3] of the act addresses steps that participating states must take to safely reduce the inappropriate use of congregate care for children. States have until October 1, 2021, to implement this provision of the act. California intends to meet this deadline through this trailer bill.

The trailer bill addresses the numerous aspects of part IV, including new licensing requirements for STRTPs, new requirements for the interagency placement committee process, the definition of the qualified individual (QI) who must produce an assessment on the need for a STRTP placement or lack thereof, and new reporting requirements at status review hearings when a youth remains placed in a STRTP after the court's approval of the placement. The new required judicial review of a placement of a foster youth (including wards and nonminor dependents) in a STRTP, however, is the focus of this proposal.

As the trailer bill currently reads, it would create new sections 361.22 and 727.12 of the Welfare and Institutions Code.[4] These virtually identical sections would create the process for the juvenile court to approve or disapprove a new placement in a STRTP. After receiving a request for review from the social worker or probation officer, the juvenile court would be required to set a hearing within 45 days of the placement being made. The social worker or probation officer must prepare a report that includes the assessment from the qualified individual, as required by section 4096.[5] The report must be served on all parties no later than seven calendar days before the hearing.

At the hearing, the court must make two determinations: (1) whether the child's or nonminor dependent's needs can be met in a family-based setting and, if not, whether the placement in the STRTP provides the most effective and appropriate care setting in the least restrictive environment, and (2) whether a STRTP is consistent with the short- and long-term mental and

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[1] The full trailer bill language is accessible at *https://esd.dof.ca.gov/dofpublic/public/trailerBill/pdf/343*.

[2] Pub. L. No. 115-123 (Feb. 9, 2018) 132 Stat. 254. The Family First Prevention Services Act was included as a provision in the Bipartisan Budget Package/Continuing Resolution (Pub. L. No. 115-123), which was approved by Congress and signed by President Donald J. Trump on February 9, 2018.

[3] Family First Prevention Services Act (Pub.L. No. 115-123, §§ 50741–50746 (Feb. 9, 2018), 132 Stat. 254).

[4] All subsequent unspecified statutory references are to the Welfare and Institutions Code, and all rule references are to the California Rules of Court.

[5] Section 4096(g)(3): "The assessment conducted by the qualified individual shall include, at a minimum, all of the following: [¶] (A) Engagement with the child and family team members in conducting the assessment. [¶] (B) An assessment of the strengths and needs of the child or nonminor dependent, using an age-appropriate, evidence-based, validated, functional assessment tool and methodology approved by the State Department of Social Services and the State Department of Health Care Services. [¶] (C) The identification of the child-specific short- and long-term mental and behavioral health goals and treatment needs of the child."

behavioral health goals and permanency plan for the child or nonminor dependent.[6] After making these determinations, the court must approve or disapprove the placement.

Although the bill requires the court to set a hearing, the court may approve the placement without a hearing if the court has received the report, no party has objected to the placement within five calendar days of receiving the report, the court has enough information to make the determinations required at the hearing, and the court intends to approve the placement based on the information before the court.[7]

If at the hearing the court does not approve the placement, the court must order the social worker or probation officer to transition the child or nonminor dependent to a placement setting that is consistent with the determinations discussed above within 30 days. After the placement is approved, all supplemental reports must include evidence of the QI's continued assessment of the need for the STRTP placement, the child's specific treatment or service needs that will be met in the placement and the length of time the child is expected to need the treatment or services, and the intensive and ongoing efforts made by the child welfare department or probation department to place the youth in a lower level of care.[8]

The Proposal

The trailer bill requires the Judicial Council to amend or adopt rules of court and to develop or revise appropriate forms, as necessary, to implement this section on or before October 1, 2021.[9] To implement the new legislation, a new rule of court and five new forms are proposed to be adopted. In addition, small revisions to one existing rule and five existing forms are recommended. The committee proposes an effective date of October 1, 2021, to coincide with the effective date of the trailer bill and to ensure that the process created by this proposal is in place when juvenile courts must begin to review and approve STRTP placements. The language of the bill may change as the bill makes its way through the legislative process, which may require modifications to the proposal.

The following actions are proposed:

- Adopt rule 5.618, Placement in a short-term residential therapeutic program.
- Amend rule 5.697, Disposition hearing for a nonminor.
- Adopt five Judicial Council forms:
  - *Request for Review of Placement in Short-Term Residential Therapeutic Program* (JV-235)
  - *Objection to or Input on Placement in Short-Term Residential Therapeutic Program* (JV-236)

[6] Welf. & Inst. Code, §§ 361.22(e)(2) and (3); 727.12(e)(2) and (3) of the trailer bill.

[7] As discussed, the trailer bill is pending and not final, so the language of the statute is subject to change.

[8] Welf. & Inst. Code §§ 366.1(j)(1)-(3); 706.5(c)(1)(B)(i)-(iii).

[9] Welf. & Inst. Code, §§ 361.22(h); 727.12(h).

- *Proof of Service—Short-Term Residential Therapeutic Program Placement* (JV-237)
  - *Notice of Hearing Regarding Placement in Short-Term Residential Therapeutic Program* (JV-238)
  - *Order on Placement in Short-Term Residential Therapeutic Program* (JV-239)
- Revise five Judicial Council forms:
  - *Findings and Orders After Detention Hearing* (JV-410)
  - *Dispositional Attachment: Removal From Custodial Parent—Placement With Nonparent* (JV-421)
  - *Dispositional Attachment: Nonminor Dependent* (JV-461(A))
  - *Initial Appearance Hearing—Juvenile Delinquency* (JV-642)
  - *Custodial and Out-of-Home Placement Disposition Attachment* (JV-667)

Rule of court

Rule 5.618. Placement in a short-term residential therapeutic program

Many procedural aspects of the hearing that could be addressed in a rule of court are addressed in the trailer bill in sections 361.22 and 727.12. The proposed rule would make clarifications on the following matters that are procedural in nature and not addressed in the statute:

1. Subdivision (b) requires that the social worker or probation officer serve a copy of the request for a hearing on *Request for Review of Placement in Short-Term Residential Therapeutic Program* (form JV-235) on the parties to the case. A hearing must be requested within five calendar days of the start of the placement. The rule requires that a blank copy of *Objection to or Input on Placement in Short-Term Residential Therapeutic Program* (form JV-236) be served with the request for review. These requirements were added to provide proper notice of the hearing request and to ensure that the parties are informed of how to make an objection to the placement.

2. Subdivision (c) addresses the court's notice of the hearing. In addition to notice to the parties, the committee wanted to ensure that a child's or nonminor dependent's Court-Appointed Special Advocate (CASA) volunteer would be noticed of the hearing.

3. Subdivision (d) addresses the use of proposed *Objection to or Input on Placement in Short-Term Residential Therapeutic Program* (form JV-566), which may be used by a party to make an objection to the placement. Although the report submitted for the hearing requires that the social worker provide a statement regarding whether a party objects to the placement, the committee believes that enabling parties to inform the court of their objection through a Judicial Council form is important.

4. Subdivision (e), when the court approves the STRTP placement without a hearing, clarifies that the court must vacate the hearing date, if one has been set, and inform the parties of its decision to approve the placement.

5. Subdivision (f) addresses other procedural aspects pertaining to the hearing.

- Subdivision (f)(1) addresses the evidence that the court may consider, which is all relevant evidence to the court's required determinations in sections 361.22(e)(2) and (3) and 727.12(e)(2) and (3)[10] and whether placement in the STRTP is consistent with the child's or nonminor dependent's best interest.

- Subdivision (f)(2) applies the evidentiary standard of "preponderance of the evidence" to the required determinations sections 361.22(e)(2) and (3) and 727.12(e)(2) and (3). No evidentiary standard is provided in the statute for the court to make the determinations in subdivisions (e)(2) and (3). Evidence Code section 115 states: "Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence." Indicating this standard in the rule will provide this clarification, which may benefit courts and practitioners.

- Subdivision (f)(3) clarifies how the court should determine whether the placement should be approved or disapproved. It requires that the court approve or disapprove the placement based on the determinations in sections 366.22(e)(2) and (3) and 727.12(e)(2) and (3) and whether it appears that the child's or nonminor dependent's best interest will be promoted by the placement.

- Subdivision (f)(4) clarifies that if the court continues the hearing for good cause, including for an evidentiary hearing, in no event may the hearing be continued beyond 60 days after the start of the placement. This paragraph is added to indicate that the court may hold an evidentiary hearing, but the court must ensure that the hearing concludes within 60 days of the making of the placement. The placement will be ineligible for title IV-E funding unless it is approved within 60 days of the start of the placement

Rule 5.697, Disposition hearing for a nonminor

The Family and Juvenile Law Committee recommends updating rule 5.697(e), which lists the required contents of the social study, to include the information specified in section 361.22(c) if the nonminor is placed in a STRTP. This requirement was added to section 358.1(*l*) by the trailer bill.[11]

In addition, the committee recommends that the references to "agree with the continuation of reunification services" and "continued reunification services" be replaced with "agree to court-ordered reunification services' and "reunification services" where the rule addresses the social

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[10] Welf. & Inst., §§ 361.22 and 727.12(e)(2): "Determine whether the needs of the child or nonminor dependent can be met through placement in a family-based setting, or, if not, whether placement in a short-term residential therapeutic program provides the most effective and appropriate care setting for the child or nonminor dependent in the least restrictive environment. A shortage or lack of family homes shall not be an appropriate reason for determining that the needs of the child cannot be met in a family-based setting.

(e)(3) Determine whether a short-term residential therapeutic program level of care is consistent with the short- and long-term mental and behavioral health goals and permanency plan for the child or nonminor dependent.

[11] (*l*) For a placement made on or after October 1, 2021, if the child has been placed in a short-term residential therapeutic program, the social study shall include the information specified in subdivision (c) of Section 361.22.

worker's reporting requirements for a nonminor disposition hearing in 5.697(e)(1)(D)(iv) & (v). Reunification services are not continued at a disposition hearing but rather are ordered.

New and revised forms

The committee proposes that five new Judicial Council forms be adopted to address notice, to provide for the court's findings and orders after the hearing, and for use by a party to lodge an objection to the placement. In addition, the committee recommends that a small amendment and some technical revisions be made to forms related to detention and disposition hearings. The committee elected to circulate the forms as mandatory so there would be a consistent and more predictable procedure for making objections to STRTP placements and for the court procedure approving or disapproving STRTP placements. The committee however is seeking comment on whether the forms should be mandatory or optional.

Request for Review of Placement in Short-Term Residential Therapeutic Program *(form JV-235)*

This form would be used by the petitioning placing agency to request a hearing. The rule requires that this form be served on the parties to the case. The form informs the parties of how to make an objection to the placement. The rule also clarifies that a blank copy of the objection form (JV-236) must be provided along with the request for review.

Objection to or Input on Placement in Short-Term Residential Therapeutic Program *(form JV-236)*

This form would be used by a party to notify the court of an objection to the placement and the reasons for the objection. The form provides a check box for users to indicate whether the individual objecting wants to present evidence or cross-examine the social worker or probation officer. This check box will alert the court that an evidentiary hearing may be requested at the hearing.

Proof of Service–Short-Term Residential Therapeutic Program Placement *(form JV-237)*

Proof of Service would be used by the placing agency to verify that it has provided a copy of the request for review and the report to the parties in the case.

Notice of Hearing Regarding Placement in Short-Term Residential Therapeutic Program *(form JV-238)*

This form would be used by the court to provide notice of the hearing date.

Order on Placement in Short-Term Residential Therapeutic Program *(form JV-239)*

This form would include the required findings and orders approving or disapproving the STRTP placement. It will also give the court the option to approve the placement without a hearing.

Detention and Disposition Forms

Because the court's approval is required for an initial placement in a STRTP, the committee recommends that detention and disposition forms be amended to indicate when the hearing on

the STRTP placement was held or will be held under sections 361.22 and 727.12.[12] Other technical amendments unrelated to the proposal are also proposed and highlighted on the forms.

Other issues

The committee members have raised several issues about the legislation, which have been communicated, in consultation with Governmental Affairs, to the sponsor through the Judicial Council's Budget Services office, the Judicial Council's avenue to provide input on trailer bill legislation. A small working group of committee members has also worked with the California Department of Social Services and stakeholders to help craft language to implement Part IV and provide input on the trailer bill. The following issues have been raised by the working group regarding the trailer bill language:

- *Definition of a party*
  The current statutory language in sections 361.22(d)(1)(B) and 727.12(d)(1)(B) allows for a "party" to make an objection to the placement. Committee members suggested that the statute be more specific because the term "party" can be used to describe multiple individuals in a dependency case, including de facto parents and, in some instances, relatives.
- *Inclusion of CASA as an individual who can object*
  Committee members suggested that the CASA be added as an individual who can object to the STRTP placement because the CASA is often a critical advocate for youth on placement issues. The committee however did not have unanimous agreement with this suggestion.
- *The timing to make an objection*
  Committee members were concerned that the timeline required to submit an objection is based on when the individual received the report, but there is no way to monitor when a report is served. Committee members suggested that instead of counting from date of receipt, the timeline should count backwards from date of hearing, and give the shortest amount of time possible.
- *Approval of the placement without a hearing*
  Committee members were concerned that the placement could be approved if no objection is filed, which puts the burden on the parties to object to ensure that a hearing is held. Committee members suggested that all hearings should be kept on the calendar unless there is unanimity among the parties to approve the placement without a hearing. The committee however did not have unanimous agreement with this suggestion.

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[12] *Findings and Orders After Detention Hearing* (form JV-410), new item 15(g)(6).
Dispositional Attachment: Removal From Custodial Parent—Placement With Nonparent (form JV-421), new item 10(f).
Dispositional Attachment: Nonminor Dependent (form JV-461(A)), new item 7.
Initial Appearance Hearing—Juvenile Delinquency (form JV-642), new item 32.
Custodial and Out-of-Home Placement Disposition Attachment (form JV-667), new item 8. In addition, item 9 of this form, referring to the court's order placing the child in the Division of Juvenile Justice, is proposed to be deleted. Under Senate Bill 823 (Committee on Budget and Fiscal Review; Stats. 2020, ch. 337), intake of new juvenile offenders to the Division of Juvenile Justice will stop July 1, 2021.

- *Confidential information in report*
  Information in the report may be confidential, between the youth and therapist or doctor. Committee members suggested that the legislation create a process by which confidential information in the QI report can remain confidential.
- *Findings required at supplemental hearings*
  To conform to the federal requirements, the bill requires that after the STRTP placement is approved, certain information be included in any supplemental report when a child or nonminor dependent is placed in a STRTP.[13] The committee members sought clarification if there should be court findings related to this required evidence, or if they should remain as only reporting requirements.
- *No legal findings or evidentiary considerations for a court to make a decision to approve or disapprove a placement*
  Committee members noted that the statute contains no references or guidelines by which a court would be able to approve or disapprove a placement. This lack has been addressed in rule 5.618(f)(3), and the concern was also communicated to the Budget Services office.

Alternatives Considered

Because the legislation would require the Judicial Council to adopt implementing rules and forms the committee focused consideration on the timing and scope of new and amended rules and forms changes. The committee considered whether new forms were needed and whether existing forms needed to be changed to effectively and efficiently enact the legislation. The committee concluded that a new set of forms were needed for the legislation's new hearing on STRTP placements and some existing forms needed to be amended to help ensure that the new hearing requirements were met at the beginning of a case. The committee also considered whether the rules and forms proposal should be pursued in a future cycle but elected to proceed to ensure that the forms and rule can be ready in time for the effective date of the trailer bill, October 1, 2021.

Fiscal and Operational Impacts

The committee anticipates that courts will incur additional costs when a hearing under the rule is held, but this is the result of the implementation of the trailer bill rather than the proposal. A uniform procedure for these hearings as proposed can benefit judicial economy and save costs for courts and litigants. Courts will be able to save time by using the procedure created in this proposal as opposed to having to create their own procedures for these hearings.

[13] Welf. & Inst. Code §§ 366.1(j)(1)-(3); 706.5(c)(1)(B)(i)-(iii).

Request for Specific Comments

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

- Does the proposal adequately address the stated purpose?
- Should rule 5.618(f) provide a procedure for the court to approve or disapprove the placement, or is the language in sections 361.22(e)(2), (3) and (4) and 727.12(e)(2), (3) and (4) sufficient?
- Should the forms be mandatory or optional?
- Should *Request for Review of Placement in Short-Term Residential Therapeutic Program* (form JV-235) require an explanation of the reasons that the youth is being placed in the STRTP?
- Should the rule require that a CASA volunteer receive a copy of the request for review and the report submitted to the court? Should the rule require that a CASA volunteer be given the opportunity to object to the placement?
- After the STRTP placement is approved and if the child or nonminor dependent remains placed in the STRTP, should the court be required to make findings at each supplemental review related to the evidence required by sections 366.1(j)(1)-(3) and 706.5(c)(1)(B)(i)-(iii) of the trailer bill?

The advisory committees also seek comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- 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?

Attachments and Links

1. Cal. Rules of Court, rules 5.618 and 5.697, at pages 10-12
2. Forms JV-235, JV-236, JV-237, JV-238, JV-239, JV-410, JV-421, JV-461(A), JV-642, and JV-667, at pages 13–42
3. Trailer bill: *https://esd.dof.ca.gov/dofpublic/public/trailerBill/pdf/343*

Rule 5.618 of the California Rules of Court would be adopted, and rule 5.697 would be amended, effective October 1, 2021, to read:

Rule 5.618. Placement in a short-term residential therapeutic program (§§ 361.22; 727.12)

(a) Applicability

This rule applies to the court's review under Welfare and Institutions Code sections 361.22 and 727.12 following the placement of a child or nonminor dependent in a short-term residential therapeutic program.

(b) Notice

The social worker or probation officer must serve a copy of the *Request for Review of Placement in Short-Term Residential Therapeutic Program* (form JV-235) and a blank copy of the *Objection to or Input on Placement in Short-Term Residential Therapeutic Program* (form JV-236) within five calendar days of each placement of a child or nonminor dependent in a short-term residential therapeutic program on

(1) A child's parents and their attorneys of record, if parental rights have not been terminated, or a nonminor dependent's parents and their attorneys of record, if they are receiving family reunification services;

(2) A child's legal guardians, if applicable, and their attorneys of record;

(3) The child, if older than 10 years of age, or the nonminor dependent and their attorney of record; and

(4) The child's or nonminor dependent's identified Indian tribe, if applicable.

(c) Setting of a hearing

The court must set a hearing under section 361.22(d)(1) or 727.12(d)(1) unless the court approves the placement without a hearing under section 361.22(d)(2) or 727.12(d)(2). The court must provide notice of the hearing date to the following:

(1) A child's parents and their attorneys of record, if parental rights have not been terminated, or a nonminor dependent's parents and their attorneys of record, if they are receiving family reunification services;

(2) A child's legal guardians, if applicable, and their attorneys of record;

(3) The child, if older than 10 years of age, or the nonminor dependent and their attorney of record;

(4) The child's or nonminor dependent's identified Indian tribe, if applicable; and

(5) The child's or nonminor dependent's Court Appointed Special Advocate, if applicable.

(d) Objection to Placement

A party to the proceeding—or the child's tribe, in the case of an Indian child—who objects to the placement may inform the court of the objection by filing *Objection to or Input on Placement in Short-Term Residential Therapeutic Program* (form JV-236) within five calendar days of receiving the report described in section 361.22(c) or 727.12(c).

(e) Approval Without a Hearing

If the court approves the placement without a hearing, it must notify the parties of the court's decision to approve the placement and vacate the hearing, if one has been set.

(f) Conduct of the hearing

(1) In addition to the report described in sections 361.22(c) and 727.12(c), the court may consider all evidence relevant to the court's determinations of sections 361.22(e)(2) and (3) and 727.12(e)(2) and (3) and whether the placement in the short-term residential therapeutic program is consistent with the child's or nonminor dependent's best interest.

(2) The court must make the findings in sections 361.22(e)(2) and (3) and 727.12(e)(2) and (3) by a preponderance of the evidence.

(3) The court must approve or disapprove the placement based on the determinations in 366.22(e)(2) and (3) and section 727.12(e)(2) and (3) and whether it appears that the child's or nonminor dependent's best interest will be promoted by the placement.

(4) If the court continues the hearing for good cause, including for an evidentiary hearing, in no event may the hearing be continued beyond 60 days after the start of the placement.

Rule 5.697. Disposition hearing for a nonminor (Welf. & Inst. Code, §§ 224.1, 295, 303, 358, 358.1, 361, 366.31, 390, 391)

(a)—(d) * * *

(e) Social study (§§ 358, 358.1)

The petitioner must prepare a social study of the nonminor if the court proceeds to a disposition hearing. The social study must include a discussion of all matters relevant to disposition and a recommendation for disposition.

(1) The petitioner's social study must include the following information:

(A)–(C) * * *

(D) If reunification services are being considered:

(i)–(iii) * * *

(iv) Whether the nonminor and parent, parents, or guardian agree to court-ordered ~~agree with the continuation of~~ reunification services;

(v) Whether ~~continued~~ reunification services are in the best interest of the nonminor; and

(vi) * * *

(E)–(N) * * *

(O) For a placement made on or after October 1, 2021, the information specified in section 361.22(c), if the nonminor has been placed in a short-term residential therapeutic program.

(2) * * *

(f)–(h) * * *

JV-235

Request for Review of Placement in Short-Term Residential Therapeutic Program

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

JV-235.v4.040721.cz

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's name:

Date of birth:

Court fills in case number when form is filed.

Case Number:

The request for review must be served on all parties with a blank copy of *Objection to or Input on Placement in Short-Term Residential Therapeutic Program* (JV-236)

1. **To:**
   a. Court: ______________________
   b. Parent/Legal Guardian (*name*): ______________________
   c. Parent/Legal Guardian (*name*): ______________________
   d. Child's or nonminor's Attorney (*name*): ______________________
   e. Child, if 10 years of age or older, or nonminor dependent (*name*): ______________________
   f. The child's or nonminor dependent's identified Indian tribe, if any (*name*): ______________________
   g. The child's or nonminor dependent's Indian custodian, if any (*name*): ______________________

2. Name of Agency: ______________________

3. The child or nonminor dependent was placed at the following short-term residential therapeutic program (*name*): ______________________, on the following date: ______________________.

4. **If you do not agree with the placement in the short-term residential therapeutic program, you may inform the court of your objection**. To do so, you must fill out *Objection to Placement or input in Short-Term Residential Therapeutic Program* and file it with the court. An objection must be filed with the court within five calendar days of receiving the report for the hearing. If no objections are received, the court may approve the placement without a hearing.

I declare under penalty of perjury under the laws of the State of California that the information in items 1, 2, and 3 is true and correct.

Date: ______________________

______________________ *Type or print your name*

______________________ *Sign your name*

Judicial Council of California, *www.courts.ca.gov*
New October 1, 2021, For Mandatory Use

Welfare and Institutions Code, §§ 361.22, 727.12
California Rules of Court, rule 5.618

JV-236 Objection to or Input on Placement in Short-Term Residential Therapeutic Program

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

JV-236.v4.032521.cz

If you do not agree with the child or the nonminor being placed in a short-term residential therapeutic program, you may inform the court of your objection by using this form. The form must be filed with the court within five calendar days of receiving the social worker's or probation officer as described in Welfare and Institutions Code section 361.22 (c) or 727.12 (c).

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's name:

Date of birth:

Court fills in case number when form is filed.

Case Number:

1 Relationship to the child or nonminor:

a. ☐ Self

b. ☐ Parent or legal guardian

c. ☐ Attorney for parent

d. ☐ Attorney for child or nonminor

e. ☐ The child's or nonminor's Indian Tribe

f. ☐ Other: ____

2 My contact information (if confidential, use form JV-287):

a. Name: ____

b. Address: ____

c. City/State/Zip: ____

d. Phone number: ____

e. E-mail address: ____

3 The child or nonminor dependent was placed in a short-term residential therapeutic program on date:__________________________.

4 I received the report from the social worker or probation officer addressing the child's or nonminor dependent's placement in the short-term residential therapeutic program on (*specify date*): ______________________.

5 The placement is opposed because:

____

____

____

____

____

____

____

____

____

____

Case Number:

6 The placement is not opposed, but I want to tell the court the following:

____

7 ☐ I am requesting the opportunity to present evidence at the hearing or to cross-examine the social worker, probation officer, or qualified individual on the issue of the child's or nonminor dependent's placement in the short-term residential therapeutic program.

Date: ____________________

____________________________	____________________________
Type or print your name	*Sign your name*

JV-237 Proof of Service—Short-Term Residential Therapeutic Program Placement

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

JV-237.v4.032521.cz

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's name:

Date of birth:

Court fills in case number when form is filed.

Case Number:

I served a copy of:

☐ *Request for Review of Placement in Short-Term* (form JV-235) *Residential Therapeutic Program* along with a blank copy of: *Objection to or Input on Placement in Short-Term Residential Therapeutic Program* (form JV-236), and/or

☐ the report as described in Welfare and Institutions Code section 361.22 (c) or 727.12 (c),

for a hearing on (*specify date*): ___________________________

on the following persons or entities by personally delivering a copy to the person served, OR by delivering a copy to a competent adult at the usual place of residence or business of the person served and thereafter mailing a copy by first-class mail to the person served at the place where the copy was delivered OR by placing a copy in a sealed envelope and depositing the envelope directly in the U.S. mail with postage prepaid or at my place of business for same-day collection or mailing with the U.S. mail, following our ordinary business practices with which I am readily familiar OR by delivering a copy by electronic means at the electronic service address indicated below (electronic service must comply with Welfare and Institutions Code section 212.5):

1 ☐ The child, if 10 years of age or older or the nonminor dependent

a. Name: ___________________________

b. Mailing or electronic service address:

____

c. Date of service: ___________________________

d. Method of service: ___________________________

☐ Attorney

a. Name: ___________________________

b. Mailing or electronic service address:

____

c. Date of service: ___________________________

d. Method of service: ___________________________

2 ☐ Parent/Legal Guardian

a. Name: ___________________________

b. Mailing or electronic service address:

____

c. Date of service: ___________________________

d. Method of service: ___________________________

☐ Attorney

a. Name: ___________________________

b. Mailing or electronic service address:

____

c. Date of service: ___________________________

d. Method of service: ___________________________

3 ☐ Parent/Legal Guardian
a. Name: ____
b. Mailing or electronic service address: ____
c. Date of service: ____
d. Method of service: ____

☐ Attorney
a. Name: ____
b. Mailing or electronic service address: ____
c. Date of service: ____
d. Method of service: ____

4 ☐ The child or nonminor dependent's Indian tribe, if applicable
a. Name: ____
b. Mailing or electronic service address: ____
c. Date of service: ____
d. Method of service: ____

☐ Attorney
a. Name: ____
b. Mailing or electronic service address: ____
c. Date of service: ____
d. Method of service: ____

5 ☐ Other
a. Name: ____
b. Mailing or electronic service address: ____
c. Date of service: ____
d. Method of service: ____

☐ Attorney
a. Name: ____
b. Mailing or electronic service address: ____
c. Date of service: ____
d. Method of service: ____

6 ☐ Other
a. Name: ____
b. Mailing or electronic service address: ____
c. Date of service: ____
d. Method of service: ____

☐ Attorney
a. Name: ____
b. Mailing or electronic service address: ____
c. Date of service: ____
d. Method of service: ____

7 ☐ Parental rights were terminated, and the child has no legal parents who must be informed.

8 ☐ The parents of the nonminor dependent are not receiving family reunification services, and notice is not required.

9 ☐ Parent/legal guardian (*name*): ____ was not informed becase (*state reason*):

10 ☐ Parent/legal guardian (*name*):_______________ was not informed becase (*state reason*):
____
____
____
____
____
____

11 At the time of service I was at least 18 years of age. If service was made in person or by mail, I am not a party to this matter. I am a resident of or employed in the county where the service occurred. My residence or business mailing address, or my electronic service address, is (*specify*): _______________

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _______________

_______________ _______________
Type or print your name *Sign your name*

JV-238 Notice of Hearing Regarding Placement in Short-Term Residential Therapeutic Program

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

JV-238.v5.040721.cz

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's name:

Date of birth:

Court fills in case number when form is filed.

Case Number:

1. ☐ The court has received the request for review as defined in Welfare and Institutions Code section 361.22(b) or 727.12(b) filed on (*specify date*): ______________________

2. ☐ Notice requirements were met.

3. ☐ Notice requirements were not met, the social worker or probation officer is ordered to provide the notice required in Welfare and Institutions Code section 361.22(b)(2) or 727.12(b)(2).

4. ☐ A hearing is set within 45 days of the child's or nonminor's placement in the short-term residential therapeutic program:

   a. Date: ______________________

   b. Time: ______________________

   c. Department: ______________________

Date: ____________________

____
Judge or Judicial Officer

Judicial Council of California, *www.courts.ca.gov*
New October 1, 2021, For Mandatory Use

Order After Hearing on Placement in Short-Term Residential Therapeutic Program

Welfare and Institutions Code, §§ 361.22, 727.12
California Rules of Court, rule 5.618

JV-239 Order on Placement in Short-Term Residential Therapeutic Program

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

JV-239.v3.032521.cz

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's name:

Date of birth:

Court fills in case number when form is filed.

Case Number:

1. The court has read and considered the following:

   a. ☐ The report described in section 361.22(c) or 727.12(c) filed on (*date*):____________________

   b. ☐ *Objection to or Input on Placement in Short-Term Residential Therapeutic Program* (Form JV-236) filed by:________________ ___________________________ on date:__________________

   c. ☐ *Objection to or Input on Placement in Short-Term Residential Therapeutic Program* (Form JV-236) filed by:________________ ___________________________ on date:__________________

   d. ☐ CASA report dated:_________________________

   e. ☐ Other:______________________________

The court finds and orders

2. The court has reviewed the child's or nonminor's placement in a short-term residential therapeutic program:

   a. ☐ At a hearing held on:____________________________

   b. ☐ Without a hearing. After receiving proper notice, no party to the proceeding, or the child's tribe in the case of an Indian child, has objected to the placement of the child or nonminor in the short-term residential therapeutic program within five calendar days of receiving the report described in section 361.22(c) or 727.12(c). The hearing set for (*date*):______________ is vacated.

3. ☐ Notice requirements were met.

4. ☐ Notice requirements were not met. Proper notice was not given to:__________________________________

5. The needs of the child or nonminor dependent:

   a. ☐ can be met through placement in a home-based family setting.

   b. ☐ cannot be met through placement in a home-based family setting. The placement in a short-term residential therapeutic program ☐ does ☐ does not provide the most effective and appropriate care setting for the child or nonminor dependent in the least restrictive environment.

6. The short-term residential therapeutic program ☐ is ☐ is not consistent with the short and long-term mental and behavioral health goals and permanency plan for the child or nonminor dependent.

7. ☐ The placement is approved.

8. ☐ The placement is not approved. The social worker is ordered to transition the child or nonminor dependent to a placement setting that is consistent with these determinations within 30 days.

Case Number:

9 The basis for the court's determination has been stated on the record or is stated in writing here:

____

____

____

____

____

____

____

____

____

____

10 ☐ Other orders: ____

Date: ____________________

____

Judge or Judicial Officer

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.:	
E-MAIL ADDRESS:		
ATTORNEY FOR *(name)*:		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		**DRAFT Not approved by the Judicial Council** **JV-410.v4.033021.cz**
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
CHILD'S NAME:		
FINDINGS AND ORDERS AFTER DETENTION HEARING (Welf. & Inst. Code, § 319)		CASE NUMBER:

1. This matter came before the court on the
   ☐ original petition ☐ subsequent petition ☐ supplemental petition ☐ other *(specify):*
   filed on *(date):*

2. **Detention hearing**
   a. Date:
   b. Department:
   c. Judicial officer *(name):*
   d. Court clerk *(name):*
   e. Court reporter *(name):*
   f. Bailiff *(name):*
   g. Interpreter *(name and language):*
   h.

Party *(name):*	Present	Attorney *(name):*	Present	Appointed today
(1) Child:	☐		☐	☐
(2) Mother:	☐		☐	☐
(3) Father—presumed:	☐		☐	☐
(4) Father—biological:	☐		☐	☐
(5) Father—alleged:	☐		☐	☐
(6) Legal guardian:	☐		☐	☐
(7) Indian custodian:	☐		☐	☐
(8) De facto parent:	☐		☐	☐
(9) County agency social worker:	☐		☐	☐
(10) Tribal representative:	☐		☐	☐
(11) Other *(specify):*	☐		☐	☐

   i. Others present in courtroom:
      (1) Court Appointed Special Advocate (CASA) volunteer *(name):*
      (2) Other *(name):*
      (3) Other *(name):*

3. **The court has read and considered and admits into evidence:**
   a. ☐ Report of social worker dated:
   b. ☐ Report of CASA volunteer dated:
   c. ☐ Other *(specify):*
   d. ☐ Other *(specify):*

BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:

4. a. ☐ Notice of the date, time, and location of the hearing was given as required by law.
   b. ☐ **For a child 10 years of age or older who is not present**
      (1) ☐ The child was properly notified under Welfare and Institutions Code section 349(d), of the right to attend the hearing and was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.
      (2) ☐ The child was not properly notified under Welfare and Institutions Code section 349(d), of the right to attend the hearing or, if the child wished to be present and was not given an opportunity to be present and

CHILD'S NAME:	CASE NUMBER:

4. b. (2). (a) ☐ there is good cause for a continuance for a period of time necessary to provide notice and secure the presence of the child to enable the child to be present.

(b) ☐ it is in the best interest of the child not to continue the hearing.

5. ☐ The attorney appointed to represent the child as the child's attorney of record is also appointed as the child's Child Abuse Prevention and Treatment Act guardian ad litem.

6. a. ☐ The child will not benefit from representation by an attorney and, for the reasons stated on the record, the court finds
   (1) the child understands the nature of the proceedings;
   (2) the child is able to communicate and advocate effectively with the court, other counsel, other parties, including social workers, and other professionals involved in the case; and
   (3) under the circumstances of the case, the child would not gain any benefit from being represented by counsel.

   b. A Court Appointed Special Advocate is appointed for the child, and that person is also appointed as the child's Child Abuse Prevention and Treatment Act guardian ad litem.

7. ☐ A Court Appointed Special Advocate is appointed for the child.

8. **Parentage**

   a. ☐ The court inquired of the child's parents present at the hearing and other appropriate persons present as to the identity and addresses of all presumed or alleged parents of the child. All alleged parents present during the hearing who had not previously submitted a *Statement Regarding Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete form JV-505 and submit it to the court.

   b. ☐ The clerk of the court is ordered to provide the notice required by Welfare and Institutions Code section 316.2 to
   (1) alleged parent *(name):*
   (2) alleged parent *(name):*
   (3) alleged parent *(name):*

9. **ICWA Inquiry**

   On the record, the court has

   a. ☐ asked each participant present at the hearing
   - whether the participant is aware of any information indicating that the child is a member or citizen or eligible for membership or citizenship in an Indian tribe or Alaska Native village and if yes, the name of the tribe or village;
   - whether the residence or domicile of the child, either of the child's parents, or Indian custodian is on a reservation or in an Alaska Native village and if yes, the name of the tribe or village;
   - whether the child is or was ever a ward of a tribal court, and if yes, the name of the tribe or village; and
   - if the child, either of the child's parents, or the child's Indian custodian possesses an identification card indicating membership or citizenship in a tribe or Alaska Native village, and if so, the name of the tribe or village.

   b. ☐ instructed the participants to inform the court if they receive any information indicating that the child is a member or citizen or eligible for membership or citizenship in a tribe or Alaska Native village.

10. **ICWA Status**

   a. ☐ The court finds there is no reason to believe or reason to know the child is an Indian child and ICWA does not apply; or

   b. ☐ The court finds there is reason to believe the child is an Indian child; and
   (1) ☐ the agency has completed further inquiry as required by Welfare and Institutions Code section 224.2(e), and there is no reason to know that the child is an Indian child. ICWA does not apply; or
   (2) ☐ the agency is ordered to complete further inquiry as required by Welfare and Institutions Code section 224.2(e) and file with the court evidence of this inquiry, including all contacts with extended family members, tribes that the child may be affiliated with, the Bureau of Indian Affairs, the California Department of Social Services, and/or others.

   c. ☐ The court finds that there is reason to know that the child is an Indian child, and
   (1) ☐ the agency has presented evidence in the record that it has exercised due diligence to identify and work with all of the tribes where the child may be a member or eligible for membership to verify the child's status; or

CHILD'S NAME:	CASE NUMBER:

10. c. (2) ☐ the agency is required to exercise due diligence to identify and work with all of the tribes where the child may be a member or eligible for membership to verify the child's status and provide notice in accordance with Welfare and Institutions Code section 224.3 and file proof of due diligence and notice with the court; and

(3) ☐ notice has been provided as required by law; and

(4) ☐ the court will treat the child as an Indian child until it is determined on the record that the child is not an Indian child.

d. ☐ The court finds that the child is an Indian child and a member of the tribe.

11. **ICWA Jurisdiction**

a. It is known or there is reason to know that the child is an Indian child. The court finds *(select one)*

(1) ☐ that it has jurisdiction over the proceeding because

(a) the court finds that the residence and domicile of the child are not on a reservation where the tribe exercises exclusive jurisdiction; and

(b) the court finds that the child is not already under the jurisdiction of a tribal court; or

(2) ☐ the court finds that it does not have jurisdiction because the child is under the exclusive jurisdiction of the tribal court; or

(3) ☐ the court finds that the child is under the exclusive jurisdiction of the tribal court, but that there is a basis for emergency jurisdiction in accordance with section 1922 of title 25 of the United States Code.

Advisements and waivers

12. **The court has informed and advised the**

☐ mother ☐ biological father ☐ legal guardian ☐ child
☐ presumed father ☐ alleged father ☐ Indian custodian
☐ other *(specify):*

of the following:

a. the right of the child and each parent, legal guardian, and Indian custodian to be present and to be represented by counsel at every stage of the proceedings. The court may appoint counsel subject to the court's right to seek reimbursement, if an individual is entitled to appointed counsel and the individual is financially unable to retain counsel.

b. the right to be informed by the court of the following:

- the contents of the petition;
- the nature of and possible consequences of juvenile court proceedings;
- the reasons for the initial detention and the purpose and scope of the detention hearing if the child is detained;
- the right to have a child who is detained immediately returned to the home of the parent, legal guardian, or Indian custodian if the petition is not sustained;
- that if the petition is sustained and the child is removed from the care of the parent, legal guardian, or Indian custodian, the time for services will commence on the date the petition is sustained or 60 days from the date of the initial removal, whichever is earlier;
- that the time for services will not exceed 12 months for a child aged three years or over at the time of the initial removal; and
- that the time for services will not exceed 6 months for a child under the age of three years at the time of the initial removal or for the member of a sibling group that includes such a child if the parent, legal guardian, or Indian custodian fails to participate regularly and make substantive progress in any court-ordered treatment program.

c. The right to a hearing by the court on the issues presented by the petition.

d. The right to assert the privilege against self-incrimination; to confront and cross-examine the persons who prepared reports or documents submitted to the court by the petitioner and the witnesses called to testify against the parent, legal guardian, or Indian custodian; to subpoena witnesses; and to present evidence on his or her own behalf.

13. ☐ The ☐ mother ☐ biological father ☐ legal guardian ☐ child
☐ presumed father ☐ alleged father ☐ Indian custodian
☐ other *(specify):*

has knowingly and intelligently waived the right to a court trial on the issues, the right to assert the privilege against self-incrimination, the right to confront and cross-examine adverse witnesses, the right to subpoena witnesses, and the right to present evidence on one's own behalf.

CHILD'S NAME:	CASE NUMBER:

14. ☐ **CHILD NOT DETAINED**

a. ☐ Services that would prevent the need for further detention, including those set forth in item 17, are available.

b. ☐ The child is returned to the custody of

☐ mother ☐ biological father ☐ legal guardian ☐ other *(specify):*
☐ presumed father ☐ alleged father ☐ Indian custodian

15. ☐ **CHILD DETAINED**

a. Services that would prevent the need for further detention are not available.

b. A prima facie showing has been made that the child comes within Welfare and Institutions Code section 300.

c. Continuance in the parent's or legal guardian's home is contrary to the child's welfare AND *(select at least one)*

(1) ☐ there is a substantial danger to the physical health of the child or the child is suffering severe emotional damage, and there are no reasonable means by which the child's physical or emotional health may be protected without removing the child from the physical custody of the parent or legal guardian.

(2) ☐ there is substantial evidence that a parent, legal guardian, or custodian of the child is likely to flee the jurisdiction of the court, and in the case of an Indian child, fleeing the jurisdiction will place the child at risk of imminent physical damage or harm.

(3) ☐ the child has left a placement in which he or she was placed by the juvenile court.

(4) ☐ the child has been physically abused by a person residing in the home and is unwilling to return home.

(5) ☐ the child has been sexually abused by a person residing in the home and is unwilling to return home.

d. The child is detained, and temporary placement and care of the child is vested with the county child and family services agency pending the hearing under Welfare and Institutions Code section 355 or further order of the court.

e. The initial removal of the child from the home was necessary for the reasons stated on the record.

f. The facts on which the court bases its decision to order the child detained are stated on the record.

g. The child is placed in

(1) ☐ the approved home of a relative.

(2) ☐ an emergency shelter.

(3) ☐ other suitable licensed place.

(4) ☐ a place exempt from licensure designated by the juvenile court.

(5) ☐ the approved home of a nonrelative extended family member as defined in Welfare and Institutions Code section 362.7.

(6) ☐ a short-term residential therapeutic program. A hearing to review the placement under Welfare and Institutions Code section 361.22 is set for *(specify date):*

h. Services, including those set forth in item 17, are to be provided to the family as soon as possible to reunify the child with his or her family.

i. ☐ Reasonable efforts were made to prevent or eliminate the need for removal from the home.

j. ☐ Reasonable efforts were not made to prevent or eliminate the need for removal from the home.

k. ☐ There is a relative who is able, approved, and willing to care for the child.

l. ☐ A relative who is able, approved, and willing to care for the child is not available. This is a temporary finding and does not preclude later placement with a relative under Welfare and Institutions Code section 361.3.

16. ☐ **CHILD DETAINED AND THERE IS REASON TO KNOW CHILD IS AN INDIAN CHILD**

a. ☐ The evidence includes all of the requirements of Welfare and Institutions Code section 319(b).

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16. b. ☐ As detailed in the record, the agency has made active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and these efforts have proved ☐ successful ☐ unsuccessful; or

☐ the agency has not made active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family; the agency is ordered to initiate or continue active efforts.

c. ☐ For the reasons stated on the record, detention is necessary to prevent imminent physical damage or harm to the child.

d. ☐ The child's placement complies with the placement preferences set forth in Welfare and Institutions Code section 361.31. The child is placed

☐ with a member of the child's extended family;
☐ in a foster home licensed, approved, or specified by the child's tribe;
☐ in an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
☐ in an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs.

OR

☐ for the reasons stated on the record, the court finds by clear and convincing evidence that there is good cause not to follow the placement preferences.

17. ☐ The services below will be provided pending further proceedings:

Service	Mother	Presumed father	Biological father	Legal guardian	Indian custodian	Other *(specify):*
a. ☐ Alcohol and drug testing	☐	☐	☐	☐	☐	☐
b. ☐ Substance abuse treatment	☐	☐	☐	☐	☐	☐
c. ☐ Parenting education	☐	☐	☐	☐	☐	☐
d. ☐ *(Specify):*	☐	☐	☐	☐	☐	☐
e. ☐ *(Specify):*	☐	☐	☐	☐	☐	☐
f. ☐ *(Specify):*	☐	☐	☐	☐	☐	☐

18. ☐ **Contact with the child is ordered as stated in** *(check appropriate boxes and attach indicated forms)*

a. ☐ *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).
b. ☐ *Visitation Attachment: Sibling* (form JV-401).
c. ☐ *Visitation Attachment: Grandparent* (form JV-402).

19. ☐ The ☐ mother ☐ biological father ☐ legal guardian ☐ presumed father ☐ alleged father ☐ Indian custodian ☐ other *(specify):*

must disclose to the county agency social worker the names, residences, and any known identifying information of any maternal or paternal relatives of the child.

20. ☐ The ☐ mother ☐ biological father ☐ legal guardian ☐ presumed father ☐ alleged father ☐ Indian custodian ☐ other *(specify):*

must complete *Your Child's Health and Education* (form JV-225) or provide the necessary information for the county agency social worker to complete the form.

21. ☐ There is reason to know the child is an Indian child and the county agency must provide notice under Welf. & Inst. Code, § 224.3 for any hearings that may result in the removal or foster care placement of the child, termination of parental rights, preadoptive placement, or adoptive placement. Proof of such notice must be filed with this court.

22. ☐ **Other findings and orders**

a. ☐ See attached.
b. ☐ *(Specify):*

CHILD'S NAME:	CASE NUMBER:

23. ☐ The parents, legal guardians, and Indian custodians must keep the court, the agency, and their attorneys advised of their current addresses and telephone numbers and provide written notification of any changes to their mailing addresses. The parents, legal guardians, and Indian custodians present during the hearing who had not previously submitted a *Notification of Mailing Address* (form JV-140) or its equivalent were provided with and ordered to complete the form or its equivalent and to submit it to the court before leaving the courthouse today.

24. ☐ **The next hearing is scheduled as follows:**

Hearing date:	Time:	Dept.:	Room:

a. ☐ Jurisdictional hearing
b. ☐ Dispositional hearing
c. ☐ Settlement conference
d. ☐ Mediation
e. ☐ Other *(specify):*

25. **All prior orders not in conflict with this order remain in full force and effect.**

26. Number of pages attached: ________________

Date: ________________________ ____
☐ JUDGE ☐ JUDGE PRO TEMPORE

Date: ________________________ ____
☐ COMMISSIONER ☐ REFEREE

CHILD'S NAME:	CASE NUMBER:

DISPOSITIONAL ATTACHMENT: REMOVAL FROM CUSTODIAL PARENT—PLACEMENT WITH NONPARENT

(Welf. & Inst. Code, §§ 361, 361.2)

1. ☐ The child is a person described by Welfare and Institutions Code section 300 *(check all that apply)*
   ☐ 300(a) ☐ 300(c) ☐ 300(e) ☐ 300(g) ☐ 300(i)
   ☐ 300(b) ☐ 300(d) ☐ 300(f) ☐ 300(h) ☐ 300(j)
   and is adjudged a dependent of the court.

Circumstances justifying removal from custodial parent

2. ☐ There is clear and convincing evidence of the circumstances stated in Welfare and Institutions Code section 361 regarding the persons specified below *(check all that apply):*

	361(c)(1)	361(c)(2)	361(c)(3)	361(c)(4)	361(c)(5)
a. ☐ Mother	☐	☐	☐	☐	☐
b. ☐ Presumed father	☐	☐	☐	☐	☐
c. ☐ Biological father	☐	☐	☐	☐	☐
d. ☐ Legal guardian	☐	☐	☐	☐	☐
e. ☐ Indian custodian	☐	☐	☐	☐	☐
f. ☐ Other *(specify):*	☐	☐	☐	☐	☐

3. ☐ The child is an Indian child or ☐ there is reason to know that the child is an Indian child, and
   a. ☐ qualified expert witness testimony was provided by ; and
   b. ☐ evidence regarding the prevailing social and cultural practices of the child's tribe was provided; and
   c. ☐ there was clear and convincing evidence that continued physical custody by the following person is likely to cause serious emotional or physical damage to the child:
      ☐ Mother ☐ Biological father ☐ Legal guardian
      ☐ Presumed father ☐ Indian custodian
      ☐ Other *(specify):*

4. Reasonable efforts ☐ were ☐ were not made to prevent or eliminate the need for removal from the home.

5. ☐ The child is an Indian child or ☐ were there is reason to know that the child is an Indian child, and as set out in detail in the record,
   a. affirmative, active, thorough, and timely efforts ☐ have ☐ have not been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family;
   b. these efforts ☐ did ☐ did not include assisting the parent(s) or Indian custodian through the steps of the case plan and with accessing or developing the resources necessary to satisfy the case plan;
   c. to the maximum extent possible, the efforts ☐ were ☐ were not provided in a manner consistent with the prevailing social and cultural conditions and way of life of the child's tribe; and
   d. these efforts and the case plan ☐ have ☐ have not been developed and conducted to the maximum extent possible in partnership with the Indian child, the parents, extended family members, Indian custodians and the tribe, and utilized the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.
   e. the active efforts have proved ☐ successful ☐ unsuccessful.

6. **Based on the facts stated on the record, continuance in the home is contrary to the child's welfare and physical custody is removed from** *(check all that apply)*
   ☐ mother ☐ biological father ☐ legal guardian
   ☐ presumed father ☐ Indian custodian
   ☐ other *(specify):*

CHILD'S NAME:	CASE NUMBER:

Family finding and engagement

7. a. ☐ The county agency has exercised due diligence to identify, locate, and contact the child's relatives.
   b. ☐ The county agency has not exercised due diligence to identify, locate, and contact the child's relatives.
      (1) ☐ The county agency is ordered to make such diligent efforts, except for individuals the agency has determined to be inappropriate to contact because of their involvement with the family or domestic violence.
      (2) ☐ The county agency must submit a report to the court on or before *(date):* detailing the diligent efforts made and the results of such efforts.

Case plan development

8. a. ☐ The county agency solicited and integrated into the case plan the input of the ☐ child ☐ mother ☐ father ☐ representative of child's identified Indian tribe ☐ other *(specify):*
   b. ☐ The county agency did not solicit and integrate into the case plan the input of the ☐ child ☐ mother ☐ father ☐ representative of child's identified Indian tribe ☐ other *(specify):*
   and the agency is ordered to do so and submit an updated case plan within 30 days of the date of this hearing.
   c. ☐ The county agency did not solicit and integrate into the case plan the input of the ☐ child ☐ mother ☐ father ☐ representative of child's identified Indian tribe ☐ other *(specify):*
   and the county agency is not required to do so because these persons are unable, unavailable, or unwilling to participate.

Custody and placement

9. ☐ The ☐ mother ☐ presumed father ☐ biological father did not reside with the child at the time the petition was filed and ☐ does ☐ does not desire custody of the child.
   a. ☐ By clear and convincing evidence, placement with the following parent would be detrimental to the safety, protection, or physical or emotional well-being of the child:
      ☐ Mother ☐ Presumed father ☐ Biological father
   b. ☐ The factual basis for the findings in this item is stated on the record.

10. ☐ **The care, custody, control, and conduct of the child is under the supervision of the county agency for placement**
   a. ☐ in the approved home of a relative.
   b. ☐ in the approved home of a nonrelative extended family member.
   c. ☐ the approved home of a resource family, as defined in section 16519.5 or a home that is pending approval under section 16519.5(e)(1).
   d. ☐ with a foster family agency for placement in a foster family home.
   e. ☐ in a suitable licensed community care facility.
   f. ☐ a short-term residential therapeutic program. A hearing to review the placement under section 361.22 was held on or is set for (*specify date*):

11. ☐ **Placement with the child's relative,** *(name):*
   has been independently considered by the court and is denied for the reasons stated on the record.

12. ☐ The child is an Indian child or there is reason to know the child is an Indian child. Currently *(choose one):*
   a. ☐ the child is placed with a member of the child's extended family as defined by section 1903 of title 25 of the United States Code; or
   b. ☐ a diligent search was made for a placement with a member of the child's extended family, the efforts are documented in detail in the record, and the child is placed in a foster home licensed, approved, or specified by the Indian child's tribe; or
   c. ☐ a diligent search was made for a placement with a member of the child's extended family, or a foster home licensed, approved, or specified by the Indian child's tribe, the efforts are documented in detail in the record, and the child is placed in an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
   d. ☐ a diligent search was made for a placement with a member of the child's extended family, or in a foster home licensed, approved, or specified by the Indian child's tribe, or in an Indian foster home licensed or approved by an authorized non-Indian licensing authority, the efforts are documented in detail in the record, and the child is placed in an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs; or

CHILD'S NAME:	CASE NUMBER:

12. e. ☐ the child is placed in accordance with the preferences established by the tribe; or
f. ☐ the court finds by clear and convincing evidence that there is good cause to depart from the placement preferences based on the reasons set out in the record.

13. ☐ **The child's out-of-home placement is necessary.**

14. ☐ **The child's current placement is appropriate.**

15. ☐ **The child's current placement is not appropriate.** The county agency must locate an appropriate placement for the child.
a. ☐ The matter is continued to the date and time indicated in form JV-415, item 18 for a ☐ written ☐ oral report by the county agency on the progress made in locating an appropriate placement.
b. ☐ Other *(specify):*

16. ☐ **The child is placed outside the state of California and that out-of-state placement**
a. ☐ continues to be the most appropriate placement for the child and is in the best interest of the child.
b. ☐ is not the most appropriate placement for the child and is not in the best interest of the child. The matter is continued to the date and time indicated in form JV-415, item 18 for a ☐ written ☐ oral report by the county agency on the progress made toward
(1) ☐ returning the child to California and locating an appropriate placement within California.
(2) ☐ locating an out-of-state placement that is the most appropriate placement for the child and in the best interest of the child.
(3) ☐ other *(specify):*

Reunification services

17. ☐ **Provision of reunification services to the biological father** ☐ will ☐ will not benefit the child.

18. ☐ **The mother is incarcerated** and is seeking to participate in the Department of Corrections and Rehabilitation community treatment program.
a. ☐ Participation in the program ☐ is ☐ is not in the child's best interest.
b. ☐ The program ☐ is ☐ is not suitable to meet the needs of the mother and child.

19. ☐ **The following person is incarcerated:**
☐ mother ☐ legal guardian ☐ other *(specify):*
☐ presumed father ☐ Indian custodian
and reasonable reunification services are
a. ☐ granted.
b. ☐ denied, because, by clear and convincing evidence, providing reunification services would be detrimental to the child.

20. ☐ **As provided in Welfare and Institutions Code section 361.5(b), by clear and convincing evidence**
a. the ☐ mother ☐ legal guardian ☐ other *(specify):*
☐ presumed father ☐ Indian custodian
is a person described in Welfare and Institutions Code section *(choose all that apply)*
☐ 361.5(b)(3) ☐ 361.5(b)(7) ☐ 361.5(b)(9) ☐ 361.5(b)(11) ☐ 361.5(b)(13) ☐ 361.5(b)(16)
☐ 361.5(b)(4) ☐ 361.5(b)(8) ☐ 361.5(b)(10) ☐ 361.5(b)(12) ☐ 361.5(b)(15) ☐ 361.5(b)(17)
and reunification services are
(1) ☐ granted, because by clear and convincing evidence reunification is in the best interest of the child.
(2) ☐ denied.

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20. b. The ☐ mother ☐ presumed father ☐ legal guardian ☐ Indian custodian ☐ other *(specify):*
is a person described in Welfare and Institutions Code section 361.5(b)(1), and a reasonably diligent search has failed to locate the person. Reunification services are denied.

c. The ☐ mother ☐ presumed father ☐ legal guardian ☐ Indian custodian ☐ other *(specify):*
is a person described in Welfare and Institutions Code section 361.5(b)(2), and reunification services are
(1) ☐ granted.
(2) ☐ denied, because the person, even with the provision of services, is unlikely to be capable of adequately caring for the child within the statutory time limits.

d. The ☐ mother ☐ presumed father ☐ legal guardian ☐ Indian custodian ☐ other *(specify):*
is a person described in Welfare and Institutions Code section 361.5(b)(5), and reunification services are
(1) ☐ granted, because
(a) ☐ reunification services are likely to prevent reabuse or neglect.
(b) ☐ the failure to try reunification will be detrimental to the child because the child is closely and positively bonded to the person.
(2) ☐ denied.

e. The ☐ mother ☐ presumed father ☐ legal guardian ☐ Indian custodian
☐ other person who is a legal parent of the child *(name):*
is a person described in Welfare and Institutions Code section 361.5(b)(6), and reunification services are
(1) ☐ granted, because by clear and convincing evidence reunification is in the best interest of the child.
(2) ☐ denied, because the child or the child's sibling suffered severe sexual abuse or the infliction of severe physical harm by the person, and it would not benefit the child to pursue reunification with that person.
(3) ☐ The factual basis for the findings in this item is stated on the record.

f. The ☐ mother ☐ presumed father ☐ legal guardian ☐ Indian custodian ☐ other *(specify):*
is a person described in Welfare and Institutions Code section 361.5(b)(14). The court advised the person of any right to services and the possible consequences of a waiver. The person executed the *Waiver of Reunification Services (Juvenile Dependency)* (form JV-195), and the court accepts the waiver, the person having knowingly and intelligently waived the right to services. Reunification services are denied.

g. **The county agency must provide reunification services,** and the following must participate in the reunification services stated in the case plan:
☐ Mother ☐ Biological father ☐ Legal guardian ☐ Presumed father
☐ Indian custodian ☐ Other *(specify):*

21. **The likely date** by which the child may be returned to and safely maintained in the home or another permanent plan selected is *(specify):*

Efforts

22. The county agency ☐ has ☐ has not complied with the case plan by making reasonable efforts to return the child to a safe home through the provision of reasonable services designed to aid in overcoming the problems that led to the initial removal and continued custody of the child and by making reasonable efforts to complete any steps necessary to finalize the permanent placement of the child.

CHILD'S NAME:	CASE NUMBER:

23. **The following persons have made the indicated level of progress toward alleviating or mitigating the causes necessitating placement:**

		None	Minimal	Adequate	Substantial	Excellent
a. ☐	Mother	☐	☐	☐	☐	☐
b. ☐	Presumed father	☐	☐	☐	☐	☐
c. ☐	Biological father	☐	☐	☐	☐	☐
d. ☐	Legal guardian	☐	☐	☐	☐	☐
e. ☐	Indian custodian	☐	☐	☐	☐	☐
f. ☐	Other *(specify):*	☐	☐	☐	☐	☐

Siblings

24. ☐ **The child does not have siblings under the court's jurisdiction.**

25. ☐ **The child has siblings under the court's jurisdiction.** *Sibling Attachment: Contact and Placement* (form JV-403) is attached and incorporated by reference.

Health and education

26. ☐ The ☐ mother ☐ presumed father ☐ biological father ☐ legal guardian ☐ Indian custodian ☐ other *(specify):*
is ☐ unable ☐ unwilling ☐ unavailable to make decisions regarding the child's needs for medical, surgical, dental, or other remedial care, and the right to make these decisions is suspended under Welf. & Inst. Code, § 369 and vested with the county agency.

27. a. ☐ A limitation on the right of the parents to make educational decisions for the child is **not** necessary. The parents hold educational rights and responsibilities in regard to the child's education, including those described in rule 5.650(e) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (f) may be obtained from the court clerk.

b. ☐ A limitation on the right of the parents to make educational decisions for the child is necessary and those rights are limited as stated in *Order Designating Educational Rights Holder* (form JV-535) filed in this matter. The educational rights and responsibilities of the educational representative are described in rule 5.650(e) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (f) may be obtained from the court clerk.

28. a. The child's educational needs ☐ are ☐ are not being met.
b. The child's physical needs ☐ are ☐ are not being met.
c. The child's mental health needs ☐ are ☐ are not being met.
d. The child's developmental needs ☐ are ☐ are not being met.

29. The child ☐ does ☐ does not have an order authorizing psychotropic medication. The next hearing to review the psychotropic medication order is on *(date):* .

30. ☐ The additional services, assessments, and/or evaluations the child requires to meet the unmet needs specified in item 28 or other concerns are:
a. ☐ stated in the social worker's report.
b. ☐ specified here:

31. ☐ The following persons are ordered to take the steps necessary for the child to begin receiving the services, assessments, and/or evaluations identified in item 30:
a. ☐ Social worker.
b. ☐ Parent *(name):*
c. ☐ Surrogate parent *(name):*
d. ☐ Educational representative *(name):*
e. ☐ Other *(name):*

CHILD'S NAME:	CASE NUMBER:

32. ☐ The child's education placement has changed since the date the child was physically removed from the home.
    a. ☐ The child's educational records, including any evaluation regarding a disability, were requested by the child's new school within two business days of the request to enroll, and those records were provided by the child's former school to the child's new school within two business days of the receipt of the educational records request.
    b. ☐ The child is enrolled in school.
    c. ☐ The child is attending school.

33. ☐ **Child 14 years of age or older**
    a. ☐ The services stated in the case plan include those needed to assist the child in making the transition from foster care to successful adulthood.
    b. ☐ The services stated in the case plan do not include those needed to assist the child in making the transition from foster care to successful adulthood.
    c. ☐ To assist the child in making the transition to successful adulthood, the county agency must add to the case plan and provide the services
       (1) ☐ stated on the record.
       (2) ☐ as follows:

Advisements

34. ☐ **Child under the age of three years or member of a sibling group as described in Welfare and Institutions Code section 361.5(a)(1)(C).** The court informed all parties present at the time of the hearing and further advises all parties that, because the child was under the age of three years on the date of initial removal or is a member of a sibling group,

    a. **failure to participate regularly and make substantive progress in court-ordered treatment programs may result in the termination of reunification services** for all or some members of the sibling group at the hearing scheduled on a date within six months from the date the child entered foster care under Welf. & Inst. Code, § 366.21(e).

Six-month hearing date:

    b. **at the six-month hearing** under Welfare and Institutions Code section 366.21(e), the court will consider the following factors in deciding whether to limit reunification services to six months for all or some members of the sibling group:

    - whether the sibling group was removed from parental care as a group;
    - the closeness and strength of the sibling bond;
    - the ages of the siblings;
    - the appropriateness of maintaining the sibling group;
    - the detriment to the child if sibling ties are not maintained;
    - the likelihood of finding a permanent home for the sibling group;
    - whether the sibling group is currently placed in the same preadoptive home or has a concurrent plan goal of legal permanency in the same home;
    - the wishes of each child whose age and physical and emotional condition permits a meaningful response; and
    - the best interest of each child in the sibling group.

    c. **At the six-month hearing** under Welfare and Institutions Code section 366.21(e), if the child is not returned to the custody of a parent, the case may be referred to a selection and implementation hearing under Welfare and Institutions Code section 366.26. The selection and implementation hearing **may result in the termination of parental rights and adoption of the child and other members of the sibling group or, in the case of an Indian child for whom tribal customary adoption under section 366.24 is selected as the permanent plan goal, modification of parental rights and the adoption of the child and other members of the sibling group.**

CHILD'S NAME:	CASE NUMBER:

35. ☐ **Child three years of age or older who is not a member of a sibling group as described in Welfare and Institutions Code section 361.5(a)(1)(C).** The court informed all parties present at the time of the hearing and further advises all parties that, because the child was three years of age or older with no siblings under the age of three years at the time of initial removal, if the child is not returned to the custody of a parent at the Welfare and Institutions Code section 366.21(f) permanency hearing set on a date within 12 months from the date the child entered foster care, the case may be referred to a selection and implementation hearing under Welfare and Institutions Code section 366.26. The selection and implementation hearing **may result in the termination of parental rights and adoption of the child or, in the case of an Indian child for whom tribal customary adoption under section 366.24 is selected as the permanent plan goal, modification of parental rights and the adoption of the child.**

Twelve-month permanency hearing date:

36. ☐ a. **The matter is ordered set for hearing under Welfare and Institutions Code section 366.26, to select the most appropriate permanent plan for the child.**

b. By clear and convincing evidence, the court found that reunification services were not to be provided to the child's parents, legal guardian, or Indian custodian under Welfare and Institutions Code section 361.5(b).

c. The county agency and the licensed county adoption agency or the California Department of Social Services acting as an adoption agency will prepare and serve an assessment report as described in Welfare and Institutions Code section 361.5(g).

d. The court advised all parties present in court that to preserve any right to review on appeal of this order, a party must seek an extraordinary writ by filing a notice of intent to file a writ petition and a request for the record, which may be submitted on *Notice of Intent to File Writ Petition and Request for Record* (form JV-820), and a petition for extraordinary writ, which may be submitted on *Petition for Extraordinary Writ* (form JV-825). A copy of each form is available in the courtroom. The court further advised all parties present in court that, as to them, a notice of intent to file a writ petition and request for record must be filed with the juvenile court clerk within seven days of the date of this hearing. The clerk of the court is directed to provide written notice as stated in rule 5.695(g)(10) of the California Rules of Court to any party not present.

e. ☐ The court orders that no notice of the hearing set under Welfare and Institutions Code section 366.26 be provided to the person named below, who is a mother, a presumed father, or an alleged father and who had relinquished the child for adoption where the relinquishment has been accepted and filed with notice under Family Code section 8700, or an alleged father who has denied paternity and has executed section 2 of *Statement Regarding Parentage (Juvenile)* (form JV-505).

(1) *(name):*

(2) *(name):*

(3) *(name):*

(4) *(name):*

f. **The likely date** by which the permanent plan will be achieved is *(specify date):*

NONMINOR'S NAME:	CASE NUMBER:

DISPOSITIONAL ATTACHMENT: NONMINOR DEPENDENT

1. Reasonable efforts ☐ were ☐ were not made to prevent or eliminate the need for the nonminor's removal from the home.
2. Placement and care are vested with the county agency.
3. The county agency ☐ has ☐ has not exercised due diligence to locate an appropriate relative with whom the nonminor could be placed. Each relative whose name has been submitted to the department ☐ has ☐ has not been evaluated.
4. ☐ The nonminor dependent who is an Indian child ☐ has ☐ has not chosen to have the Indian Child Welfare Act apply to them as a nonminor dependent.
5. ☐ There was no inquiry or determination of whether the nonminor dependent was an Indian child before the nonminor dependent's 18th birthday.
   a. ☐ The nonminor dependent would like an Indian Child Welfare Act determination. The county agency is ordered to comply with rule 5.481 of the California Rules of Court.
   b. ☐ The nonminor dependent would not like an Indian Child Welfare Act determination.
6. ☐ Family reunification services are ordered under Welfare and Institutions Code section 361.6.
   a. ☐ The nonminor dependent and parents or guardians are in agreement with court-ordered family reunification services.
   b. ☐ The provision of family reunification services is in the best interests of the nonminor dependent.
   c. ☐ There is a substantial probability that the nonminor dependent will be able to safely reside in the home of the parent or guardian by the next review hearing.
7. ☐ The nonminor dependent is placed in a short-term residential therapeutic program. A hearing to review the placement under Welfare and Institutions Code section 361.22 was held on or is set for (*specify date*):

THE COURT MUST CONSIDER THE FOLLOWING FINDINGS AND ORDERS AFTER THE NONMINOR DISPOSITION HEARING OR AFTER A NONMINOR DEPENDENT STATUS REVIEW HEARING WITHIN 60 DAYS

8. a. ☐ The nonminor dependent's continued placement is necessary.
   b. ☐ The nonminor dependent's continued placement is no longer necessary.
9. a. ☐ The nonminor dependent's current placement is appropriate.
   b. ☐ The nonminor dependent's current placement is not appropriate. The county agency and the nonminor dependent must work collaboratively to locate an appropriate placement.
10. ☐ The nonminor dependent's Transitional Independent Living Case Plan includes a plan to satisfy at least one of the criteria in Welfare and Institutions Code section 11403(b) to remain in foster care under juvenile court jurisdiction as indicated below:
    a. ☐ Attending high school or a high school equivalency certificate (GED) program.
    b. ☐ Attending a college, community college, or vocational education program.
    c. ☐ Attending a program or participating in an activity that will promote or help remove a barrier to employment.
    d. ☐ Employed at least 80 hours per month.
    e. ☐ The nonminor is incapable of attending a high school, high school equivalency certificate (GED) program, college, community college, vocational education program, or an employment program or activity, or working 80 hours per month because of a medical condition.
11. The county agency ☐ has ☐ has not made reasonable efforts and provided assistance to help the nonminor dependent establish and maintain compliance with one of the conditions in Welfare and Institutions Code section 11403(b).
12. The nonminor dependent ☐ was ☐ was not provided with the information, documents, and services required under Welfare and Institutions Code section 391.

NONMINOR'S NAME:	CASE NUMBER:

13. The Transitional Independent Living Case Plan ☐ was ☐ was not developed jointly by the nonminor dependent and the county agency.

14. ☐ The nonminor dependent has elected to have the Indian Child Welfare Act apply; the representative from their tribe ☐ was ☐ was not consulted during the development of the nonminor dependent's Transitional Independent Living Case Plan.

15. The nonminor dependent's Transitional Independent Living Case Plan ☐ does ☐ does not reflect the living situation and services consistent, in the nonminor dependent's opinion, with what they need to achieve successful adulthood and sets out benchmarks that indicate how both the county agency and the nonminor dependent will know when independence can be achieved.

16. The nonminor dependent's Transitional Independent Living Case Plan ☐ does ☐ does not include appropriate and meaningful independent living skill services that will help the nonminor transition from foster care to successful adulthood.

17. The county agency ☐ has ☐ has not made reasonable efforts to comply with the nonminor dependent's Transitional Independent Living Case Plan, including efforts to finalize the nonminor's permanent plan and prepare them for independence.

18. For a permanent plan of another planned permanent living arrangement, the county agency ☐ has ☐ has not made ongoing and intensive efforts to finalize the permanent plan.

19. The nonminor dependent ☐ did ☐ did not sign and receive a copy of the Transitional Independent Living Case Plan.

20. The county agency ☐ has ☐ has not made reasonable efforts to maintain relations between the nonminor dependent and individuals who are important to the nonminor, including efforts to establish and maintain relationships with caring and committed adults who can serve as lifelong connections.

21. a. The extent of progress made by the nonminor dependent toward meeting the Transitional Independent Living Case Plan goals has been ☐ excellent ☐ satisfactory ☐ minimal.

    b. ☐ The modifications to the Transitional Independent Living Case Plan goals needed to assist the nonminor dependent in their efforts to attain those goals were stated on the record.

22. The county agency ☐ has ☐ has not made reasonable efforts to establish or maintain the nonminor dependent's relationship with siblings who are under juvenile court jurisdiction.

23. The likely date by which the nonminor dependent is anticipated to achieve successful adulthood is

24. The nonminor dependent's permanent plan is:

    a. ☐ to return home.
    b. ☐ adoption.
    c. ☐ tribal customary adoption.
    d. ☐ placement with a fit and willing relative.
    e. ☐ another planned permanent living arrangement.
    f. ☐ Other *(specify):*

25. For a permanent plan of another planned permanent living arrangement

    a. ☐ the court has asked the nonminor dependent about their desired permanency outcome.

    b. The court has considered the evidence before it and finds another planned permanent living arrangement is the best permanent plan because:

       (1) ☐ the nonminor is 18 or older.

       (2) ☐ Other *(specify):*

    c. The compelling reasons why other permanent plan options are not in the nonminor's best interest are that

       (1) ☐ the nonminor wants to live independently.

       (2) ☐ Other *(specify):*

NONMINOR'S NAME:	CASE NUMBER:

26. ☐ Family reunification services are ordered under Welfare and Institutions Code section 361.6.
   a. The county agency ☐ has ☐ has not complied with the case plan by making reasonable efforts—or in the case of an Indian child, active efforts, as described in section 361.7—to create a safe home for the nonminor dependent to reside in or to complete whatever steps are necessary to finalize the permanent placement of the nonminor.
   b. The extent of progress that the parents or legal guardians have made toward alleviating or mitigating the causes necessitating placement in foster care has been ☐ excellent ☐ satisfactory ☐ minimal ☐ none.
   c. The likely date by which the nonminor dependent may safely reside in the family home or achieve successful adulthood is:

27. ☐ It appears that juvenile court jurisdiction over the nonminor dependent may no longer be necessary, and a hearing to consider termination of juvenile court jurisdiction under rule 5.555 of the California Rules of Court is ordered.

28. ☐ The nonminor dependent has elected not to remain in foster care. A hearing to consider termination of juvenile court jurisdiction under rule 5.555 of the California Rules of Court within 30 days is ordered.

29. ☐ Other findings and orders
   a. ☐ See attachment 29a.
   b. ☐ *(specify)*:

30. The next hearings are scheduled as follows:
   a. Nonminor dependent status review hearing (Wel. & Inst. Code, §366.31; Cal. Rules of Court, rule 5.903)

Hearing date:	Time:	Dept.:	Room:

   b. Hearing to consider termination of jurisdiction (Wel. & Inst. Code, §391; Cal. Rules of Court, rule 5.555)

Hearing date:	Time:	Dept.:	Room:

   c. Other *(specify)*:

Hearing date:	Time:	Dept.:	Room:

31. Number of pages attached: ___________

CHILD'S NAME:	CASE NUMBER:

INITIAL APPEARANCE HEARING—JUVENILE DELINQUENCY

☐ Out-of-Custody Appearance ☐ In-Custody Appearance and Detention

THE COURT MAKES THE FOLLOWING FINDINGS AND ORDERS:

1. ☐ Notice has been given as required by law.
2. ☐ The child's date of birth is *(specify)*:
3. ☐ The child is to remain out of custody pending the next hearing.
4. ☐ The child was taken into custody at: ☐ a.m. ☐ p.m. on *(specify date):*
5. ☐ The petition or notice of probation violation was filed at: ☐ a.m. ☐ p.m. on *(specify date):*
6. ☐ Counsel is appointed for the child as follows:
   Counsel is to represent the child until relieved by the court in accordance with California Rules of Court, rule 5.663.
7. ☐ The information on the face of the petition was ☐ confirmed ☐ corrected as follows:
8. a. ☐ The court inquired of ☐ the mother ☐ others *(names and relationships):*
   as to the identities and addresses of all presumed or alleged fathers.
   b. ☐ The court finds *(name):* to be the ☐ legal ☐ biological ☐ presumed ☐ alleged father.
9. The ☐ mother ☐ father ☐ legal guardian ☐ other *(specify):*
   were provided with a *Parental Notification of Indian Status* (form ICWA-020) and ordered to complete the form and submit it to the court before leaving the courthouse today.
10. a. ☐ The child ☐ is ☐ may be an Indian child, and the county agency must provide, as required by law, notice of the proceeding and of the tribe's right to intervene. Proof of such notice must be filed with the court.
    b. ☐ There is reason to believe that the child may be of Indian ancestry, and the county agency must provide notice of the proceedings to the Bureau of Indian Affairs as required by law. Proof of such notice must be filed with this court.
11. ☐ The court advised the child and parent or legal guardian of *(check all that apply)*
    a. ☐ the contents of the petition.
    b. ☐ the nature and possible consequences of juvenile court proceedings.
    c. ☐ the purpose and scope of the initial hearing.
    d. ☐ the hearing rights described in rule:
    e. ☐ the reason the child was taken into custody.
    f. ☐ the parent or legal guardian's financial obligation and right to be represented by counsel.
    g. ☐ other:
12. ☐ Reading of the petition and advice of rights were waived by ☐ the child ☐ the child's counsel.
13. ☐ The prosecutor has requested that a hearing be set to determine whether the child should be transferred to the jurisdiction of the criminal court under Welfare and Institutions Code section 707.
14. ☐ The child ☐ through counsel
    a. ☐ denied the allegations of the petition dated:
    b. ☐ asked the court to take no action on the petition at this time.
15. ☐ For the reasons stated on the record, the petition is dismissed ☐ in the interests of justice ☐ because the child does not need treatment or rehabilitation.
16. ☐ After inquiry, the court finds that the child understands the nature of the allegations and the direct consequences of admitting or pleading no contest to the allegations of the petition, and understands and waives the following hearing rights, which were explained *(check all that apply):*
    a. ☐ The right to have a hearing.

CHILD'S NAME:	CASE NUMBER:

16. b. ☐ The right to cross-examine and confront witnesses.
 c. ☐ The right to subpoena witnesses and present a defense.
 d. ☐ The right to remain silent.

17. a. ☐ The child through counsel
 1. ☐ admitted the petittion ☐ as filed ☐ as amended on *(date):*
 2. ☐ pleaded no contest to the petition ☐ as filed ☐ as amended *on (date):*
 b. ☐ The child's counsel consents to the admission or plea of no contest.
 c. ☐ The admission or plea of no contest is freely and voluntarily made.
 d. ☐ There is a factual basis for the admission or plea of no contest.
 e. ☐ The court finds that the child was under 14 years old at the time of the offense but the child knew the wrongfulness of his or her conduct at the time the offense was committed.

18. a. ☐ The following allegations are admitted and found to be true:

Count number	Statutory violation	Misdemeanor	Felony	To be specified at disposition	Enhancement *(if applicable)*
		☐	☐	☐	
		☐	☐	☐	
		☐	☐	☐	
		☐	☐	☐	
		☐	☐	☐	

 b. ☐ As to any offense that could be considered a misdemeanor or felony, the court is aware of and exercises its discretion to determine the offense, as stated in 18a.
 c. ☐ The following allegations are dismissed:

Count number	Statutory violation

19. ☐ The child is described by section ☐ 601 ☐ 602 of the Welfare and Institutions Code.
20. ☐ The maximum confinement time is:
21. ☐ The child's residence is in: County.
22. ☐ The matter is transferred to: County for disposition and further proceedings. *Juvenile Court Transfer Orders* (form JV-550) will be completed and transmitted immediately.
23. ☐ The child waives his or her right under *People v. Arbuckle* to have the disposition heard by this judicial officer.

CHILD IN CUSTODY

24. ☐ The court has considered the detention report prepared by probation
 ☐ and the following documents *(specify):*
 ☐ and the testimony of *(name):*
 ☐ and the examination by the court of *(name):*
 ☐ and takes judicial notice of the entire court file.
25. ☐ The child is released from custody ☐ to the home of *(name, address, and relationship to child):*
 ☐ on home supervision ☐ on electronic monitoring
 ☐ the terms of which are stated in the attached *Terms and Conditions* (form JV-624).
26. ☐ The child is a dependent of the court under section 300 and is ordered released from custody. The child welfare services department must either ensure that the child's current caregiver take physical custody of the child or take physical custody of the child and place the child in a licensed or approved placement.

CHILD'S NAME:	CASE NUMBER:

27. ☐ A prima facie showing has been made that the child's disposition is by section 601 or 602.
28. ☐ Based on the facts stated on the record, the child is detained in secure custody on the following grounds *(check all that apply):*
    a. ☐ The child has violated an order of the court.
    b. ☐ The child has escaped from a court commitment.
    c. ☐ The child is likely to flee the jurisdiction of the court.
    d. ☐ It is a matter of immediate and urgent necessity for the protection of the child.
    e. ☐ It is reasonably necessary for the protection of the person or property of another.
29. ☐ Based on the facts stated on the record, continuance in the child's home is contrary to the child's welfare.
30. ☐ Based on the facts stated on the record, there are no available services that would prevent the need for further detention.
31. ☐ Temporary placement and care is the responsibility of the probation department.
32. ☐ The child is placed in a short-term residential therapeutic program. A hearing to review the placement under Welfare and Institutions Code section 727.12 will be set or is set for (*specify date*):
33. ☐ Probation is ordered to provide services that will assist with reunification of the child and the family.
34. ☐ Probation is granted the authority to authorize medical, surgical, or dental care under Welfare and Institutions Code section 739.
35. ☐ The child and the parent or legal guardian have been advised that if the child cannot be returned home within the statutory timelines, a proceeding may be scheduled to determine an alternative permanent home, including an adoptive home after parental rights are terminated.
36. ☐ The ☐ mother ☐ father ☐ legal guardian is/are ordered to supply the names and contact information of adult relatives to probation so they can be notified of the child's removal and of their options to be included in the child's life.
37. ☐ The probation officer must file a case plan within 60 days.
38. ☐ Probation is authorized to release the minor ☐ at its discretion ☐ under the following circumstances:
39. ☐ The court accepts transfer from the County of:
40. ☐ Other orders:
41. ☐ Child ☐ Counsel waives time for *(check all that apply)*
    ☐ jurisdiction hearing ☐ disposition hearing ☐ other:
42. ☐ **The next hearings will be**

Date:	Time:	Dept:	Type of hearing:
Date:	Time:	Dept:	Type of hearing:

43. ☐ The child
    a. ☐ is ordered to return to court on the above date(s) and time(s).
    b. ☐ remains detained.
44. All prior orders not in conflict, including any terms and conditions of probation, remain in full force and effect.
45. ☐ All appointed counsel are relieved.

Date:

☐ JUDGE ☐ JUDGE PRO TEMPORE ☐ COMMISSIONER ☐ REFEREE

Countersignature for detention orders (*if necessary*):

Date:

JUDICIAL OFFICER

CHILD'S NAME:	CASE NUMBER:

CUSTODIAL AND OUT-OF-HOME PLACEMENT DISPOSITION ATTACHMENT

THE COURT FINDS AND ORDERS

1. ☐ The maximum time the child may be confined
   a. ☐ in secure custody for the offenses sustained in the petition before the court is *(specify)*:
   b. ☐ in the petition before the court, with the terms of all previously sustained petitions known to the court aggregated, is (*specify*):

2. ☐ The child is committed to (*specify*): days months in juvenile hall
   a. ☐ and is remanded forthwith. Continuance in the home is contrary to the child's welfare.
   b. ☐ and is to report to *(name)*: by ☐ a.m. ☐ p.m. on *(date):*
   c. ☐ with credit for *(specify)*: days served.

3. ☐ The welfare of the child requires that physical custody be removed from the parent or guardian. *(Check only if applicable):*
   a. ☐ The child's parent or guardian has failed or neglected to provide, or is incapable of providing, proper maintenance, training, and education for the child.
   b. ☐ The child has been on probation in the custody of the parent or guardian and has failed to reform.
   c. Continuance in the home is contrary to the child's welfare.

4. ☐ Probation is granted the authority to authorize medical, surgical, or dental care under Welfare and Institutions Code section 739.

5. ☐ Reasonable efforts to prevent or eliminate the need for removal
   a. ☐ have been made.
   b. ☐ have not been made.

6. a. ☐ The probation officer will ensure provision of reunification services, and the following are ordered to participate in the reunification services specified in the case plan:
   ☐ Mother ☐ Biological father ☐ Legal guardian ☐ Presumed father
   ☐ Alleged father ☐ Indian custodian ☐ Other *(specify):*
   b. ☐ Reunification services do not need to be provided to *(name):* because the court finds by clear and convincing evidence that *(check one)*
      (1) ☐ reunification services were previously terminated for that parent or not offered under section 300 et seq. of the Welfare and Institutions Code.
      (2) ☐ that parent has been convicted of ☐ murder of another child of the parent ☐ voluntary manslaughter of another child of the parent ☐ aiding, abetting, attempting, conspiring, or soliciting to commit murder or manslaughter of another child of the parent ☐ felony assault resulting in serious bodily injury to the child or another child of the parent.
      (3) ☐ the parental rights of that parent regarding a sibling of the child have been terminated involuntarily.
   c. ☐ The child is ☐ ordered to ☐ continued in the care, custody, and control of the probation officer for placement in a suitable relative's home or in a foster or group home.
   d. ☐ The following are ordered to meet with the probation officer on a monthly basis:
   ☐ Mother ☐ Biological father ☐ Legal guardian ☐ Presumed father
   ☐ Alleged father ☐ Indian custodian ☐ Other *(specify)*:
   e. ☐ The child is ordered to obey all reasonable directives of placement staff and probation. The child is not to leave placement without the permission of probation or placement staff.

Form Approved for Optional Use
Judicial Council of California
JV-667 [Rev. October 1, 2021]

Welfare and Institutions Code, §§ 702, 706.6, 725, 727, 727.2;
Cal. Rules of Court, rules 5.785, 5.790, 5.795
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

6. f. ☐ The child is to be placed out of state at the following *(name and address)*:

   (1) ☐ In-state facilities are unavailable or inadequate to meet the needs of the child.

   (2) ☐ The state Department of Social Services or its designee has performed initial and continuing inspection of the facility and has certified that it meets all California licensure standards, or has granted a waiver based on a finding that there is no adverse impact to health and safety.

   (3) ☐ The requirements of section 7911.1 of the Family Code are met.

   g. ☐ Pending placement, the child is detained in juvenile hall. If being housed in another county, please specify county:

   h. ☐ The child is placed on home supervision in the home of

   (1) ☐ parent *(name):* ☐ mother ☐ father

   (2) ☐ parent *(name):* ☐ mother ☐ father

   (3) ☐ legal guardian *(name):*

   (4) ☐ other *(name and address):*

   ☐ and is subject to electronic monitoring.

   i. ☐ The parent or legal guardian must cooperate in the completion and signing of necessary documents to qualify the child for any medical or financial benefits to which the child may be entitled.

   j. ☐ The county is authorized to pay for care, maintenance, clothing, and incidentals at the approved rate.

   k. ☐ The likely date by which the child may be returned to and safely maintained in the home or another permanent plan selected is *(specify date):*

   l. ☐ The right of the parent or guardian to make educational decisions for the child is specifically limited. *Order Designating Educational Rights Holder* (form JV-535) will be completed and transmitted.

7. ☐ The child has been ordered into a placement described by title IV-E of the Social Security Act.

   a. ☐ The date the child entered foster care is: , which is 60 days after the day the child was removed from his or her home.

   b. ☐ An exception applies to the standard calculation of the date the child entered foster care because

   (1) ☐ the child has been detained for more than 60 days. Therefore, the date the child entered foster care is today's date of: .

   (2) ☐ the child has been in a ranch, camp, or other institution for more than 60 days and is now being ordered into an eligible placement. The date the child enters foster care will be the date he or she is moved into the eligible placement facility, which is anticipated to be: .

   (3) ☐ at the time the wardship petition was filed, the child was a dependent of the juvenile court and in an out-of-home placement. Thus, the date entered foster care is unchanged from the date the child entered foster care in dependency court. That date is: .

8. ☐ The minor is placed in a short-term residential therapeutic program. A hearing to review the placement under Welfare and Institutions Code section 727.12 was held on or is set for *(specify date):*

Date:

JUDICIAL OFFICER

Item Deferred

Item number:21

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee action requested [Choose from drop down menu below]**:**
Circulate for comment (January 1 cycle)

Rules Committee Meeting Date: April 14, 2021

Title of proposal: Indian Child Welfare Act (ICWA): Implementation of AB 3176 in Probate Guardianships and Conservatorships

Proposed rules, forms, or standards *(include amend/revise/adopt/approve):*
Amend Cal. Rules of Court, rules 7.51, 7.1003, 7.1013, and 7.1015; revise forms GC-210(CA) and ICWA-005-INFO

Committee or other entity submitting the proposal:
Probate and Mental Health Advisory Committee
Hon. Jayne C. Lee, Chair

Tribal Court–State Court Forum
Hon. Abby Abinanti, Cochair
Hon. Suzanne N. Kingsbury, Cochair

Staff contact (name, phone and e-mail):
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Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by Rules Committee date: PMHAC: November 2, 2020; Forum: March 11, 2021
Project description from annual agenda: PMHAC: Collaborate with the Tribal Court–State Court Forum to amend rules of court applicable to probate guardianships to implement the requirements of the federal Indian Child Welfare Act (ICWA), as amended, the 2016 federal ICWA regulations and Bureau of Indian Affairs guidance, and California statutes incorporating the amended federal requirements into state law.
Forum: Revisions to the Probate Guardianship ICWA Rules (New or Onetime Project #3, at page 4).

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

JUDICIAL COUNCIL OF CALIFORNIA

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

INVITATION TO COMMENT

SPR21-16

Title
Indian Child Welfare Act (ICWA): Implementation of AB 3176 in Probate Guardianships and Conservatorships

Proposed Rules, Forms, Standards, or Statutes
Amend Cal. Rules of Court, rules 7.51, 7.1003, 7.1013, and 7.1015; revise forms GC-210(CA) and ICWA-005-INFO

Proposed by
Probate and Mental Health Advisory Committee
Hon. Jayne C. Lee, Chair

Tribal Court–State Court Forum
Hon. Abby Abinanti, Cochair
Hon. Suzanne N. Kingsbury, Cochair

Action Requested
Review and submit comments by May 27, 2021

Proposed Effective Date
January 1, 2022

Contact
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Executive Summary and Origin

The Probate and Mental Health Advisory Committee and the Tribal Court–State Court Forum (forum) recommend amending four rules of court and revising two forms to clarify the procedures required in probate guardianship and conservatorship proceedings involving an Indian child to which the Indian Child Welfare Act (ICWA) may or does apply. The proposed amendments and revisions would update the rules and forms to conform to the requirements of the 2016 federal ICWA regulations, California statutory changes, and recent amendments to the California Rules of Court governing ICWA proceedings generally.

Background

The federal Indian Child Welfare Act of 1978 (25 U.S.C. §§ 1901–1963) establishes minimum federal standards that apply to all state court proceedings in which an Indian child could be involuntarily placed in the custody of a nonparent or parental rights could be terminated. In 2006, Senate Bill 678 (Stats. 2006, ch. 838) incorporated many provisions of ICWA into

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee.
It is circulated for comment purposes only.

California law. Effective January 1, 2008, the Judicial Council adopted California Rules of Court and Judicial Council forms to implement ICWA and SB 678. Rule 7.1015 specified procedures for applying ICWA to probate proceedings and incorporated the applicable provisions of the general ICWA rules, now found in rules 5.480 through 5.488.

In 2016, the federal government adopted regulations implementing ICWA and updated its ICWA guidelines.[1] In some respects, California law and practice were inconsistent with the regulations and guidelines. Further, in 2017 the California ICWA Compliance Task Force delivered a report to the Attorney General which identified a number of issues with California's application of ICWA.[2]

Effective January 1, 2020, Assembly Bill 3176 addressed many of the issues discussed above.[3] The bill directed the Judicial Council to adopt any rules or forms necessary to implement its provisions. Although AB 3176 did not amend the Probate Code provisions that incorporate ICWA's requirements, it did, nevertheless, amend several sections of the Welfare and Institutions Code that impose inquiry and notice requirements on probate guardianship and certain conservatorship proceedings.

In response to the enactment of AB 3176, the Judicial Council amended the generally applicable ICWA rules in title 5 and revised the ICWA forms.[4] The amendments in this proposal would bring the probate rules into conformity with the 2016 federal regulations, AB 3176, and the ICWA rules in title 5. The proposal would also clarify an Indian child's tribe ability to have access to specific reports and documents filed in probate guardianship proceedings.

The Proposal

The Probate and Mental Health Advisory Committee and the Tribal Court–State Court Forum recommend that the Judicial Council, effective January 1, 2022:

1. Amend California Rules of Court, rules 7.51, 7.1003, and 7.1013 to clarify and confirm the rights of an Indian child's tribe to receive notices of hearings and other activity and obtain access to status reports in a covered proceeding;

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[1] Indian Child Welfare Act, 25 C.F.R. §§ 23.1–23.144; U.S. Department of the Interior, Bureau of Indian Affairs, *Guidelines for Implementing the Indian Child Welfare Act* (Dec. 2016), available at *www.bia.gov/sites/bia.gov/files/assets/bia/ois/pdf/idc2-056831.pdf*.

[2] California ICWA Compliance Task Force, *Report to the California Attorney General's Bureau of Children's Justice* (2017), available at *https://caltribalfamilies.org/wp-content/uploads/2020/12/ICWAComplianceTaskForceFinalReport2017.pdf*.

[3] Assem. Bill 3176 (Stats. 2018, ch. 833), available at *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB3176*.

[4] Judicial Council of Cal., Advisory Com. Rep., *Indian Child Welfare Act (ICWA): Implementation of AB 3176 for Indian Children* (Sept. 5, 2019) (adopted Sept. 24, 2019, effective Jan. 1, 2020), available at *https://jcc.legistar.com/View.ashx?M=F&ID=7684873&GUID=52B4C6B1-F704-458F-BF42-EB1AA4F82000*.

2. Amend California Rules of Court, rule 7.1015 to conform to recent changes in the federal ICWA regulations, California statutory law, and California Rules of Court, rules 5.480–5.488 related to implementing ICWA;

3. Revise *Guardianship Petition—Child Information Attachment* (form GC-210(CA)) to:

   - Conform to the amendments to rule 7.1015 by modifying item 1c and deleting item 8 to reflect that form ICWA-010(A) would be henceforth used to document the Indian child inquiry;

   - Combine item 3, information about the proposed guardian, and item 6, suitability of the proposed guardian, into a single item 3;

   - Add a new item 4 for the petitioner to explain why appointing a guardian would be in the child's best interest; and

   - Add a new subitem a. to item 6 for the petitioner to inform the court whether the child's parent or parents agree that the court needs to appoint a guardian for the child; and

4. Revise *Information Sheet on Indian Child Inquiry Attachments and Notice of Child Custody Proceeding for Indian Child* (form ICWA-005-INFO) to reflect that form GC-210(CA) would no longer be used for the Indian child inquiry in probate guardianship proceedings.

The text of the rules and the forms, as proposed to be amended and revised, are attached at pages 6–21.

The proposed rule amendments are, for the most part, required by the passage of AB 3176 and the 2016 federal regulations and guidelines, and are urgently needed to conform to these recent changes in the law. Additional proposed changes would respond to specific issues and recommendations in the California ICWA Compliance Task Force Report and tribal advocates.

The federal regulations and guidelines and AB 3176 made significant changes to the law and practice under ICWA, especially regarding inquiry and notice. The proposal would benefit the judicial branch, justice partners, attorneys, and litigants by more clearly setting out the requirements of the Indian Child Welfare Act in probate guardianship and conservatorship proceedings and conforming practice to the requirements of federal and state law, thus protecting the legal rights of tribal children and families by reducing confusion and the need for appeals.

Amendment to rule 7.51

Rule 7.51 governs the manner of giving notices of hearings in probate proceedings. The amendment would add subdivision (f) to specify that notices of hearings in proceedings to which ICWA applies must be mailed to an Indian child's tribe as provided in rule 7.1015(d).

Amendment to rule 7.1003

Rule 7.1003 addresses the confidential guardianship status report. Proposed subdivision (c) would require the court clerk to make the status report available to an Indian child's tribe that has intervened in the proceeding, and would clarify that the limits on access to the status report are not intended to preclude an interested person or a tribe that has not intervened from petitioning for a court order directing the clerk to make the status report available to that person or tribe.

Amendment to rule 7.1013

Probate Code section 2352 requires a guardian of the person to give notice to certain persons before and after changing the ward's residence. The proposed amendments to rule 7.1013 would add an Indian child's tribe to those persons entitled to receive notice of a change in residence.

Amendment to rule 7.1015

The proposed amendments would primarily address three substantive issues. First, the amendments would update the inquiry requirements to conform to the requirements in the federal regulations, AB 3176, and the recent amendments to rules 5.480–5.488, which apply to probate guardianship proceedings. Second, the amendments would update the notice requirements to conform to the same federal and state laws. In particular, these amendments would assist courts and parties in determining when there is reason to *believe* that an Indian child is the subject of a proceeding and when there is reason to *know* that an Indian child is involved. Third, the proposed amendments would add a new subdivision applying the emergency proceeding requirements in rule 5.484 to temporary guardianships and conservatorships involving an Indian child. This revision also changes the wording from "formerly married" child to "child whose marriage was dissolved' to clarify that if a marriage is annulled rather than being dissolved, the child is not emancipated and is subject to a guardianship rather than conservatorship proceeding. Finally, the amendments would also consolidate the Indian child inquiry onto a single form, *Indian Child Inquiry Attachment* (form ICWA-010(A)) for Indian child custody proceedings, consistent with rule 5.481(a)(1) of these rules.

***Guardianship Petition—Child Information Attachment* (form GC-210(CA))**

The proposed revisions would modify item 1c and delete item 8 to reflect that the proposed amendments conform to rule 7.1015, and would require form ICWA-010(A) to be used to document the Indian child inquiry. Additional revisions would combine item 3, information about the proposed guardian, and item 6, suitability of the proposed guardian, into a single item 3 to promote efficiency; add a new item 4 for the petitioner to explain why appointing a guardian would be in the child's best interest, thereby providing information needed by the court to make the determination under Probate Code section 1514(a)–(b)(1) and Family Code section 3040; and add a new subitem a. to item 6 for the petitioner to tell the court whether the child's parent or parents agree that the court needs to appoint a guardian for the child so the court could, among other things, make a preliminary determination whether to apply the standard in Family Code section 3040 or 3041 to the appointment of a guardian of the person.

Information Sheet on Indian Child Inquiry Attachments and Notice of Child Custody Proceeding for Indian Child **(form ICWA-005-INFO)**
The proposed revisions would remove references to form GC-210(CA) because that form would no longer be used to document the Indian child inquiry and would make technical changes to the title, content, and formatting.

Alternatives Considered

The committee and the forum considered proposing more extensive rule amendments, but decided to take an incremental approach and limit this proposal to the amendments necessary to conform to the law

Fiscal and Operational Impacts

Courts will face some fiscal and operational impacts as courts, justice partners, and litigants adjust to the new requirements and update their existing forms and practices. However, these impacts and burdens are required to comply with federal and state law and cannot be avoided. The benefits of complying with the law and avoiding appellate reversals will outweigh the potential costs. In addition, the burdens may be mitigated in courts that have implemented these requirements in their juvenile and family law divisions.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- 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?
- Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?

Attachments and Links

1. Cal. Rules of Court, rules 7.51, 7.1003, 7.1013, and 7.1015, at pages 6–15
2. Forms GC-210(CA) and ICWA-005-INFO, at pages 16–21

Rules 7.51, 7.1003, 7.1013, and 7.1015 of the California Rules of Court would be amended, effective January 1, 2022, to read:

Rule 7.51. Service of notice of hearing

(a)–(e) * * *

(f) Notice when Indian Child Welfare Act may apply

If the court or the petitioner knows or has reason to know, as described in section 224.2(d) of the Welfare and Institutions Code, that an Indian child is the subject of a guardianship or conservatorship proceeding, notice to the child's tribe must be given as prescribed in rule 7.1015(d).

Rule 7.1003. Confidential guardianship status report ~~form~~ (Prob. Code, § 1513.2)

(a)–(b) * * *

(c) Access to report

(1) Except as provided in paragraph 2, the clerk must make a status report submitted under Probate Code section 1513.2 available only to persons served in the guardianship proceedings.

(2) If the ward is an Indian child and the child's tribe has intervened in the proceeding, the clerk must also make the status report available to the representative designated by the child's tribe.

(3) Paragraphs (1) and (2) are not intended to preclude an interested person or an Indian child's tribe that has not intervened from filing a petition for a court order directing the clerk to make the status report available to that person or tribe.

Rule 7.1013. Change of ward's residence

(a) Pre-move notice of change of personal residence required

Unless an emergency requires a shorter period of notice, the guardian of the person must mail copies of a notice of an intended change of the ward's personal residence to the persons listed below at least 15 days before the date of the proposed change~~,~~ and file the original notice with proof of mailing with the court. Copies of the notice must be mailed to:

(1)–(4) * * *

(5) A guardian of the ward's estate;~~ and~~

(6) Any person who was nominated as guardian of the ward under Probate Code sections 1500 or 1501 but was not appointed guardian in the proceeding; and

(7) If the ward is an Indian child and the child's tribe has intervened, the child's tribe.

(b) * * *

(c) Post-move notice of a change of residence required

The guardian of the person of a minor must file a notice of a change of the ward's residence with the court within 30 days of the date of any change. Unless waived by the court for good cause to prevent harm to the ward, the guardian, the guardian's attorney, or an employee of the guardian's attorney must also mail a copy of the notice to the persons listed below and file a proof of mailing with the original notice. Unless waived, copies of the notice must be mailed to:

(1)–(3) * * *

(4) A guardian of the ward's estate;~~ and~~

(5) Any person who was nominated as guardian of the ward under Probate Code sections 1500 or 1501 but was not appointed guardian in the proceeding; and

(6) If the ward is an Indian child and the child's tribe has intervened, the child's tribe.

(d)–(g) * * *

Rule 7.1015. Indian Child Welfare Act in guardianship and certain conservatorship proceedings (Prob. Code, §§ 1449, 1459, 1459.5, 1460.2, 1511(i); Welf. & Inst. Code, §§ 224–224.6; 25 U.S.C. §§ 1901–1963)

(a) Definitions

As used in this rule, unless the context or subject matter otherwise requires:

(1) "Act" means the federal Indian Child Welfare Act (25 ~~United States Code sections~~ U.S.C. §§ 1901–1963).

(2) "Emergency proceeding" refers to:

(A) a temporary guardianship of the person of a minor; or

(B) a temporary conservatorship of the person of a minor whose marriage has been dissolved

when it is known or there is reason to know that the minor is or may be an Indian child.

(3) "Petitioner" ~~means and~~ refers to:

(A) A petitioner for the appointment of a guardian of the person of a minor child; or

(B) A petitioner for the appointment of a conservator of the person of a ~~formerly married~~ minor child whose marriage has been dissolved.

(b) Applicability of this rule and rules 5.480 through 5.48~~7~~8

(1) This rule applies to the following proceedings under division 4 of the Probate Code~~ when the proposed ward or conservatee is an Indian child, within the meaning of the act:~~

(A) A guardianship or temporary guardianship of the person or of the person and estate in which the proposed guardian of the person is not the proposed ward's ~~natural~~ biological parent or Indian custodian ~~within the meaning of the act~~;

(B) A conservatorship, limited conservatorship, or temporary conservatorship of the person or of the person and estate of a ~~formerly married~~ minor whose marriage has been dissolved in which the proposed conservator of the person is not ~~a natural~~ the proposed conservatee's biological parent or Indian custodian ~~of the minor~~ and is seeking physical custody of the proposed conservatee.

(2) Unless the context requires otherwise, ~~requires,~~ rules 5.480 through 5.48~~7~~8 apply to the proceedings listed in (1).

(3) When applied to the proceedings listed in (1), references in rules 5.480 through 5.48~~7~~8 to social workers, probation officers, county probation departments, or county social welfare departments are references to the

petitioner or petitioners for the appointment of a guardian or conservator of the person ~~of an Indian child~~ and to ~~an Indian child's~~ the appointed temporary or general guardian or conservator of the person.

(4) If the court appoints a temporary or general guardian or conservator of the person of the child involved in a proceeding listed in (1), the duties and responsibilities of a petitioner under the Act and this rule ~~are transferred to and~~ become the duties and responsibilities of the appointed guardian or conservator. The petitioner must cooperate with and provide any information the petitioner ~~has~~ knows or possesses concerning the child to the appointed guardian or conservator.

(c) Inquiry

(1) The court, ~~a~~ the court investigator or county officer appointed to conduct an investigation under Probate Code section 1513 or 1826, and each petitioner~~,~~ have an affirmative and continuing duty to inquire whether ~~the~~ each child involved in ~~the~~ a matter~~s~~ identified in (b)(1) is or may be an Indian child.

(2) Before filing ~~his or her~~ a petition for appointment of a guardian or conservator of the person, the petitioner must ask the child involved in the proceeding, if the child is old enough, ~~and~~ the parents, any ~~other legal~~ previously appointed guardian of the person, and any Indian custodian, whether the child is or may be an Indian child, ~~and must~~ complete ~~items 1c and 8 of the *Guardianship Petition—Child Information Attachment* (form GC-210(CA))~~ *Indian Child Inquiry Attachment* (form ICWA-010(A)), and attach ~~it~~ that form to ~~his or her~~ the petition.

(3) ~~At the first personal appearance by a parent or previously appointed legal guardian at a hearing in a guardianship or conservatorship, the court must if requested by petitioner, or may on its own motion, order the parent or legal guardian to complete a *Parental Notification of Indian Status* (form ICWA-020) and deliver the completed form to the petitioner.~~ At the initiation of any proceeding identified in (b)(1) and at any hearing in such a proceeding that may result in the appointment of a guardian or conservator, the court must:

(A) Ask each participant present whether the participant knows or has reason to know that the child is an Indian child;

(B) Instruct the parties to inform the court if they subsequently receive information that provides reason to know that the child is an Indian child; and

(C) Order the parent, existing guardian, or Indian custodian, if available, to complete *Parental Notification of Indian Status* (form ICWA-020).

(4) If the parent, Indian custodian, or guardian ~~does not personally appear at a hearing in~~ is not available at the initiation of a proceeding identified in (b)(1), the court ~~may~~ must order the petitioner to use reasonable diligence to find and ~~ask~~ inform the parent, Indian custodian, or ~~legal~~ guardian that the court has ordered that person to complete and deliver to petitioner a *Parental Notification of Indian Status* (form ICWA-020).

(5) If the court or county investigator, the petitioner, ~~appointed guardian or conservator~~, or the attorney for ~~a~~ the petitioner ~~or appointed guardian or conservator,~~ knows or has reason to know or believe that an Indian child is involved in the proceeding, ~~he or she~~ that person must make further inquiry as soon as practicable by:

(A) Interviewing the parents, Indian custodian, and "extended family members" as defined in 25 United States Code section 1903(2), to gather the information listed in ~~Probate Code section 1460.2(b)(5) that is required to complete the *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030)~~ Welfare and Institutions Code section 224.3(a)(5);

(B) Contacting the ~~U.S. Department of the Interior,~~ federal Bureau of Indian Affairs and the California Department of Social Services for assistance in identifying the names and contact information of the tribes of which the child may be a member or eligible for membership; and

(C) Contacting the tribes and any other persons who reasonably can be expected to have information regarding the child's tribal membership status or eligibility for membership. These contacts must at a minimum use the methods and share the information listed in Welfare and Institutions Code section 224.2(e)(2)(C).

(6) If the court knows or has reason to know or believe that an Indian child is involved in the proceeding, the court ~~may direct any~~ must direct one or more of the persons named in (5) to conduct the inquiry described in that paragraph.

(7) The circumstances that may provide reason to believe the child may be an Indian child are those set forth in Welfare and Institutions Code section 224.2(e)(1). The circumstances that may provide reason to know the child is

an Indian child ~~include the following:~~ are those set forth in Welfare and Institutions Code section 224.2(d) and rule 5.481(b).

~~(A) The child or person having an interest in the child, including an Indian tribe, an Indian organization, an officer of the court, a public or private agency, or a member of the child's extended family, informs or otherwise provides information suggesting that the child is an Indian child to the court or to any person listed in (5);~~

~~(B) The residence or domicile of the child, the child's parents, or an Indian custodian is in a predominantly Indian community; or~~

~~(C) The child or the child's family has received services or benefits from a tribe or services that are available to Indians from tribes or the federal government, such as the U.S. Department of Health and Human Services, Indian Health Service, or Tribal Temporary Assistance to Needy Families benefits.~~

(d) Emergency proceedings

In an emergency proceeding as defined in (a)(2), the following requirements apply to the proceeding in addition to the applicable requirements of Probate Code sections 2250–2257 and California Rules of Court, rules 7.1012 and 7.1062.

(1) If a petition for appointment of a temporary guardian or conservator of the person of the child is filed, the petition must meet the requirements in rule 5.484(a) of these rules for a petition requesting emergency placement.

(2) If a petition for termination of a temporary guardianship or conservatorship of the person of the child is filed, the requirements of rule 5.484(b) apply.

(3) If the court considers extending the time for the termination of the powers of a temporary guardian or conservator of the person of the child, it must first make the determinations required by rule 5.484(c).

(~~c~~e) Notice

If, at any time after the filing of a petition for appointment of a guardian or conservator for a minor child, the court or petitioner knows or has reason to know, within the meaning of ~~Probate Code sections 1449 and 1459.5 and~~ Welfare and Institutions Code section ~~224.3(b),~~ 224.2(d) and rule 5.481(b) of these rules, that an Indian child is involved, the petitioner and the court must notify the child's parents or ~~legal~~ previously appointed guardian of the person, ~~and~~ Indian custodian, if any,

and the ~~Indian~~ child's tribe, of the pending proceeding and the right of the tribe to intervene, as provided in rule 5.481(c). ~~follows:~~

~~(1) Notice to the Indian child's parents, Indian custodian, and Indian tribe of the commencement of a guardianship or conservatorship must be given by serving copies of the completed *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030), the petition for appointment of a guardian or conservator, and all attachments, by certified or registered mail, fully prepaid with return receipt requested.~~

~~(2) The petitioner and his or her attorney, if any, must complete the *Notice* and the petitioner must date and sign the declaration. If there is more than one petitioner, the statements about the child's ancestors and background provided in the *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030) must be based on all information known to each petitioner, and all petitioners must sign the declaration.~~

~~(3) When the petitioner is represented by an attorney in the proceeding, the attorney must serve copies of the *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030) in the manner described in (1) and sign the declaration of mailing on the *Notice*.~~

~~(4) When the guardianship or conservatorship petitioner or petitioners are not represented by an attorney in the proceeding, the clerk of the court must serve the *Notice* in the manner described in (1) and sign the certificate of mailing on the *Notice*.~~

~~(5) The original of all *Notices of Child Custody Proceeding for Indian Child* (form ICWA-030) served under the act, and all return receipts and responses received, must be filed with the court before the hearing.~~

~~(6) Notice to an Indian child's tribe must be sent to the tribal chairperson unless the tribe has designated another agent for service.~~

~~(7) Notice must be served on all tribes of which the child may be a member or eligible for membership. If there are more tribes or bands to be served than can be listed on the last page of the *Notice*, the additional tribes or bands may be listed on an *Attachment to Notice of Child Custody Proceeding for Indian Child* (form ICWA-030(A)).~~

~~(8) Notice under the act must be served whenever there is any reason to know that the child is or may be an Indian child and for every hearing after the first~~

~~hearing unless and until it is determined that the act does not apply to the proceeding.~~

~~(9) If, after a reasonable time following the service of notice under the act—but in no event less than 60 days—no determinative response to the *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030) is received, the court may determine that the act does not apply to the proceeding unless further evidence of its applicability is later received.~~

~~(10) If an Indian child's tribe intervenes in the proceeding, service of the *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030) is no longer required~~, ~~and subsequent notices to the tribe may be sent to all parties in the form and in the manner required under the Probate Code and these rules. All other provisions of the act, this rule, and rules 5.480 through 5.487 continue to apply.~~

~~(11) Notice under the act must be served in addition to all notices otherwise required for the particular proceeding under the provisions of the Probate Code.~~

~~(d) Duty of inquiry~~

~~(1) The court, a court investigator or county officer appointed to conduct an investigation under Probate Code section 1513 or 1826, a petitioner, and any appointed temporary or general guardian or conservator of the person of a minor child each have an affirmative and continuing duty to inquire whether the child involved in the matters identified in (b)(1) is or may be an Indian child.~~

~~(2) Before filing his or her petition, the petitioner must ask the child involved in the proceeding, if the child is old enough, and the parents, any other legal guardian, and any Indian custodian, whether the child is or may be an Indian child, and must complete items 1c and 8 of the *Guardianship Petition—Child Information Attachment* (form GC-210(CA)) and attach it to his or her petition.~~

~~(3) At the first personal appearance by a parent or previously appointed legal guardian at a hearing in a guardianship or conservatorship, the court must if requested by petitioner, or may on its own motion, order the parent or legal guardian to complete a *Parental Notification of Indian Status* (form ICWA-020) and deliver the completed form to the petitioner.~~

~~(4) If the parent, Indian custodian, or guardian does not personally appear at a hearing in a proceeding identified in (b)(1), the court may order the petitioner to use reasonable diligence to find and ask the parent, Indian custodian, or legal guardian to complete and deliver to petitioner a *Parental Notification of Indian Status* (form ICWA-020).~~

~~(5) If the court or county investigator, petitioner, appointed guardian or conservator, or the attorney for a petitioner or appointed guardian or conservator, knows or has reason to know that an Indian child is involved in the proceeding, he or she must make further inquiry as soon as practicable by:~~

~~(A) Interviewing the parents, Indian custodian, and "extended family members" as defined in 25 United States Code section 1903(2), to gather the information listed in Probate Code section 1460.2(b)(5) that is required to complete the *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030);~~

~~(B) Contacting the U.S. Department of the Interior, Bureau of Indian Affairs and the California Department of Social Services for assistance in identifying the names and contact information of the tribes of which the child may be a member or eligible for membership; and~~

~~(C) Contacting the tribes and any other person who reasonably can be expected to have information regarding the child's tribal membership status or eligibility for membership.~~

~~(6) If the court knows or has reason to know that an Indian child is involved in the proceeding, the court may direct any of the persons named in (5) to conduct the inquiry described in that paragraph.~~

~~(7) The circumstances that may provide reason to know the child is an Indian child include the following:~~

~~(A) The child or person having an interest in the child, including an Indian tribe, an Indian organization, an officer of the court, a public or private agency, or a member of the child's extended family, informs or otherwise provides information suggesting that the child is an Indian child to the court or to any person listed in (5);~~

~~(B) The residence or domicile of the child, the child's parents, or an Indian custodian is in a predominantly Indian community; or~~

1 ~~(C) The child or the child's family has received services or benefits from a~~
2 ~~tribe or services that are available to Indians from tribes or the federal~~
3 ~~government, such as the U.S. Department of Health and Human~~
4 ~~Services, Indian Health Service, or Tribal Temporary Assistance to~~
5 ~~Needy Families benefits.~~

GC-210(CA) **Child Information Attachment to Probate Guardianship Petition**

Case Number:

Guardianship of *(all children's names)*: ______________________

This child's name: ______________________

Fill out a separate copy of this form for **each child** for whom your petition asks the court to appoint a guardian.

This form is attached to the Petition, ☐ **form GC-210, item 2,** or ☐ **form GC-210(P), item 8.**

The petition asks the court to appoint a guardian of this child's *(specify)*: ☐ person ☐ estate ☐ person and estate.

1 Tell the court about this child

a. Child's full legal name: ______________________ Date of birth: __________
First Middle Last *mm/dd/yyyy*

b. Child's current address: ______________________

c. Indian child inquiry *(Complete only if your petition asks the court to appoint a guardian of this child's person or person and estate. If your petition asks the court to appoint a guardian of this child's estate only, skip this item and go to item 1d.)*

☐ I have asked whether the child is or may be a member of one or more Indian tribes recognized by the federal government, or eligible for membership in such a tribe and the biological child of a tribal member. Form ICWA-010(A), *Indian Child Inquiry Attachment,* is attached to this form.

(For more information about your duties under the federal Indian Child Welfare Act (ICWA) (25 U.S.C. §§ 1901–1963) and California law, including making the inquiry and completing form ICWA-010(A), if the child is or may be an Indian child, see Information Sheet on Indian Child Inquiry Attachment and Notice of Child Custody Proceeding for Indian Child *(form ICWA-005-INFO).)*

d. Is this child married? ☐ Yes ☐ No ☐ Never married If you checked "No," was this child married in the past but the marriage was dissolved or ended in divorce? ☐ Yes ☐ No
The court cannot appoint a guardian of the person for a minor child who is married or whose marriage was dissolved or ended in divorce.)

e. Is this child receiving public benefits? ☐ Yes ☐ No ☐ I don't know *(If you checked "Yes," fill in below.)*

Type of Aid	Monthly Benefit	Type of Aid	Monthly Benefit
☐ TANF (Temporary Asst. for Needy Families)	$	☐ Other *(explain)*: __________	$
☐ Social Security	$	☐ Other *(explain)*: __________	$
☐ Dept. Veterans Affairs Benefits	$		

f. Name and address of the person with *legal* custody of this child: ______________________

g. ☐ *(Check this box and fill out below if the person the child lives with is **not** the person in f. with legal custody.)*
Name and address of the person this child lives with (who takes care of the child): ______________________

DRAFT

Guardiernship of *(all children's names):* ______________________

Case Number:

This child's name: ______________________

1 Tell the court about this child (continued)

h. ☐ *(Check this box if this child has been involved in an adoption, juvenile court, marriage dissolution (divorce), domestic relations, child custody, or other similar court case.)* Describe the court case below:

Type of Case	Court District or County and State	Case Number (if known)

i. ☐ *(Check this box if this child is in or on leave from an institution supervised by the California Department of Developmental Services or the California Department of State Hospitals.)* Write the name of the institution here:

2 List the names and addresses of this child's relatives and all other persons shown below:

Relationship	Name	Home Address (Street, City, State, Zip)
Father		
Mother		
Grandfather (Father's father)		
Grandmother (Father's mother)		
Grandfather (Mother's father)		
Grandmother (Mother's mother)		
Brother/Sister		
Brother/Sister		
Brother/Sister		
Brother/Sister		
Brother/Sister		
Brother/Sister		
Brother/Sister		

☐ *(Check here if this child has additional brothers or sisters, including half-brothers and half-sisters, and list their names and addresses on a separate sheet of paper. Write "Form GC-210(CA)," the name of this child, and "Item 2: Other Siblings" at the top of the paper and attach it to this form.)*

DRAFT

Guardianship of *(all children's names)*: ______________________

Case Number:

This child's name: ______________________

2 List the names and addresses of this child's relatives and all other persons shown below:

Relationship	Name	Home Address (Street, City, State, Zip)
Spouse *(Guardianship of the estate only)*		
Person nominated as guardian of this child *(if someone other than a proposed guardian named in 3)*		
Indian custodian *(if any)*		
Child's tribe *(if any and if known)*		

3 Information about the proposed guardian:

a. Name *(name all proposed guardians if more than one)*: ______________________

b. Relationship(s) to the child named in 1 *(check all that apply)*:

☐ Relative *(specify relationship(s) to the child of each proposed relative guardian)*: ______________________

☐ Not a relative *(explain interest in or connection to this child)*: ______________________

c. Did the child's parent(s) nominate the proposed guardian(s)? ☐ Yes ☐ No ☐ I don't know
(If you checked "Yes," attach the written nomination as Attachment 3c.)

d. Does this child currently live with the proposed guardian(s)? ☐ Yes ☐ No ☐ I don't know
If "Yes," how long has the child lived with the proposed guardian(s)? *(years, months)*: ______________________

e. If the court approves the guardianship, will this child live with the proposed guardian(s)? ☐ Yes ☐ No

f. Does/do the proposed guardian(s) currently plan to adopt this child? ☐ Yes ☐ No ☐ I don't know

4 *Explain why appointing a guardian for the child named in* 1 *would be in the child's best interest:*

____

☐ *(Check here if you need more space. Continue your explanation on a separate sheet of paper. Write "Form GC-210(CA)," the name of this child, and "Attachment 4: Guardianship—Best Interest of Child" at the top of the paper and attach it to this form.)*

DRAFT

5 *Explain why appointing the person named in ③ to be this child's guardian would be in the child's best interest:*

☐ *(Check here if you need more space. Continue your explanation on a separate sheet of paper. Write "Form GC-210(CA)," the name of this child, and "Attachment 5: Proposed Guardian—Best Interest of Child" at the top of the paper and attach it to this form.)*

6 a. Does one or do both of this child's parents agree that the court needs to appoint a guardian for the child?

(1) Father: ☐ Yes ☐ No ☐ I don't know

(2) Mother: ☐ Yes ☐ No ☐ I don't know

b. Does one or do both of this child's parents agree that the person named in ③ should be the child's guardian?

(1) Father: ☐ Yes ☐ No ☐ I don't know

(2) Mother: ☐ Yes ☐ No ☐ I don't know

7 ☐ **Check this box if you (the petitioner) are not the person named in ③, and fill in below.**

Your relationship to this child:

☐ Relative *(specify relationship):* ______________________

☐ Not a relative *(explain your interest in or connection to this child):* ______________________

8 Except as otherwise stated in this form, the statements made in the petition to which this form is attached fully apply to this child.

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INFORMATION SHEET ON INDIAN CHILD INQUIRY ATTACHMENT AND NOTICE OF CHILD CUSTODY PROCEEDING FOR INDIAN CHILD

This is an information sheet to help you fill out form ICWA-010(A), *Indian Child Inquiry Attachment,* and form ICWA-030, *Notice of Child Custody Proceeding for Indian Child.*

Form ICWA-010(A), *Indian Child Inquiry Attachment*

You are responsible for helping to find out if the child is or may be an Indian child and filling out the information requested on ICWA-010(A), *Indian Child Inquiry Attachment.* This is important because if the child is an Indian child, specific steps must be taken to prevent the breakup of the child's Indian family and to obtain for the child resources and services that are culturally specific to the child's family. The court will check to make sure that the child receives these resources and services.

Tips on how to fill out form ICWA-010(A), Indian Child Inquiry Attachment

1. Try to find contact information for the child's parents or other legal guardian, the child's Indian custodian (if the child is living with an Indian person other than a parent), the child's grandparents and great-grandparents, and other available family members.

2. Contact the child's parents, any other legal guardian, and the child's Indian custodian and other available family members and ask them (and the child, if he or she is old enough) these questions:
   a. Is the child a member of a tribe, and if they think he or she might be, then which tribe or tribes?
   b. Are they members of a tribe, and if they think they might be, which tribe or tribes?
   c. Does the child, or do the child's parents, live in Indian country, including a reservation, rancheria, Alaska Native village, or other tribal trust land?
   d. Does the child or any of the child's relatives receive services or benefits from a tribe, and if yes, which tribe?
   e. Does the child or any of the child's relatives receive services or benefits available to Indians from the federal government?

3. If you are in touch with any of the child's relatives, ask them the same questions.

The court clerk's office cannot file your petition unless you have filled out form ICWA-010(A), *Indian Child Inquiry Attachment,* and attached it to the petition. This requirement does not apply to a petition for appointment of a probate guardian of the estate only or a petition filed in the juvenile court under Welfare and Institutions Code sections 601 or 602.

After taking the steps listed above to find out whether the child is an Indian child, if you have reason to believe that the child is an Indian child, you must contact the tribe or tribes that may have a connection with the child about your court case. You have reason to believe the child is an Indian child if any of the people you question answers yes to any of your questions. Tribes that learn of the case can investigate and advise you and the court whether the child is a tribal member or eligible to become a tribal member, and can then decide whether to get involved in the case or assume tribal jurisdiction.

Your contacts with the tribe or tribes should include:

(1) Contacting the tribe's designated agent for service of notice under the Indian Child Welfare Act, which is published in the Federal Register, by telephone, facsimile, or email; and

(2) Sharing with the tribe or tribes any information identified by the tribe as necessary for the tribe to make a determination about the child's tribal membership or eligibility for membership, as well as information on the current status of the child and the case.

Form ICWA-030, *Notice of Child Custody Proceeding for Indian Child*

Following your inquiry about the child's Indian status and contacts with the child's tribe or tribes, if necessary, you must provide formal notice on form ICWA-030, *Notice of Child Custody Proceeding for Indian Child,* if you know or have reason to know the child is an Indian child.

(continued on next page)

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Some tips to help you figure out if you have a reason to know the child is an Indian child.

You have reason to know:

1. If the child, an Indian tribe, an Indian organization, an attorney, a public or private agency, or a member of the child's extended family says or provides information to anyone involved in the case that the child is an Indian child;
2. If the child, the child's parents, or an Indian custodian live in a predominately Indian community; or
3. If the child or the child's family has received services or benefits from a tribe or services that are available to Indians from tribes or the federal government, such as the Indian Health Service.

These are just a few of the facts that would give you reason to know that a child is an Indian child. There also may be other information that would give you reason to know that the child is an Indian child.

Who do you need to notify?

If you know or have reason to know that the child is an Indian child, you must send the Notice to the following:

1. Child's parents or other legal guardian, including adoptive parents;
2. Child's Indian custodian (if the child is living with an Indian person who has legal custody of the child under tribal law or custom, under state law, or if the parent asked that person to take care of the child);
3. Child's tribe or tribes; and
4. Sacramento Area Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825 (if the parents, Indian custodian, or tribe cannot be determined or located).

Tips on how to find the address for the child's tribe or tribes

The Secretary of the Interior periodically updates and publishes in the Federal Register (see 25 C.F.R. § 23.12) a list of tribe names and addresses. The Bureau of Indian Affairs also keeps a list. You can access the Federal Register list and other resources related to ICWA on the Bureau of Indian Affairs website at www.bia.gov/bia/ois/dhs/.

Copy to the Secretary of the Interior and the Area Director of the Bureau of Indian Affairs

If you know the identity and location of the parent, Indian custodian, and the tribe or tribes, when you send the Notice to the parent, Indian custodian, and the tribe or tribes, you must also send a copy to the Secretary of the Interior, at 1849 C Street, NW, Washington, DC 20240, and a copy to the Sacramento Area Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, CA 95825.

Copy to the Area Director of the Bureau of Indian Affairs

If you do **not** know the identity and location of the child's parents, Indian custodian, and tribe or tribes, you must send copies of the Notice and the other documents to the Sacramento Area Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, CA 95825. To help establish the child's tribal identity, provide as much information as possible, including the child's name, birth date, and birth place; the name of the tribe or tribes; the names of all of the child's known relatives with addresses and other identifying information; and a copy of the petition in the case.

How do you send the Notice and prove to the court that you have done so?

If you have an attorney, the attorney will complete the steps described below. If you are representing yourself without an attorney in a probate guardianship case, the court clerk will help you with steps 1 and 2 below, including doing the mailing and signing the certificate of mailing on page 9 of the Notice, but you must deliver copies of the Notice and other documents listed in step 1 below to the court in addressed envelopes ready for mailing and then do step 3.

1. Mail to the persons and organizations listed at the top of this page, by registered or certified mail, with return receipt requested, copies of the following filled-out and signed forms:
   a. Your petition;
   b. Form ICWA-010(A), *Indian Child Inquiry Attachment ;* and
   c. Form ICWA-030, *Notice of Child Custody Proceeding for Indian Child.*
2. The person who does the mailing must fill out the information requested on page 10 of form ICWA-030, *Notice of Child Custody Proceeding for Indian Child,* and then date and sign the original form on page 9.
3. Go to the court and file with the clerk of the court proof that you have given notice to everyone listed above and on page 10 of form ICWA-030, *Notice of Child Custody Proceeding for Indian Child.* Your proof must consist of the following:
   a. The original signed Notice (form ICWA-030) and copies of the documents you sent with it (the petition and form ICWA-010(A);
   b. All return receipts given to you by the post office and returned from the mailing; and
   c. All responses you receive from the child's parents, the child's Indian custodian, the child's tribe or tribes, and the Bureau of Indian Affairs.

Please note that you are subject to court sanctions if you knowingly and willfully falsify or conceal a material fact concerning whether the child is an Indian child or if you counsel a party to do so. (Welf. & Inst. Code, § 224.3(e).)

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RUPRO ACTION REQUEST FORM

RUPRO action requested: **Circulate for comment (January 1 cycle)**

RUPRO Meeting: April 14, 2021

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Domestic Violence: Revising Forms to Implement New Laws (forms DV-100, DV-110, DV-120, DV-130, DV-500-INFO)

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee

Staff contact (name, phone and e-mail): Frances Ho; frances.ho@jud.ca.gov; (415) 865-7662

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: November 2, 2020
Project description from annual agenda:
This proposal implements changes in the law, as described in item 1 of the annual agenda for the Family and Juvenile Law Advisory Committee Annual Agenda.
Item 1: As directed by the Judicial Council, review legislation identified by Governmental Affairs that may have an impact on family and juvenile law issues within the advisory committee's purview. The committee will review the legislation below, and any other identified legislation, and propose rules and forms as may be appropriate for the council's consideration.
Item 1a (Gloria) Domestic violence

Item 1b
SB 1141 (Rubio) Domestic violence: coercive control (Ch. 248, Stats. of 2020)
Expands the definition of "disturbing the peace" for which a court may issue a restraining order under the Domestic Violence Prevention Act to include, among other things, coercive control.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)
While a more substantive redesign of the protective orders has been postponed (item 19 on the annual agenda) in light of the challenges posed by the COVID-19 pandemic, the committee recommends making a number of changes to these forms in addition to the necessary statutory changes to make them more accessible to domestic violence survivors. The committee believes that these changes are timely as many agencies report that domestic violence is on the rise while fewer resources are available. A more significant redesign of the protective order forms will occur at a later time, in collaboration with the CIvil and Small Claims Advisory Committee.

JUDICIAL COUNCIL OF CALIFORNIA

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

INVITATION TO COMMENT

SPR-21-15

Title
Domestic Violence: Revising Forms to Implement New Laws

Proposed Rules, Forms, Standards, or Statutes
Revise forms DV-100, DV-110, DV-120, DV-130, and DV-500-INFO

Proposed by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Action Requested
Review and submit comments by May 27, 2021

Proposed Effective Date
January 1, 2022

Contact
Frances Ho
(415) 865-7662
frances.ho@jud.ca.gov

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Executive Summary and Origin

The Family and Juvenile Law Advisory Committee recommends revising five forms in the domestic violence restraining order series to implement new laws enacted by Senate Bill 1141 (Rubio; Stats. 2020, ch. 248) and Assembly Bill 2517 (Gloria, Stats. 2020; ch. 245), and to make the forms easier to understand and enforce.

The Proposal

This proposal is necessary to implement new changes in the law. As most litigants in domestic violence restraining order proceedings represent themselves, it is particularly important for the council to act quickly, to ensure that litigants have access to the new remedies provided by the legislature. The proposal also revises the format of the forms to make them more useable.

The committee proposes the following:

1. Revise *Request for Domestic Violence Restraining Order* (form DV-100);
2. Revise *Temporary Restraining Order (Domestic Violence Prevention)* (form DV-110);
3. Revise *Response to Request for Domestic Violence Restraining Order* (form DV-120);
4. Revise *Restraining Order After Hearing (Order of Protection*, (form DV-130); and

*This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee.
It is circulated for comment purposes only.*

5. Revise *Can a Domestic Violence Restraining Order Help Me?* (form DV-500-INFO).

Implementing SB 1141 (Coercive Control Bill)

Senate Bill 1141 modified the definition of "abuse" under the Domestic Violence Prevention Act by codifying the definition of disturbing the peace provided in case law, and including "coercive control" as a means of disturbing someone's peace.[1] To implement SB 1141, the committee proposes adding new language to the request and order forms. The new language would go under the "Orders for No Abuse" section,[2] referred to in the current forms as "Personal Conduct Orders." The committee is seeking specific comment on whether the new language should closely track the statutory language or, instead, provide some concrete examples of coercive control that are provided by statute. Factors that the committee considered in proposing the language in the attached forms included whether self-represented litigants would be able to understand the statutory definition of coercive control, and legal accuracy of including language something other than the statutory definition. The committee seeks public comment on the two options provided below to implement the new language in Family Code section 6320(c).

Option 1 gives a summary of "disturbing the peace" and includes some of the examples provided in the statute. The examples are included in the dash-lined box with rounded corners. Option 2—which has been included in the proposed forms—is substantially similar to the new statutory language but is written in simpler language. The language in option 2, other than the first sentence setting out the statute, is at a 12th grade reading level. Using the statutory language verbatim would be at a 16th grade reading level.

Option 1

☐ **Order for No Abuse**

The person in (2) must not harass, attack, strike, threaten, assault (sexually or otherwise), hit, follow, stalk, molest, destroy personal property, keep under surveillance, impersonate (on the Internet, electronically or otherwise), or block movements, or disturb the peace (including coercively control) of any person protected by this restraining order.

Disturbing the peace means to disturb someone's mental or emotional well being. It includes isolating someone from their friends, family, or other support; keeping someone from getting food or other basic necessities; and intimidating or threatening someone based on their actual or suspected immigration status.

[1] Family Code section 6320(c).

[2] See form DV-100 at item 10, form DV-110, at item 8, and form DV-130 at item 8.

Option 2

☐ **Order for No Abuse**

The person in (2) must not molest, attack, strike, stalk, threaten, sexually assault, batter, impersonate as described in Section 528.5 or 529 of the Penal Code, harass, telephone (including, but not limited to, making annoying telephone calls as described in Section 653m of the Penal Code), destroy personal property, or disturb the peace of any person protected by this restraining order.
To disturb the peace means to destroy their mental or emotional calm. This can be done directly or indirectly, such as through someone else. This can also be done in any way, such as by phone, over text, or online. Disturbing the peace includes coercive control. Coercive control means a number of acts that unreasonably limits the free will and individual rights of any person protected by this restraining order. Examples include isolating them from friends, relatives, or other support; keeping them from food or basic needs, controlling, or keeping track of them, including their movements, contacts, actions, money; or access to services; and making them do something that they don't want to do by force, threat or intimidation. This includes threats related to the protected person's actual or suspected immigration status.

The committee is also seeking comment on a proposal for juvenile restraining order forms which parallels this proposal, to implement SB 1141 and to change those forms into the same new version of "plain language" format as the domestic violence restraining order forms in this proposal. See the Invitation to Comment for *Juvenile Law: Restraining Orders*.

Implementing AB 2517

Assembly Bill 2517 amended Family Code section 6342.5, to allow the court, when granting an order for debt payment as part of a restraining order, to find that a specific debt was incurred as a result of domestic violence, and without the permission of the protected person. According to the legislative history, this law is needed to protect domestic violence survivors against the economic impact of financial abuse. A finding by the court that a debt resulted from domestic violence could help the survivor be made whole (e.g. act as a defense against creditors seeking to collect from the survivor). To implement AB 2517, the committee recommends revising the following item on the request form (DV-100, item 19) to allow the petitioner to provide facts to support the finding and adding an item for the finding on the restraining order after hearing form (DV-130), as shown on the next page.

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On form DV-100:

☐ **Pay Debts (Bills)**

I ask the judge to order the person in ② to make these payments while the restraining order is in effect:

a. Pay to: ______ For: ______ Amount: $ ______ Due date: ______

b. Pay to: ______ For: ______ Amount: $ ______ Due date: ______

c. Pay to: ______ For: ______ Amount: $ ______ Due date: ______

If any of the debts listed above resulted from the abuse in this case and were made without your permission, explain which debt and how it happened:

:

On form DV-130:

⑯ ☐ **Pay Debts (Bills)**

a. The person in ② must make these payments until this order ends:

(1) Pay to: ______ For: ______ Amount: $ ______ Due date: ______

(2) Pay to: ______ For: ______ Amount: $ ______ Due date: ______

(3) Pay to: ______ For: ______ Amount: $ ______ Due date: ______

b. ☐ The court finds that the debt listed above in ______ was the result of abuse in this case, and was made without the permission of the person in ① .

Other Changes to Improve the Forms

While making the revisions described above that are required by new law, the committee is also recommending some additional changes. Based on feedback from court users, domestic violence advocates, judicial officers, and self-help and other court staff, the committee recommends making a number of changes to the forms to make them more user-friendly and easier for self-represented litigants (SRLs) to complete. These changes include simplifying language, explaining legal concepts, eliminating unnecessary repetition, providing more white space on each page, minimizing the use of italicized font, using rounded boxes for instructions, and reorganizing content as described below. These changes would result in a different format for these DV forms (and the JV forms in the parallel proposal referenced above) than used on the other plain language Judicial Council forms, at least for the near future. The committee requests comments on these proposed changes to help the council determine the best format to use moving forward.

Reorganize Content

The current request and order forms are organized so that the item numbers refer to the same remedy/order across all forms. For example, "Stay Away Order" is at item 7 on the request, temporary restraining order, and order after hearing forms. While this numbering system may provide some benefit to judicial officers and helpers, the committee decided that reorganizing the items would lead to greater benefits for SRLs. The committee recommends moving the "describe abuse" closer to the front of the form rather than have it be, as currently, the last question on the form. This would allow SRLs to complete this important section early in the process, when they may have more capacity to focus. The remedies have also been reorganized to clearly show which orders can be granted automatically unless otherwise ordered by the court,[3] granted right away (ex parte in a temporary restraining order),[4] and only granted at a noticed court date.[5] . Although each remedy would no longer be at the same item number on all the forms, the committee proposes listing the items in the same sequence across all the forms.

Revise request form (DV-100)

The request form is the most important form the moving party must complete. In many counties, judges decide whether to grant temporary protection based on the request form alone. It is therefore crucial that this form be as accessible as possible for anyone seeking protection. To improve the usability of this form, even though making it several pages longer, the committee proposes the following changes to form DV-100:

- In the instructions (top of form), identify other forms that are required to ask for a domestic violence restraining order, and include links to them on the on-line form;
- At item 2, limit the questions regarding the proposed restrained person to name, gender, and age, with date of birth being optional, consistent with what is required by the Department of Justice to register a protective order into the law enforcement database known as CLETS (California Law Enforcement Telecommunication System). All other information regarding the restrained person, including address and physical characteristics, may be provided on the order forms if the petitioner desires;
- At item 3, provide a complete list of relatives within the second degree, and provide a definition of cohabitant, as defined by long-standing case law;
- At item 5, expand the "describe abuse" section, as more fully described below;
- At item 6, increase lines to allow up to five additional protected person, where the current version allows for three;
- At item 7, expanded the questions about firearms that the respondent may possess;
- At items 8 and 9, list the orders that are automatically included in a restraining order, unless the court grants an exemption or finds good cause not to make the order, respectively[6];
- At items 11 and 12, explain that a judge may grant an exception for court-ordered custody or visitation;

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[3] See, e.g., form DV-100 at items 8 and 9.
[4] Form DV-100 at items 10 through 22.
[5] Form DV-100 at items 23 through 28.
[6] Family Code sections 6389(h) and 6322.7.

- At item 12, simplify question on Stay Away Orders as many SRLs do not understand the question on the current form. The committee proposes simplifying the question so that it only identifies whether the parties live, work, or go to the same school. Once flagged, the court would decide how to proceed and gather more information on a case-by-case basis. Legal helpers can help SRLs provide additional information, as needed;
- At item 13, rename to “Order to Move-Out” to use more natural language and to provide checkable options where the person is asked to explain their right to live at the address;
- At item 15, rename current item on “Care of Animals” to “Protect Animals” to more accurately describe all the orders that may be requested to protect animals;
- At item 16, rename current item on “Property Control” to “Control of Property” to use more natural language, and include space for petitioner to explain why they need control of the property listed;
- At item 17, rename current item for “Insurance” to “Health and Other Insurance.” This change does not reflect a change in the law but is renamed to help SRLs better identify whether this remedy is applicable to their case;
- At item 18, rename current item called “Record Unlawful Communications” to “Record Communications” to simplify language;
- At item 21, change wording for current item on “Time for Service (Notice)” to “Extend My Deadline to Give Notice to Person in 2” to use more natural language and to better explain what an “order shortening time” provides;
- At item 23(c), remove “MediCal” as receiving MediCal benefits alone would not generate the filing of a child support petition by the local child support agency;
- At item 26, explain what a Batterers Intervention Program is, including goals and program requirements;
- In item 28, simplify “rights to mobile device and wireless phone account” item as providers report that this item is rarely requested. Instead of listing the three possible remedies associated with mobile devices (property control of the device, debt payment of the wireless account, and transfer of the wireless phone account), this item would provide for the transfer of wireless accounts only. Changing this item does not reflect a change in the law as property control and debt payment can still be requested under “Property Control” and “Pay Debts (Bills)”, respectively; and
- In items 29 and 30, make the signature lines for the petitioner and lawyer, if any, numbered items to ensure they can be located by the party.

Item 5, the “describe abuse” section on the request form, has been moved closer to the front of the form, as noted above, and has been expanded to allow up to four incidents be described on the form (to lessen the need for parties to use attachment form DV-101, *Description of Abuse*, to describe additional incidents of abuse) and to provide more space for details for each incident. This reorganized item now also provides a non-exhaustive list of forms of abuse, instead of the statutory definition of abuse, as shown below. The committee believes it would be more helpful to provide concrete examples, which would include some examples of coercive control (the bullets in the last column). Because of the amount of content contained in item 5, the headings of

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sub-items are in bold font to help the user more easily see that each sub-item represents a separate incident of abuse.

(5) Describe Abuse

In this section, explain how the person in (2) has been abusive. The information you give in this section will be used by the judge to decide whether you qualify for a restraining order. To help you understand what "abuse" means under the law, here are some examples (not a complete list):

- hit, kicked, pushed, or bit
- caused injuries or tried to
- threats to hurt or kill
- sexually abused
- destroyed your property
- harassed you
- stalked you
- tracked your movements
- contacted you too much
- abused a pet or animal
- kept you from getting food or basic needs
- isolated you from friends, family, or other support
- intimidated you based on your actual or suspected immigration status

Revise response form (DV-120)

The committee proposes the following changes to the response form:

- Add instructions at the top of the form
- Use same headings for items as the request form (DV-100);
- List items in the same sequence as the request form; and
- At item 3, remove the spaces for the date and place of hearing (leaving the cross-reference to the *Notice of Court Hearing* (for DV-109), explain the consequences of not going to court date, and include icon for court date.

Revise order forms (DV-110 and DV-130)

The following changes are being proposed to the two order forms:

- Use the same headings for items as the request form (DV-100);
- List items in the same sequence as the request form;
- At item 1, remove the name, address, and contact information for the protected person's lawyer, if they have one and the and contact information for SRLs;
- At item 2, indicate that certain information is required to enter the restraining order into the protective order database within CLETS;
- At item 2, add spaces to allow petitioner to include information about firearms that may be in the restrained person's possession or control to ensure that law enforcement has this information at the time of enforcement;
- At item 3, allow up to five additional protected persons without the use of an attachment;
- At item 4, include icon for court date; and
- At items 9 and 10, allow court to craft more tailored exceptions for contact and stay away orders.
- Include "Signature of Judge" as heading for judicial officer's signature.

The committee also recommends removing from the order forms, the item on criminal protective orders (on the existing forms, at item 5 on DV-110 and item 26 on DV-130). The committee believes that this item is unnecessary, as criminal protective orders do not automatically have priority in enforcement over other restraining orders, as they did before the passage of Assembly

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Bill 176 (Campos; Stats. 2013, ch. 263). In response to an alleged violation, a law enforcement officer would check CLETS for the existence of any restraining order between the parties, and would have information in real-time that would be more accurate and complete than information provided on the order forms.

Revise information sheet (DV-500 INFO)
This information sheet needs to be revised to include the new definition of "disturbing the peace." Because the point of the form is to provide general information about domestic violence restraining orders, including the types of orders that may be granted, and eligibility criteria. The committee also recommends removing information that is beyond the scope of this form (e.g. information related to preparing for a court hearing). Where appropriate, references to other information sheets and the court's self-help website were included. The committee also revised the list of other kinds of restraining orders to add gun violence restraining orders and remove workplace violence restraining orders, as the latter is unlikely to be filed by self-represented litigants.

Other changes
The committee recommends asking for the restrained person's "gender" instead of "sex" on forms DV-100, DV-110, and DV-130, and adding a third non-binary option. However, adding this option on the forms is subject to the approval of California's Department of Justice as all protective orders must be entered into their statewide protective order database.[7] If the Department of Justice does not approve of adding this option, the forms would include the existing options of male and female, only.

The committee also recommends formatting changes to make the forms easier to read including the use of more white space on each page to make the content less overwhelming.[8] The committee also recommends limiting the use of italicized font, as italics are harder to read, especially for people with dyslexia. Judicial Council forms generally have italics on all instructions, to distinguish them from text of the questions or orders. In this proposal, italics would be used for short phrases but not for longer sections of text (e.g. instructions at the beginning of the form, instructions to explain the need for an additional form, and any instructions longer than a few words. See, e.g., form DV-100 at items 1(c) and item 3 (at beginning and following (g); item (4); item 5.[9] The committee is seeking comments as to whether the lack of italics is an improvement or may lead to confusion.

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[7] Family Code section 6380.
[8] The committee recognizes that this will lead to longer forms, but concluded that each page would be easier to read with the greater amount of white space.
[9] One alternative to italics would be the use of more "boxes" around information or instructions, such as the box used in form DV-100 at item 14 or the one shown on page 2 above as part of Option 1 for item 10.

Alternatives Considered

Implementing SB 1141

The committee considered various language to implement SB 1141, including adding the phrase "coercive control" to the list of enjoined conduct. However, the committee rejected this idea because it is not a term commonly understood or used by lay people.

Implementing AB 431

Assembly Bill 413 (Eggman, Stats.2017; ch. 191) provides that a person seeking a domestic violence restraining order may record a private communication made by the proposed restrained person, if the person seeking the restraining order reasonably believes that the communication relates to the request for domestic violence restraining order. Such a recording may only be used as evidence in court.[10] Because this information relates to evidence that may be presented to the court, the committee considered but declined to include this information on the request or order forms. The committee notes that the protected person may also ask for the right to record communications made by the restrained person that violate the court's orders, which is currently on the request and order forms.

Other Changes Needed to Improve Usability of Forms

The committee considered recommending only those changes needed to implement new law. However, the committee rejected that approach as these forms are mostly used by SRLs. Access to the domestic violence restraining order process requires that the forms be as user-friendly as possible, especially during a global pandemic and its aftermath. Because many of the changes recommended in this proposal were based on user-testing and feedback from providers and courts, the committee believes that these changes will make the forms easier for SRLs to understand and complete.

Fiscal and Operational Impacts

The committee anticipates that this proposal would require courts to train court staff and judicial officers on the newly revised forms, and costs to make and replace paper forms packets. The committee also anticipates that this proposal would result in some cost savings, because it believes the forms will be easier to complete. By making these mandatory forms easier to complete, less time would be needed to explain the forms, and address errors.

Penal Code section 633.6(b).

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Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Would removing the questions regarding the restrained person's physical characteristics (e.g. race, height, weight, hair color) from form DV-100 result in any negative consequences? The applicant would still have the option to include this information on form DV-110.
- Would removing the questions regarding the restrained person's address from form DV-100 result in any negative consequences? The applicant would have the option to include this information on form DV-110.
- Are there other examples of abuse that should be included in the Describe Abuse section (new item 5, DV-100), either as a common form of abuse, or one that is not commonly understood to be "abuse" under the law?
- Is the expansion of the Describe Abuse section to add three more half-page items that the petitioner may complete (which adds additional pages to the form) likely to be helpful to SRLs or potentially intimidating?
- Which is the better option to include on the forms to implement SB 1141's new definition of "disturbing the peace—Option 1 or Option 2, taking into account legal accuracy as well as a lay person's ability to understand such an order? (See page 2 of this Invitation to Comment)
- Is the new format eliminating italics from longer instructions helpful or does it make the forms confusing?
- Is the new format adding more white space to the forms, so making the forms longer but the individual pages easier to read, helpful?
- Is the addition of icons, such as, on form DV-100 the exclamation point at item 1, and on forms DV-110 and DV-120 the courthouse with calendar for the court date, likely to be helpful to SRLs?
- Are there any other formatting or organizational changes proposed here that should be incorporated into Judicial Council forms generally?

The advisory committee also seeks comments from **courts** on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- 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?

Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?

Draft

Attachments and Links

1. Forms DV-100, DV-110, DV-120, DV-130, and DV-500-INFO at pages [ ]
2. Link A: Senate Bill 1141, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB1141
3. Link B: Assembly Bill 2517, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB2517
4. Link C: Assembly Bill 413, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB413

Draft

DV-100 Request for Domestic Violence Restraining Order

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council
4.9.21.FH

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

To ask for a domestic violence restraining order you will need to complete this form and the three forms listed below. Additional forms may be required, depending on the orders you ask for.

- *Notice of Court Hearing* (form DV-109) (complete items (1) and (2) only)
- *Temporary Restraining Order* (form DV-110) (complete items (1), (2), and (3) only)
- *Confidential CLETS Information* (form CLETS-001)

(1) Person Asking for Protection

a. **Your name:** ______________________

b. **Your age:** __________

c. (!) **Address where you can receive mail**

(This address will be used by the court and by the person in (2) to send you official court dates and papers. For privacy, you may use another address like a post office box or another person's address, if you have their permission and can get your mail regularly. If you have a lawyer, give their information.)

Address: ______________________

City: __________ State: __________ Zip: __________

d. **Contact information** *(optional)*

Telephone: __________ Fax: __________

E-Mail Address: ______________________

e. **Lawyer's information** *(skip if you do not have a lawyer)*

Name: __________ State Bar No.: __________

Firm Name: ______________________

(2) Person You Want Protection From

a. **Full Name**: ______________________

b. **Age** *(give estimate if you do not know exact age)*: __________

c. **Date of Birth** *(if known)*: __________

d. **Gender**: ☐ M ☐ F ☐ Non-binary

This is not a Court Order.

③ Your Relationship to the Person in ②

(If you do not have one of these relationships with the person in ②, you are not eligible for this type of restraining order. You may be eligible for another type of restraining order. Learn more at https://www.courts.ca.gov/selfhelp-abuse.htm.)

Check all that apply

a. ☐ We are married or registered domestic partners.

b. ☐ We used to be married or registered domestic partners.

c. ☐ We have a child or children together.

d. ☐ We are dating or used to date.

e. ☐ We are or used to be engaged to be married.

f. ☐ We are related. The person in ② is my (*check all that apply*):

☐ Parent, stepparent, or parent-in-law
☐ Sibling or sibling-in-law
☐ Child, stepchild, or legally adopted child
☐ Grandparent or grandparent-in-law
☐ Child's spouse
☐ Grandchild or grandchild-in-law

g. ☐ We live together or used to live together. *(if checked, answer question below)*

Have you lived with person in ② as a family or group with common goals (more than just roommates)?

☐ Yes ☐ No (If "no," you do not qualify for this kind of restraining order unless you checked one of the other relationships listed above.)

④ Other Restraining Orders and Court Cases

a. Are there any restraining or protective orders currently in place **or** that have expired in the last six months (example: if the police gave you one that lasts a few days or if the criminal court gave you one)?

☐ No ☐ Yes *(If "yes," give information below and attach a copy if you have one.)*

(1) *(date of order):* *(expiration date):*

(2) *(date of order):* *(expiration date):*

b. Are you involved in any other court case with the person you want protection from?

☐ No ☐ Yes *(If "yes,"give information below)*:

	Which county, state, or tribe?	What year did the case start (*if known*)?
☐ Custody		
☐ Divorce		
☐ Juvenile		
☐ Criminal		
☐ Other:		

If "other," what kind of case?: ______________________

This is not a Court Order.

5 Describe Abuse

In this section, explain how the person in (2) has been abusive. The information you give in this section will be used by the judge to decide whether you qualify for a restraining order. To help you understand what "abuse" means under the law, here are some examples (not a complete list):

- hit, kicked, pushed, or bit
- caused injuries or tried to
- threats to hurt or kill
- sexually abused
- destroyed your property
- harassed you
- stalked you
- tracked your movements
- contacted you too much
- abused a pet or animal
- kept you from getting food or basic needs
- isolated you from friends, family, or other support
- intimidated you based on your actual or suspected immigration status

Use the space below to give details about how the person in (2) has been abusive. Details can include how often something happened, what was said, physical or emotional injuries, use of weapons, etc.

a. **Most recent abuse**

(1) Date of abuse *(give an estimate if you don't know the exact date)*: ____________________

(2) Did anyone else hear or see what happened on this day? ____________________

(3) Did the person in (2) use or threaten to use a gun or weapon? ____________________

(4) Describe any emotional or physical injuries: ____________________

(5) Did the police come? ☐ No ☐ Yes *(If the police gave you a restraining order, list it in item (4).)*

Give details on how the person in (2) was abusive on that day:

____

____

____

____

____

____

____

____

____

____

____

____

____

☐ Check here if you need more space to describe the most recent abuse. Attach a sheet of paper and write "DV-100, Most Recent Abuse" at the top.

This is not a Court Order.

(5) Describe Abuse (continued)

b. **Was there another incident of abuse? If yes, describe below:**

(1) Date of abuse *(give an estimate if you don't know the exact date)*: ______

(2) Did anyone else hear or see what happened on this day? ______

(3) Did the person in (2) use or threaten to use a gun or weapon? ______

(4) Describe any emotional or physical injuries: ______

(5) Did the police come? ☐ No ☐ Yes *(If the police gave you a restraining order, list it in item (4).)*

Give details on how the person in (2) was abusive on that day:

c. **Was there another incident of abuse? If yes, describe below:**

(1) Date of abuse *(give an estimate if you don't know the exact date)*: ______

(2) Did anyone else hear or see what happened on this day? ______

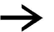
(3) Did the person in (2) use or threaten to use a gun or weapon? ______

(4) Describe any emotional or physical injuries: ______

(5) Did the police come? ☐ No ☐ Yes *(If the police gave you a restraining order, list it in item (4).)*

Give details on how the person in (2) was abusive on that day:

This is not a Court Order.



(5) Describe Abuse (continued)

d. **Here, describe any other time when the person in (2) was abusive that you want the judge to know about.**

☐ Check here if you have more abuse to describe, attach a sheet of paper and write "DV-100, Abuse" at the top or use form DV-101, Description of Abuse.

(6) Other Protected People

Do you want the restraining order to protect your family or someone you live with?

☐ No ☐ Yes (*If yes, list them:*)

Full name	Age	Relationship to you	Lives with you?
			☐ Yes ☐ No
			☐ Yes ☐ No
			☐ Yes ☐ No
			☐ Yes ☐ No
			☐ Yes ☐ No

Why do these people need protection?

☐ Check here if you need more space. Attach a sheet of paper and write "DV-100, Protected People" at the top.

This is not a Court Order.

(7) Does Person in (2) Have Guns or Firearms?

a. ☐ I don't know
b. ☐ No
c. ☐ Yes *(if you have information, you may complete the section below.)*

(1) Type and number of firearms: ______________________________

____

(2) Where are firearms located, if known: ______________________________

____

Automatic Orders

(Items (8) and (9), are orders that a judge will automatically grant in most restraining orders. In limited situations, the judge may grant a limited exception to (8), or may not grant (9) if the judge finds good cause not to make the order.)

(8) No Guns, Other Firearms, or Ammunition

If a restraining order is granted, the person in (2) must sell or turn in any firearms that they have or control for as long as this restraining order is in effect.

(9) Cannot Look for Protected People

If a restraining order is granted, the person in (2) will not be allowed to look for the address or location of any person protected by the restraining order.

Orders That You Want a Judge to Make

(In this section, you will choose the orders you want a judge to make now. Every situation is different. Choose the orders that fit your situation.)

✓ *Check all the orders that you want a judge to make (order).*

(10) ☐ Order for No Abuse

I ask the judge to order the person in (2) to not do the following things to me or anyone listed in (6):

Harass, attack, strike, threaten, assault (sexually or otherwise), hit, follow, stalk, molest, destroy personal property, keep under surveillance, impersonate (on the internet, electronically or otherwise), block movements, or disturb the peace.

This is not a Court Order.

(10) Order for No Abuse (continued)

Disturb the peace means to destroy someone's mental or emotional calm. This can be done directly or indirectly, such as through someone else. This can also be done in any way, such as by phone, over text, or online. Disturbing the peace includes coercive control**. Coercive control** means a number of acts that unreasonably limits the free will and individual rights of any person protected by this restraining order. Examples include isolating someone from their friends, relatives, or other support; keeping them from food or basic needs; controlling, or keeping track of them, including their movements, contacts, actions, money, or access to services; and making them do something that they don't want to do by force, threat or intimidation. This includes threats related to the protected person's actual or suspected immigration status.

(11) ☐ No Contact Order

I ask the judge to order the person in (2) to not have any contact with me or anyone listed in (6), either directly or indirectly, in any way, including but not limited to, by telephone, mail, e-mail, or other electronic means.

(**Exception to contact children**: The judge may grant an exception to this no contact order, if you and the person in (2) have children together.)

(12) ☐ Stay Away Order

a. I ask the judge to order the person in (2) to stay away from:

Check all that apply

- ☐ Me
- ☐ My home
- ☐ My job
- ☐ My vehicle
- ☐ My school
- ☐ Each person in (6)
- ☐ My children's school or child care
- ☐ Other *(please explain)*:

b. Do you and the person in (2) live together, work together, or go to the same school?

☐ No ☐ Yes (*if "yes," check all that apply)*:

- ☐ live together *(if you live together, you can ask that the person in (2) move out. See next page.)*
- ☐ work together
- ☐ go to same school

c. How far do you want the person to stay away from all the places you checked above?

☐ 100 yards (300 feet) ☐ Other *(give distance in yards)*: ____________________

(**Exception for visits with children**: The judge may grant an exception to the stay away orders, if you and the person in (2) have children together and person in (2) is ordered to have time with your children.)

This is not a Court Order.

Case Number:

(13) ☐ Order to Move-Out

a. I ask the judge to order the person in (2) to move out of the home, located at:
(Give address): ______________________________

b. I have a right to live at this address because:

Check all that apply

☐ I own the home.
☐ My name is on the lease.
☐ I live at this address with my child(ren).
☐ I have lived at this address for _____ years, _____ months.
☐ I pay for some or all the rent or mortgage.
☐ Other (*please explain*): ______________________________

(14) ☐ Child Custody and Visitation

Check this box if you have a child with the person in (2) and want the court to make or change a child custody/visitation order. You must also fill out form DV-105, *Request for Child Custody and Visitation Orders*, and turn it in with this form.

(15) ☐ Protect Animals

a.

Name (or other way to ID animal)	Type of animal	Breed (if known)	Color

b. I ask the judge to protect the animals listed above from the person in (2) by:

Check all that apply

(1) ☐ ordering person in (2) to stay at least _____ yards away.

(2) ☐ ordering person in (2) to not take, sell, transfer, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of the animals.

(3) ☐ giving me sole possession, care and control of the animals because *(check all that apply)*:

☐ Person in (2) abuses the animals. ☐ I take care of these animals. ☐ I purchased these animals.
☐ Other (please explain): ______________________________

(16) ☐ Control of Property

I ask the judge to give **only me** temporary use, possession, and control of the property listed here (*describe*):

____

Explain why you want control of the property you listed:

____

____

This is not a Court Order.

17 ☐ **Health and Other Insurance**

I ask the judge to order the person in (2) **not** to cash, borrow against, cancel, transfer, dispose of, or change the beneficiaries of any insurance or coverage held for the benefit of me or the person in (2), or our children, for whom support may be ordered, or both.

18 ☐ **Record Communications**

I ask the judge that I may record communications made to me by the person in (2) that violate the judge's orders.

19 ☐ **Pay Debts (Bills)**

I ask the judge to order the person in (2) to make these payments while the restraining order is in effect:

a. Pay to: ______________ For: ______________ Amount: $ __________ Due date: __________

b. Pay to: ______________ For: ______________ Amount: $ __________ Due date: __________

c. Pay to: ______________ For: ______________ Amount: $ __________ Due date: __________

If any of the debts listed above resulted from the abuse in this case and were made without your permission, explain which debt and how it happened:

____

____

20 ☐ **Property Restraint** (*only if you are married or a registered domestic partner with the person in* (2).)

I ask the judge to order that the person in (2) not borrow against, sell, hide, or get rid of or destroy any possessions or property, except in the usual course of business or for necessities of life. I also ask the judge to order the person in (2) to notify me of any new or big expenses and to explain them to the court.

21 ☐ **Extend My Deadline to Give Notice to Person in (2)**

(Usually, the judge will give you about two weeks to give notice, or "serve" the person in (2) of your request. If you need more time to serve, the judge may be able to give you a few days extra.)

I ask the judge to give me more time to serve the person in (2) .

Explain why you need more time: ____

22 ☐ **Other Orders**

(Describe any additional orders you want the judge to make.):

____

____

This is not a Court Order.

Orders That You Want a Judge to Make at Your Court Date

In this section, are a list of orders that a judge cannot make right away but can make at your court date (in about 2-3 weeks), if at the time of your court date the person in ② has been notified of your request.

Check all the orders that you want a judge to make.

23 ☐ **Child Support** *(only if you have a minor child with the person in ②)*

Check all that apply

a. ☐ I do not have a child support order and I want one.

b. ☐ I have a child support order and I want it changed *(attach a copy if you have one)*.

c. ☐ I now receive or have applied for TANF, Welfare, or CalWORKS.

24 ☐ **Spousal Support** *(only if you are married or a registered domestic partner with person in ②)*

I ask the judge to order the person in ② to give me financial assistance.

25 ☐ **Lawyer's Fees and Costs**

I ask that the person in ② pay for some or all of my lawyer's fees and costs.

If you checked item 23, 24, or 25 you must complete form FL-150, *Income and Expense Declaration*. Before your court date, form FL-150 must be turned in to the court, and mailed to the person in ②. Learn more about how to properly mail this document on form DV-250, *Proof of Service by Mail*, and at **https://www.courts.ca.gov/selfhelp-serving.htm#mail**. If you are only asking for child support (item 23) and not spousal support or lawyer's fees, you may want to fill out a simpler version of form FL-150, called FL-155. Read form DV-570 to see if you are eligible to fill out form FL-155.

26 ☐ **Batterer Intervention Program**

I ask the judge to order the person listed in ② to go to a 52-week batterer intervention program. (The goal of a batterer's intervention program is to stop abuse. There are weekly classes to teach accountability, abuse effects, and gender roles. If ordered to complete this program, the person in ② would have to show proof to the judge that they enrolled and completed the program.)

This is not a Court Order.

(27) ☐ **Payments for Costs and Services**

(You can ask for lost earnings or your costs for services caused directly by the person in (2) (damaged property, medical care, counseling, temporary housing, etc.). You must bring proof of these amounts to your court date.)

I ask the judge to order the person in (2) to pay the following:

Pay to: ______________________ For: ______________ Amount: $ __________
Pay to: ______________________ For: ______________ Amount: $ __________
Pay to: ______________________ For: ______________ Amount: $ __________

(28) ☐ **Transfer of Wireless Phone Account**

(If the person in (2) holds the rights to your cell phone account, you can ask the judge to transfer your number or your child's number to you. If the judge makes this order, you will be financially responsible for these accounts, including monthly service fees and costs of any mobile devices connected to these phone numbers. You may be responsible for other fees. You should contact the wireless service provider to find out what fees you will be responsible for and whether you are eligible for an account.)

I ask the judge to order the wireless service provider to transfer the billing responsibility and rights to the wireless phone numbers listed below to me because the account currently belongs to the person in (2):

a. ☐ my number ☐ number of child in my care (including area code): ______________________
b. ☐ my number ☐ number of child in my care (including area code): ______________________
c. ☐ my number ☐ number of child in my care (including area code): ______________________

(29) **Additional pages**

If you used additional paper or forms, enter the number of extra pages attached to this form: ____________

(30) **Your signature**

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: ________________

______________________________ ______________________________
Type or print your name *Sign your name*

(31) **Your lawyer's signature** (skip if you do not have have a lawyer)

Date: ________________

______________________________ ______________________________
Lawyer's name *Lawyer's signature*

This is not a Court Order.

DV-110 Temporary Restraining Order

Clerk stamps date here when form is filed.

Draft- Not approved by Judicial Council 4.9.21

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

The person asking for a restraining order must complete items (1), (2), and (3) only. The court will complete the rest of this form.

(1) Protected Person *(name)*: ____________

(2) Restrained Person

a. **Information to help police enforce this order**
(You must provide information that **has a star (*)** next to it.)

***Full Name:** ____________
***Gender**: ☐ M ☐ F ☐ Non-binary
***Age** :_____ (*give estimate if you do not know exact age*.)
Date of Birth: ____________ Race: ____________
Height: ____________ Weight: ____________
Hair Color: ____________ Eye Color: ____________
Relationship to person in (1): ____________

Firearms *(describe below)*
Type and number of firearms: ____________
Where are firearms located, if known: ____________

b. **Current address for the restrained person** *(if you have one)*
Address: ____________
City: ____________ State: _____ Zip: ____________

(3) ☐ Other Protected People

In addition to the person named in (1), the people listed below are protected by the orders listed in (6) through (9).

Full name	Relationship to person in (1)	Age

☐ Check here if you need to list more people. List them on a separate piece of paper, write "DV-110, Other Protected People" at the top, and attach it to this form.

The court will complete the rest of this form

(4) Hearing Date (Court Date)

This order expires at the end of the hearing stated below:

Hearing Date: ____________ Time: ____________ ☐ a.m. ☐ p.m.

This is a Court Order.

This order must be enforced throughout the United States. See page 5.

To the Person in ②

The court has granted temporary orders. See items ⑤ through ⑱.

- If you do not obey these orders, you can be charged with a crime, go to jail or prison, and/or pay a fine.
- It is a felony to take or hide a child in violation of this order.

⑤ No Guns or Other Firearms or Ammunition

a. You cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get guns, other firearms, or ammunition.

b. **Within 24 hours of receiving this order, you must** sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any guns or other firearms you have in your immediate possession or control.

c. **Within 48 hours of receiving this order**, you must file a receipt with the court that proves guns have been turned in, or sold. (You may use **form DV-800**, *Proof of Firearms Turned In, Sold, or Stored,* for the receipt.)

d. ☐ The court has received information that the person in ② owns or possesses a firearm.

⑥ Cannot Look for Protected People

You must not take any action to look for any person protected by this order, including their addresses or locations.

☐ If checked, this order was **not granted** because the judge found good cause not to make the order.

⑦ Order for No Abuse ☐ **Not requested** ☐ **Denied until the hearing** ☐ **Granted as follows:**

You must not do the following things to the person in ① and any person listed in ③ :

Harass, attack, strike, threaten, assault (sexually or otherwise), hit, follow, stalk, molest, destroy personal property, keep under surveillance, impersonate (on the Internet, electronically or otherwise), block movements, or disturb the peace. Disturb the peace means to destroy someone's mental or emotional calm. This can be done directly or indirectly, such as through someone else. This can also be done in any way, such as by phone, over text, or online. Disturbing the peace includes coercive control. Coercive control means a number of acts that unreasonably limits the free will and individual rights of any person protected by this restraining order. Examples include isolating them from friends, relatives, or other support; keeping them from food or basic needs, controlling, or keeping track of them, including their movements, contacts, actions, money; or access to services; and making them do something that they don't want to do by force, threat or intimidation. This includes threats related to the protected person's actual or suspected immigration status.

This is a Court Order.

8 No Contact Order ☐ **Not requested** ☐ **Denied until the hearing** ☐ **Granted as follows:**

a. You must **not contact** ☐ the person in 1, ☐ the persons in 3, directly or indirectly, by any means, including by telephone, mail, email, or other electronic means.

b. ☐ Exception: You may have brief and peaceful contact with:
- ☐ The person in 1 to communicate about your child(ren) only.
- ☐ The child(ren) you have with the person in 1 only during court-ordered contact or visits.
- ☐ Other (*explain*): ______

c. Peaceful written contact through a lawyer or process server or another person for service of legal papers related to a court case is allowed and does not violate this order.

9 Stay-Away Order ☐ **Not requested** ☐ **Denied until the hearing** ☐ **Granted as follows:**

a. You must stay at least *(specify):* ______ yards away from *(check all that apply):*
- ☐ The person in 1
- ☐ Home of person in 1
- ☐ Job or workplace of person in 1
- ☐ Vehicle of person in 1
- ☐ School of person in 1
- ☐ The persons in 3
- ☐ The child(ren)'s school or child care
- ☐ Other *(explain):* ______

b. ☐ Exception: The stay away orders listed in 10a do not apply to the following situations:
- (1) ☐ For the person in 1 to exchange child(ren) for court-ordered visits.
- (2) ☐ For court-ordered visits with the child(ren) of person 1 and 2.
- (3) ☐ Other (*explain*): ______

10 Order to Move-Out ☐ **Not requested** ☐ **Denied until the hearing** ☐ **Granted as follows:**

You must take only personal clothing and belongings needed until the hearing and move out immediately from *(address):* ______

11 Child Custody and Visitation ☐ **Not requested** ☐ **Denied until the hearing** ☐ **Granted as follows:**

Child custody and visitation are ordered on the attached form DV-140, *Child Custody and Visitation Order* or *(list other form)*: ______ . The parent with temporary custody of the child must not remove the child from California without permission from the court.

This is a Court Order.

⑫ Protect Animals ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

a. ☐ The person in ② must stay at least ________ yards away from the animals listed below.

b. ☐ The person in ② must not take, sell, transfer, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of the animals listed below.

c. ☐ The person in ① is given the sole possession, care, and control of the animals listed below.

Name (or other way to ID animal)	Type of animal	Breed (if known)	Color

⑬ Control of Property ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

Until the hearing, **only** the person in ① can use, control, and possess the following property:

____

⑭ Health and Other Insurance ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

☐ The person in ① ☐ the person in ② is ordered **not** to cash, borrow against, cancel, transfer, dispose of, or change the beneficiaries of any insurance or coverage held for the benefit of the parties, or their children, if any, for whom support may be ordered, or both.

⑮ Pay Debts (Bills) ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

The person in ② must make these payments until this order ends:

Pay to: ____________________ For: ____________ Amount: $ __________ Due date: __________________

Pay to: ____________________ For: ____________ Amount: $ __________ Due date: __________________

Pay to: ____________________ For: ____________ Amount: $ __________ Due date: __________________

⑯ Property Restraint ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

☐ The person in ① ☐ the person in ② must not transfer, borrow against, sell, hide, or get rid of or destroy any property, including animals, except in the usual course of business or for necessities of life. In addition, each person must notify the other of any new or big expenses and explain them to the court. (If the court granted ⑧, you can notify the person in ① of new or big expenses by "serving" them or contacting their lawyer. Learn more about how to "serve" the person in ① at https://www.courts.ca.gov/selfhelp-serving.htm#mail.)

This is a Court Order.

(17) Record Communications ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

The person in (1) may record communications made by the person in (2) that violate the judge's orders.

(18) Other Orders ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

____

____

____

____

(19) Orders That May Be Made At the Hearing Date (Court Date)

If the person in (1) checked any of these orders on form DV-100, a judge could grant them at your court date.

- **Spousal Support**
- **Child Support**
- **Lawyer's Fees and Costs**
- **Payments for Costs and Services**
- **Batterer Intervention Program**
- **Transfer of Wireless Phone Account**

(20) No Fee to Serve (Notify) Restrained Person

The sheriff or marshal will serve this order for free.
Bring a copy of all the papers that you need to be served to the sheriff or marshall.

(21) ☐ Attached pages

Number of pages attached to this seven-page form: ________________

Judge's Signature

Date: ____________________

____
Judge or Judicial Officer

Certificate of Compliance With VAWA

This temporary protective order meets all "full faith and credit" requirements of the Violence Against Women Act, 18 U.S.C. § 2265 (1994) (VAWA), upon notice of the restrained person. This court has jurisdiction over the parties and the subject matter; the restrained person has been or will be afforded notice and a timely opportunity to be heard as provided by the laws of this jurisdiction. **This order is valid and entitled to enforcement in each jurisdiction throughout the 50 states of the United States, the District of Columbia, all tribal lands, and all U.S. territories, commonwealths, and possessions and shall be enforced as if it were an order of that jurisdiction.**

This is a Court Order.

Warnings and Notices to the Restrained Person in ❷

Service of Order by Mail

If the judge makes a restraining order at the hearing (court date), which has the same orders as in this Temporary Restraining Order, you will get a copy of that order by mail at your last known address, which is written in item ② on page 1. If your address was not listed on this form or is incorrect, contact the court. If you did not go to your court date and want to know if the judge granted a restraining order against you, contact the court.

Child Custody, Visitation, and Support

- **Child custody and visitation:** If you do not go to your hearing (court date), the judge can make custody and visitation orders for your children without hearing from you.

- **Child support:** The judge can order child support based on the income of both parents. The judge can also have that support taken directly from a parent's paycheck. Child support can be a lot of money, and usually you have to pay until the child is age 18. File and serve a *Financial Statement (Simplified)* (form FL-155) or an *Income and Expense Declaration* (form FL-150) if you want the judge to have information about your finances. Otherwise, the court may make support orders without hearing from you.

- **Spousal support:** File and serve an *Income and Expense Declaration* (form FL-150) so the judge will have information about your finances. Otherwise, the court may make support orders without hearing from you.

Instructions for Law Enforcement

This order is effective when made. It is enforceable by any law enforcement agency that has received the order, is shown a copy of the order, or has verified its existence on the California Law Enforcement Telecommunications System (CLETS). If the law enforcement agency has not received proof of service on the restrained person, and the restrained person was not present at the court hearing, the agency shall advise the restrained person of the terms of the order and then shall enforce it. Violations of this order are subject to criminal penalties.

Arrest Required if Order Is Violated

If an officer has probable cause to believe that the restrained person had notice of the order and has disobeyed the order, the officer must arrest the restrained person. (Pen. Code, §§ 836(c)(1), 13701(b).) A violation of the order may be a violation of Penal Code section 166 or 273.6.

If the Protected Person Contacts the Restrained Person

Even if the protected person invites or consents to contact with the restrained person, the orders remain in effect and must be enforced. The protected person cannot be arrested for inviting or consenting to contact with the restrained person. The orders can be changed only by another court order. (Pen. Code, §13710(b).)

This is a Court Order.

Conflicting Orders–Priorities for Enforcement

If more than one restraining order has been issued protecting the protected person from the restrained person, the orders must be enforced according to the following priorities (see Pen. Code, section 136.2, and Fam. Code, sections 6383(h), 6405(b)):

1. **EPO:** If one of the orders is an *Emergency Protective Order* (form EPO-001), and it is more restrictive than other restraining or protective orders, it has precedence in enforcement over all other orders.
2. **No-Contact Order:** If there is no EPO, a no-contact order that is included in a restraining or protective order has precedence in enforcement over any other restraining or protective order.
3. **Criminal Order:** If none of the orders includes a no-contact order, a domestic violence protective order issued in a criminal case takes precedence in enforcement over any conflicting civil court order. Any nonconflicting terms of the civil restraining order remain in effect and enforceable.
4. **Family, Juvenile, or Civil Order:** If more than one family, juvenile, or other civil restraining or protective order has been issued, the one that was issued last must be enforced.

Child Custody and Visitation

- The custody and visitation orders are on form DV-140, items (3) and (4). They are sometimes also written on additional pages or referenced in DV-140 or other orders that are not part of the restraining order.
- **Forms DV-100 and DV-105 are not orders. Do not enforce them.**

The clerk will complete this part

—Clerk's Certificate—

Clerk's Certificate [seal]

I certify that this *Temporary Restraining Order* is a true and correct copy of the original on file in the court.

Date: ______________ Clerk, by ______________________, Deputy

This is a Court Order.

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Print this form | Save this form | Clear this form

DV-120 Response to Request for Domestic Violence Restraining Order

Clerk stamps date here when form is filed.

Draft- Not approved by Judicial Council
4.9.21

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

Use this form if someone has asked for a domestic violence restraining order against you, and you want to respond in writing. You will need a copy of form DV-100, *Request for Domestic Violence Restraining Order*, that was filled out by the person who asked for a restraining order against you. **Do not use this form** if you want to ask for your own restraining order. If you need a restraining order, read **form DV-505-INFO**, *Can a Domestic Violence Restraining Order Help Me?*.

1 Name of Person Asking for Protection:

(See Form DV-100, item 1):

____

2 Your Name: ______________________________

! Address where you can receive mail

(This address will be used by the court and by the person in 2 to send you official court dates and papers. For privacy, you may use another address like a post office box or another person's address, if you have their permission and can get your mail regularly. If you have a lawyer, give their information.)

Address: ______________________________

City: ____________ State: ________ Zip: ________

Contact information (*optional*)

E-Mail Address: ____________ Telephone: ____________ Fax: ____________

Lawyer's information (*skip if you do not have a lawyer*)

Name: ____________ State Bar No.: ____________

Firm Name: ______________________________

3 Your Hearing Date (Court Date)

Your hearing date is listed on form DV-109, *Notice of Court Hearing*. If you do not want the judge to grant a restraining order against you that can last up to five years, you must go to your hearing date. At your hearing, the judge will consider your response (this form) and any other evidence or statements you have.

(Look at the form DV-100 filled out by the other side, to answer items 4- 25. If you do not agree to the orders, you can explain why in item 25.)

4 Your Relationship to Person Asking for Protection

a. ☐ I agree to the relationship listed in item 3 on Form DV-100.

b. ☐ I do not agree that the other party and I have or had the relationship listed in item 3 on form DV-100 because: ______________________________

This is not a Court Order.

(5) ☐ **Other Protected People** *(see item 6, on form DV-100)*

a. ☐ I agree to the order requested.
b. ☐ I do not agree to the order requested, ☐ but I would agree to: ______________________________

____

(6) **Guns or Other Firearms or Ammunition**

(If you were served with form DV-110, *Temporary Restraining Order*, you must turn in any guns or firearms in your immediate possession or control. You must file a receipt with the court from a law enforcement agency or a licensed gun dealer within 48 hours after you received form DV-110.)

Check all that apply

a. ☐ I do not own or have any guns or firearms.
b. ☐ I have turned in my guns and firearms to law enforcement or sold/stored them with a licensed gun dealer. A copy of the receipt showing that I turned in, sold, or stored my firearms *(check all that apply):* ☐ is attached ☐ has already been filed with the court.
c. ☐ I ask for an exemption from the firearms prohibition under Family Code section 6389(h) because *(explain):* ______________________________

(7) ☐ **Cannot Look for Protected People**

a. ☐ I agree to the orders requested.
b. ☐ I do not agree to the order requested, ☐ but I would agree to: ______________________________

____

(8) ☐ **Order for No Abuse**

a. ☐ I agree to the orders requested.
b. ☐ I do not agree to the order requested, ☐ but I would agree to: ______________________________

____

(9) ☐ **No Contact Order**

a. ☐ I agree to the orders requested.
b. ☐ I do not agree to the order requested, ☐ but I would agree to: ______________________________

____

(10) ☐ **Stay-Away Order**

a. ☐ I agree to the order requested.
b. ☐ I do not agree to the order requested, ☐ but I would agree to: ______________________________

____

(11) ☐ **Order to Move-Out**

a. ☐ I agree to the order requested.
b. ☐ I do not agree to the order requested, ☐ but I would agree to: ______________________________

____

This is not a Court Order.

(12) ☐ Child Custody and Visitation

a. ☐ I agree to the order requested.
b. ☐ I am not the parent of the child listed in form DV-105, *Request for Child Custody and Visitation Orders.*
c. ☐ I do not agree to the order requested, ☐ but I would agree to: ______________________________

____

d. ☐ I do ☐ I do not agree to the orders requested to limit the child's travel as listed in form DV-108, *Request for Order: No Travel with Children.*

(13) ☐ Protect Animals

a. ☐ I agree to the order requested.
b. ☐ I do not agree to the order requested, ☐ but I would agree to: ______________________________

____

(14) ☐ Control of Property

a. ☐ I agree to the order requested.
b. ☐ I do not agree to the order requested, ☐ but I would agree to: ______________________________

____

(15) ☐ Health and Other Insurance

a. ☐ I agree to the order requested.
b. ☐ I do not agree to the order requested, ☐ but I would agree to: ______________________________

____

(16) ☐ Record Communications

a. ☐ I agree to the order requested.
b. ☐ I do not agree to the order requested, ☐ but I would agree to: ______________________________

____

(17) ☐ Pay Debt (Bills)

a. ☐ I agree to the order requested.
b. ☐ I do not agree to the order requested, ☐ but I would agree to: ______________________________

____

(18) ☐ Property Restraint

a. ☐ I agree to the order requested.
b. ☐ I do not agree to the order requested, ☐ but I would agree to: ______________________________

____

This is not a Court Order.

(19) ☐ **Other Orders** *(see item 22 on form DV-100)*

a. ☐ I agree to the order requested.
b. ☐ I do not agree to the order requested, ☐ but I would agree to: ______________________________

____

(20) ☐ **Child Support**

a. ☐ I agree to the order requested.
b. ☐ I do not agree to the order requested.
c. ☐ I agree to pay guideline child support. *(Learn more about guideline child support at https://www.courts.ca.gov/selfhelp-support.htm.)*

(21) ☐ **Spousal Support**

a. ☐ I agree to the order requested.
b. ☐ I do not agree to the order requested, ☐ but I would agree to: ______________________________

____

(22) ☐ **Lawyer's Fees and Costs**

a. ☐ I agree to the order requested.
b. ☐ I do not agree to the order requested, ☐ but I would agree to: ______________________________

____

c. ☐ I request the court to order payment of my lawyer’s fees and costs.

(23) ☐ **Batterer Intervention Program**

a. ☐ I agree to the order requested.
b. ☐ I do not agree to the order requested, ☐ but I would agree to: ______________________________

____

(24) ☐ **Payments for Costs and Services**

a. ☐ I agree to the order requested.
b. ☐ I do not agree to the order requested, ☐ but I would agree to: ______________________________

____

(25) ☐ **Transfer Wireless Phone Account**

a. ☐ I agree to the order requested.
b. ☐ I do not agree to the order requested, ☐ but I would agree to: ______________________________

____

(26) ☐ **Out-of-Pocket Expenses**

I ask the court to order payment of my out-of-pocket expenses because the temporary restraining order was issued without enough supporting facts. The expenses are:

Item: ________________ Amount: $ ____________ Item: ________________ Amount: $ ____________

This is not a Court Order.

Case Number:

If you checked items 20, 21, 22, or 26, you must complete form FL-150, ***Income and Expense Declaration***. Before your court date, form FL-150 must be turned in to the court, and mailed by a server to the person in (1). If you checked item 20 and not 21, 22, or 26, you may want to fill out a simpler version of form FL-150, called FL-155. Read form DV-570, **Which Financial Form-FL-155 or FL-150?**.

(27) ☐ Reasons I Do Not Agree to the Orders Requested

Explain your answers to each of the orders requested *(give specific facts and reasons):*

____

____

____

____

____

____

____

____

____

____

____

☐ Check here if there is not enough space below for your answer. Put your complete answer on an attached sheet of paper and write, "DV-120, Reasons I Do Not Agree" as a title.

(28) Number of pages attached to this form, if any: ________

After you complete this form, learn about next steps on form DV-120, *How Can I Respond to a Domestic Violence Restraining Order,* or at https://selfhelp.courts.ca.gov/respond-domestic-violence-restraining-order.

(29) Your signature

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: ____________________

______________________________ *Type or print your name*

______________________________ *Sign your name*

(30) Your lawyer's signature *(skip if you do not have have a lawyer)*

Date: ____________________

______________________________ *Lawyer's name*

______________________________ *Lawyer's signature*

This is not a Court Order.

DV-130 Restraining Order After Hearing (Order of Protection)

Clerk stamps date here when form is filed.

Draft-Not approved by Judicial Council 04.09.21

Fill in court name and street address:

Superior Court of California, County of

Clerk fills in case number when form is filed.

Case Number:

☐ **Original Order** ☐______ **Amended Order**

1 Protected Person *(name)*: ______________________________

2 Restrained Person

a. **Information to help police enforce this order**
(You must provide information that **has a star (*)** next to it.)

***Full Name:** ______________________________
***Gender**: ☐ M ☐ F ☐ Non-binary
***Age** :_____ (*give estimate if you do not know exact age*.)
Date of Birth: ________________ Race: ____________________
Height:________________ Weight:________________
Hair Color:_____________ Eye Color:_____________
Relationship to person in 1: ______________________

Firearms *(describe below)*
Type and number of firearms: ______________________
Where are firearms located, if known: ______________________

b. **Current address for the restrained person** *(if you have one)*
Address: ______________________________________
City: ________________________ State: _____ Zip: __________

3 ☐ **Other Protected People**

In addition to the person in 1, the following persons are protected by orders as indicated in items 7 through 10.

Full name	Relationship to person in 1	Age

☐ Check here if you need to list more people. List them on a separate piece of paper, write "DV-130 Other Protected People" at the top, and attach it to this form.

4 Expiration Date

This restraining order, except for the orders listed below, end on
(date): ____________________ at *(time)*: ____________________ ☐ a.m. ☐ p.m. or ☐ midnight

- If no date is written, the restraining order ends three years after the date of the hearing in item 5(a).
- If no time is written, the restraining order ends at midnight on the expiration date.
- Custody, visitation, child support, and spousal support orders remain in effect after the restraining order ends. Custody, visitation, and child support orders usually end when the child is 18.

This is a Court Order.

(5) Hearings

a. The hearing was on *(date)*: ____________ with *(name of judicial officer)*: ______________________

b. These people were at the hearing *(check all that apply)*:

☐ The person in (1) ☐ The lawyer for the person in (1) *(name)*: ______________________

☐ The person in (2) ☐ The lawyer for the person in (2) *(name)*: ______________________

c. The people in (1) and (2) must return to court on *(date)*: ______________ in Department: ____________ at *(time)*: ____________ ☐ a.m. ☐ p.m. to review *(list issues)*: ______________________

____

This order must be enforced throughout the United States. **See page 7.**

To the Person in (2)

The court has granted a long-term restraining order. See (6) through (28).

- If you do not obey these orders, you can be charged with a crime, go to jail or prison, and/or pay a fine.
- It is a felony to take or hide a child in violation of this order.

(6) No Guns or Other Firearms or Ammunition

a. You cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get guns, other firearms, or ammunition.

b. **Within 24 hours of receiving this order, you must** sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any guns or other firearms you have in your immediate possession or control.

c. **Within 48 hours of receiving this order, you must file a receipt with the court** that proves guns have been turned in, or sold. (You may use **form DV-800**, *Proof of Firearms Turned In, Sold, or Stored,* for the receipt.)

d. ☐ The court has received information that the person in (2) owns or possesses a firearm.

e. ☐ **Limited Exemption:** The court has made the necessary findings to grant an exemption under Family Code section 6389(h). Under California law, the person in (2) is not required to relinquish this firearm *(specify make, model, and serial number of firearm)*: ______________________ but must only have it during scheduled work hours and to and from their place of work. Even if exempt under California law, the person in (2) may be subject to federal prosecution for possessing or controlling a firearm.

(7) Cannot Look for Protected People

The person in (2) must not take any action to look for any person protected by this order, including their addresses or locations.

☐ If checked, this order was not granted because the court found good cause not to make this order.

This is a Court Order.

8 ☐ Order for No Abuse

You must not do the following things to the person in (1) and any person listed in (3):

Harass, attack, strike, threaten, assault (sexually or otherwise), hit, follow, stalk, molest, destroy personal property, keep under surveillance, impersonate (on the Internet, electronically or otherwise), block movements, or disturb the peace. Disturb the peace means to destroy someone's mental or emotional calm. This can be done directly or indirectly, such as through someone else. This can also be done in any way, such as by phone, over text, or online. Disturbing the peace includes coercive control. Coercive control means a number of acts that unreasonably limits the free will and individual rights of any person protected by this restraining order. Examples include isolating them from friends, relatives, or other support; keeping them from food or basic needs, controlling, or keeping track of them, including their movements, contacts, actions, money; or access to services; and making them do something that they don't want to do by force, threat or intimidation. This includes threats related to the protected person's actual or suspected immigration status.

9 ☐ No Contact Order

a. You must **not contact** ☐ the person in (1), ☐ the persons in (3), directly or indirectly, by any means, including by telephone, mail, email, or other electronic means.

b. ☐ **Exception**: You may have brief and peaceful contact with:

(1) ☐ The person in (1) to communicate about your child(ren) only.

(2) ☐ The child(ren) you have with the person in (1) only during court-ordered contact or visits.

(3) ☐ Other (*explain*):

c. Peaceful written contact through a lawyer or process server or another person for service of legal papers related to a court case is allowed and does not violate this order.

10 ☐ Stay-Away Order

a. The person in (2) **must** stay at least *(specify):* ________ yards away from *(check all that apply):*

☐ The person in (1)	☐ School of person in (1)
☐ Home of person in (1)	☐ The persons in (3)
☐ The job or workplace of person in (1)	☐ The children's school or child care
☐ Vehicle of person in (1)	☐ Other *(specify):* ____________________

b. ☐ **Exception**: The stay away orders listed in 10a do not apply to the following situations:

(1) ☐ For the exchange of a child or children for court-ordered visits.

(2) ☐ For court-ordered visits with the child(ren) of person (1) and (2).

(3) ☐ Other (*explain*): ____

____

This is a Court Order.

(11) ☐ Order to Move-Out

The person in (2) must move out immediately from *(address)*: ______________________________

____

(12) ☐ Child Custody and Visitation

Child custody and visitation are ordered on the attached form DV-140, *Child Custody and Visitation Order* or *(specify other form):* ______________________________

(13) ☐ Protect Animals

a. ☐ The person in (2) must stay at least _______ yards away from the animals listed below.

b. ☐ The person in (2) must not take, sell, transfer, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of the animals listed below.

c. ☐ The person in (1) is given the sole possession, care, and control of the animals listed below.

Name (or other way to ID animal)	Type of animal	Breed (if known)	Color

(14) ☐ Control of Property

Only the person in (1) can use, control, and possess the following property:

____

____

(15) ☐ Health and Other Insurance

☐ The person in (1) ☐ the person in (2) is ordered **not** to cash, borrow against, cancel, transfer, dispose of, or change the beneficiaries of any insurance or coverage held for the benefit of the parties, or their children, if any, for whom support may be ordered, or both.

(16) ☐ Pay Debts (Bills)

a. The person in (2) must make these payments until this order ends:

(1) Pay to: ____________ For: ____________ Amount: $ ________ Due date: ________

(2) Pay to: ____________ For: ____________ Amount: $ ________ Due date: ________

(3) Pay to: ____________ For: ____________ Amount: $ ________ Due date: ________

b. ☐ The court finds that the debt listed above in ________ was the result of abuse in this case, and was made without the permission of the person in (1) .

This is a Court Order.

(17) ☐ Property Restraint

☐ The person in (1) ☐ the person in (2) must not transfer, borrow against, sell, hide, or get rid of or destroy any property, including animals, except in the usual course of business or for necessities of life. In addition, each person must notify the other of any new or big expenses and explain them to the court. (If the court granted (9), you can notify the person in (1) of new or big expenses by "serving" them or contacting their lawyer.)

(18) ☐ Record Communications

The person in (1) may record communications made by the person in (2) that violate the judge's orders.

(19) ☐ Child Support

Child support is ordered on the attached form FL-342, *Child Support Information and Order Attachment* or *(specify other form):* ____________________

(20) ☐ Spousal Support

Spousal support is ordered on the attached form FL-343, *Spousal, Partner, or Family Support Order Attachment* or *(specify other form):* ____________________

(21) ☐ Lawyer's Fees and Costs

The person in (2) must pay the following lawyer's fees and costs:

Pay to: ____________ For: ____________ Amount: $ ________ Due date: ________

Pay to: ____________ For: ____________ Amount: $ ________ Due date: ________

(22) ☐ Batterer Intervention Program

a. The person in (2) must go to and pay for a probation certified 52-week batterer intervention program and show proof of completion to the court.

b. The person in (2) must enroll by *(date)*:__________ or if no date is listed, must enroll within 30 days after the order is made.

c. The person in (2) must complete, file, and serve form DV-805, *Proof of Enrollment for Batterer Intervention Program.*

This is a Court Order.

(23) ☐ Payments for Costs and Services

The person in (2) must pay the following:

Pay to: ______________ For: ______________ Amount: $ __________ Due date: __________

Pay to: ______________ For: ______________ Amount: $ __________ Due date: __________

Pay to: ______________ For: ______________ Amount: $ __________ Due date: __________

(24) ☐ Transfer of Wireless Phone Account

The court has made an order transferring one or more wireless service accounts from the person in (2) to the person in (1). These orders are contained on form DV-900, *Order Transferring Wireless Phone Account*.

(25) ☐ Other Orders

(specify): ____

____

____

(26) Service

a. ☐ **No other proof of service is needed**. The people in (1) and (2) were at the hearing or agreed in writing to this order.

b. ☐ **The person in (2) was not present.** Proof of service of Form DV-109 and Form DV-110 (if issued) was presented to the court.

(1) ☐ **Order can be served by mail.** The judge's orders in this form are the same as in Form DV-110 except for the expiration date. The person in (2) must be served, either by mail or in person.

(2) ☐ **Order must be personally served.** The judge's orders in this form are different from the orders in Form DV-110, or form DV-110 was not issued. The person in (2) must be personally served (given) a copy of this order.

c. ☐ Proof of service of Form FL-300 to modify the orders in form DV-130 was presented to the court.

(1) ☐ The people in (1) and (2) were at the hearing or agreed in writing to this order. No other proof of service is needed.

(2) ☐ The person in ☐ (1) ☐ (2) was not at the hearing and must be personally served (given) a copy of this amended order.

(27) No Fee to Serve (Notify) Restrained Person

The sheriff or marshal will serve this order for free.
Bring a copy of all the papers that you need to be served to the sheriff or marshall.

(28) ☐ Attached pages

All of the attached pages are part of this order.

a. Number of pages attached to this eight-page form: __________

b. Attachments include *(check all that apply):*

☐ DV-140 ☐ DV-145 ☐ DV-150 ☐ DV-900 ☐ FL-342 ☐ FL-343 ☐ Other: ______________

This is a Court Order.

Judge's Signature

Date: ____________________________

____
Judge or Judicial Officer

Certificate of Compliance With VAWA

This restraining (protective) order meets all "full faith and credit" requirements of the Violence Against Women Act, 18 U.S.C. § 2265 (1994) (VAWA) upon notice of the restrained person. This court has jurisdiction over the parties and the subject matter; the restrained person has been or will be afforded notice and a timely opportunity to be heard as provided by the laws of this jurisdiction. **This order is valid and entitled to enforcement in each jurisdiction throughout the 50 states of the United States, the District of Columbia, all tribal lands, and all U.S. territories, commonwealths, and possessions and shall be enforced as if it were an order of that jurisdiction.**

Instructions for Law Enforcement

Start Date and End Date of Orders

The orders *start* on the earlier of the following dates:

- The hearing date in item (5)(a) on page 2, or
- The date next to the judge's signature on this page.

The orders *end* on the expiration date in item (4) on page 1. If no date is listed, they end three years from the hearing date.

Arrest Required if Order Is Violated

If an officer has probable cause to believe that the restrained person had notice of the order and has disobeyed the order, the officer must arrest the restrained person. (Pen. Code, sections 836(c)(1), 13701(b).) A violation of the order may be a violation of Penal Code section 166 or 273.6.

Notice/Proof of Service

Law enforcement must first determine if the restrained person had notice of the orders. If notice cannot be verified, the restrained person must be advised of the terms of the orders. If the restrained person then fails to obey the orders, the officer must enforce them. (Fam. Code, section 6383.)

Consider the restrained person "served" (notified) if:

- The officer sees a copy of the *Proof of Service* or confirms that the *Proof of Service* is on file; *or*
- The restrained person was at the restraining order hearing or was informed of the order by an officer. (Fam. Code, section 6383; Pen. Code, section 836(c)(2).) An officer can obtain information about the contents of the order in the California Restraining and Protective Order System (CARPOS). (Fam. Code, section 6381(b)-(c).)

This is a Court Order.

If the Protected Person Contacts the Restrained Person

Even if the protected person invites or consents to contact with the restrained person, the orders remain in effect and must be enforced. The protected person cannot be arrested for inviting or consenting to contact with the restrained person. The orders can be changed only by another court order. (Pen. Code, section 13710(b).)

Child Custody and Visitation

The custody and visitation orders are on Form DV-140, items (3) and (4). They may be written on additional pages or referenced in DV-140 or other orders that are not part of the restraining order.

Enforcing the Restraining Order in California

Any law enforcement officer in California who receives, sees, or verifies the orders on a paper copy, in the California Law Enforcement Telecommunications System (CLETS), or in an NCIC Protection Order File must enforce the orders.

Conflicting Orders—Priorities for Enforcement

If more than one restraining order has been issued protecting the protected person from the restrained person, the orders must be enforced in the following priority (see Pen. Code, section 136.2 and Fam. Code, sections 6383(h)(2), 6405(b)):

1. **EPO:** If one of the orders is an *Emergency Protective Order* (Form EPO-001) and it is more restrictive than other restraining or protective orders, it has precedence in enforcement over all other orders.

2. **No-Contact Order:** If there is no EPO, a no-contact order that is included in a restraining or protective order has precedence in enforcement over any other restraining or protective order.

3. **Criminal Order:** If none of the orders includes a no-contact order, a domestic violence protective order issued in a criminal case takes precedence in enforcement over any conflicting civil court order. Any nonconflicting terms of the civil restraining order remain in effect and enforceable.

4. **Family, Juvenile, or Civil Order:** If more than one family, juvenile, or other civil restraining or protective order has been issued, the one that was issued last must be enforced.

The clerk will complete this part

—Clerk's Certificate—

Clerk's Certificate
[seal]

I certify that this *Restraining Order After Hearing (Order of Protection)* is a true and correct copy of the original on file in the court.

Date: ________________ Clerk, by ______________________________, Deputy

This is a Court Order.

DV-500-INFO Can a Domestic Violence Restraining Order Help Me?

What is a "domestic violence restraining order"?

It is a court order that can help protect people who have been abused by someone they've had an intimate relationship with, are closely related to, or have lived with as more than just roommates.

How can the restraining order help me?

The court can order the restrained person to:

- Not contact or go near you, your children, other relatives, or others who live with you
- Not have any guns or ammunition
- Move out of your home
- Obey child custody and visitation
- Pay child support
- Pay spousal support
- Obey orders about property

Does this request cost money?

No, filing this request is free.

How soon can I get the order?

The judge will decide within one business day whether to grant you a temporary restraining order. Sometimes the judge decides sooner.

How long does the order last?

If the judge makes a temporary order, it will last until your hearing date (court date). At your court date, the judge will decide whether to grant you a long-term restraining order that can last up to five years.

Do I have to go to court?

Yes. Go to court on the date the clerk gives you. If you do not, any order you have will end. To learn more about what to expect at your court date go to www.courts.ca.gov/selfhelp or read form DV-520-INFO, *Get Ready for the Restraining Order Court Hearing.*

Am I eligible?

You can ask for one if:

1. You want a restraining order against:
   - your spouse, ex-spouse, registered domestic partner or ex-registered domestic partner
   - someone you have a child with
   - your parent, child, sibling, or grandparent (includes in-laws)
   - someone you live with or used to live with (more than just roommates)

   and

2. That person has been abusive.

   Abuse can be spoken, written, or physical. It can be physical, sexual or emotional. It includes threats to harm you or your family, stalking, harassment, destroying personal property, and disturbing your peace.

   Disturbing your peace means destroy your mental or emotional calm. This can be done directly or indirectly, such as through someone else. This can also be done in any way, such as by phone, over text, or online. Disturbing the peace includes coercive control.

   Coercive control means a number of acts that unreasonably limits the free will and individual rights of any person protected by this restraining order. Examples include isolating someone from their friends, relatives, or other support; keeping them from food or basic needs; controlling, or keeping track of them, including their movements, contacts, actions, money, or access to services; and making them do something that they don't want to do by force, threat or intimidation. This includes threats related to the protected person's actual or suspected immigration status.

How do I ask for a domestic violence restraining order?

See Form DV-505-INFO, *How Do I Ask for a Temporary Restraining Order?* The forms are available at any California courthouse or county law library or at: www.courts.ca.gov/forms.

What if I don't qualify for a domestic violence restraining order

There are other kinds of restraining orders you can ask for. Here are some examples:

- **Civil harassment order** (can be used for neighbors, roommates, cousins, uncles, and aunts)
- **Dependent adult or elder abuse restraining order** (if you are at least 65 or a dependent adult).
- **Gun violence restraining order** (to prevent someone from hurting themselves or others with a firearm)
  Note that all restraining orders include a firearms restriction. A gun violence restraining order gives limited protection because it only restrains the person from having firearms and ammunition.

To learn more about other kinds of restraining orders go to https://www.courts.ca.gov/selfhelp-abuse.htm.

Can I use the restraining order to get divorced or terminate a registered domestic partnership?

No. These forms will not end your marriage or registered domestic partnership. You must file other forms to end your marriage or registered domestic partnership.

Can the order stop the other parent from taking our children away?

If you get a temporary restraining order that includes an order for custody, the parent with custody may not remove the child from California before notice to the other parent and a court hearing on the request to establish or modify custody. Read the order and Form DV-140, *Child Custody and Visitation Order*, if issued, for any other limits. There are some exceptions. Ask a lawyer.

What if I want to leave the county or state?

The restraining order is valid anywhere in the United States. If you move out of California, contact the local police so they will know about your orders.

What if I don't have a green card?

You can get a restraining order even if you are not a U.S. citizen. If you are worried about deportation, talk to an immigration lawyer.

Do I need a lawyer to make this request?

No, but this type of request can be hard to get through on your own. Free help may be available at your local court's self-help center. (See below.)

Where can I find a self-help center?

Find your local court's self-help center at www.courts.ca.gov/selfhelp. Self-help center staff will not act as your lawyer but may be able to give you information to help you decide what to do in your case.

Where can I find other help?

The National Domestic Violence Hotline provides free and private safety tips and help in over 100 languages. Call them at 1-800-799-7233; 1-800-787-3224 (TTY); or visit online at www.thehotline.org.

I need an interpreter. How can I get help?

You may use form INT-300 to request an interpreter. Ask court staff for information.

I have a disability. How can I get help?

You may use form MC-410 to request assistance.Contact the disability/ADA coordinator at your local court for more information.

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office or go to *www.courts.ca.gov/forms.htm* for Request for Accommodations by Persons With Disabilities and Response (*form MC-410*). (Civ. Code, § 54.8.)

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee action requested [Choose from drop down menu below]:
Circulate for comment (January 1 cycle)

Rules Committee Meeting Date: 04/14/2021

Title of proposal: Rules: Lodged Electronic Exhibits

Proposed rules, forms, or standards *(include amend/revise/adopt/approve):*
Adopt Cal. Rules of Court, rule 2.901

Committee or other entity submitting the proposal:
Information Technology Advisory Committee

Staff contact (name, phone and e-mail): Andrea Jaramillo, 916-263-0991, andrea.jaramillo@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by Rules Committee date: N/A. Approved by Judicial Council Technology Committee: January 11, 2021
Project description from annual agenda: 10.1 Trial Court Rules and Statutes Revisions
Project Summary: Revise statutes and the California Rules of Court for the trial courts to support e-business. In collaboration with other advisory committees, as needed, review rules and statutes and develop recommendations for amendments to align with modern business practices.

Proposals within the scope of this item include:
(a) Develop legislative and rule proposals for electronic exhibits and evidence based on the needs identified by the Digital Evidence Workstream including defining "lodged electronic exhibits," permitting courts to use vendors for storage of electronic exhibits and evidence; and removing requirements that clerks return exhibits if they are in electronic format.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

Information for JC Staff regarding form translations:

- *List any amended forms in this proposal that have already been translated:*
- *List any new forms that require translation by statute or that you will request to be translated:*

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INVITATION TO COMMENT

SPR21-16

Title
Rules: Lodged Electronic Exhibits

Proposed Rules, Forms, Standards, or Statutes
Adopt Cal. Rules of Court, rule 2.901

Proposed by
Information Technology Advisory Committee
Hon. Sheila F. Hanson, Chair

Action Requested
Review and submit comments by May 27, 2021

Proposed Effective Date
January 1, 2022

Contact
Andrea L. Jaramillo, 916-263-0991
andrea.jaramillo@jud.ca.gov

Executive Summary and Origin

The Information Technology Advisory Committee recommends that the Judicial Council adopt a new rule of court to define and govern "lodged electronic exhibits." The purpose of the proposal is to provide clarity and facilitate the use of electronic exhibits in court proceedings. The proposal originates with recommendations from the Information Technology Advisory Committee's Digital Evidence Workstream.

Background

In 2017, the Information Technology Advisory Committee (ITAC) established the Digital Evidence Workstream to investigate, assess, and report on statutes, rules, business practices, and technical standards related to digital evidence, also known as electronic evidence. During the first phase of the workstream's activity, the workstream completed a survey of the courts about digital evidence. During the next phase, the workstream established a subgroup (1) to work on identifying statutes and rules that need to change to allow courts to implement and receive electronic evidence, and (2) to identify and recommend new statutes and rules where appropriate. In November 2020, the workstream presented its recommendations to ITAC, including rules defining and governing "lodged electronic exhibits."

The Proposal

The proposal would add rule 2.901 to the California Rules of Court to define "lodged electronic exhibits" and establish requirements for access and deletion. The purpose of the proposal is to provide clarity to the courts, litigants, and the public on the handling of exhibits in electronic format and to facilitate the use of electronic exhibits in court proceedings.

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee. It is circulated for comment purposes only.

Rule 2.901 would be located in chapter 1 of division 7 of title 2 of the California Rules of Court. This chapter governs general provisions for proceedings in the trial courts. As such, the rule would apply to all proceedings in the trial courts.

The proposal would define a "lodged electronic exhibit" as "an exhibit in electronic format that is not filed, but rather is electronically transmitted to or received by the court for temporary storage pending use at a trial or other evidentiary hearing." The rule only concerns exhibits that are in electronic format rather than a physical format. While a lodged electronic exhibit may be something that originally exists in an electronic format, e.g., an email, the rule does not require a lodged electronic exhibit to have originally existed in electronic format. For example, a lodged electronic exhibit could be a copy of a paper map that was scanned to be in electronic format. In addition, because lodged electronic exhibits are electronically transmitted or received by the court, the court would be storing only the electronic exhibit, not physical items such thumb drives or CDs.

Because a lodged electronic exhibit is only temporarily stored pending use in a trial or other evidentiary hearing, it may ultimately never be used. Unlike a filing, a lodged electronic exhibit may never become part of the court record. For example, a party might lodge an electronic exhibit by transmitting it through a court's online portal designed for that purpose, and then during the proceeding decide not to present it. Hence, the rule limits access to lodged electronic exhibits to parties and the court pending their use in a proceeding. However, once a lodged electronic exhibit is admitted into evidence and becomes part of the record of the proceeding, access would not be limited to that exhibit unless the exhibit was otherwise confidential by law or sealed by court order.

Also, because lodged electronic exhibits are only temporarily stored pending use in a proceeding, the rule requires deletion of lodged electronic exhibits following the proceeding unless otherwise ordered by the court. The court must email or mail a confirmation of deletion to the party who submitted the lodged electronic exhibit.

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Alternatives Considered

One alternative to the proposal would be to maintain the status quo. However, because courts are increasingly becoming the recipients of exhibits in electronic format, the committee determined that a change is now needed to create clarity and facilitate the use of such exhibits.

The committee also considered alternative provisions. It discussed the timing for the court's deletion of the lodged exhibits under rule 2.901(c) and whether it should be "immediately," but decided that offering no specific timeline gives courts flexibility to delete the lodged electronic exhibits consistent with their own needs and schedules. The committee also discussed the scope of who may access lodged electronic exhibits and limited it to parties and the court until the lodged electronic exhibit is admitted into evidence. The committee seeks specific comments on the timing of deletion, the scope of who may access lodged electronic exhibits, and admission into evidence as the trigger for both broader scope access and retention of the exhibits.

The committee considered including a provision related to protection of privacy similar to rule 1.201 of the California Rules of Court, which governs protection of privacy in filed documents.[1] However, the committee determined it was not practical for inclusion in the proposed rule.

Fiscal and Operational Impacts

The proposal does not require courts to accept lodged electronic exhibits, but if a court does accept lodged electronic exhibits, the rule governs how they must be handled. The rule does not prescribe the use of any particular system or technology for electronically receiving or handling lodged electronic exhibits. Costs to establish a system will likely vary depending on a court's current technical capabilities. Staff would need to be trained on any system and in local procedures for deletion and electronically categorizing exhibits that are admitted into evidence. Electronic storage of lodged electronic exhibits could become a challenge for courts in terms of storage capacity and technical capability.

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[1] Specifically, the committee considered, but ultimately decided not to include the following subdivision:

(d) Exclusion or redaction of identifiers

(1) *Identifiers*

To protect personal privacy and other legitimate interests, parties and their attorneys must not include, or must redact where inclusion is necessary, the following identifiers from all lodged electronic exhibits, unless otherwise provided by law or ordered by the court:

(A) Social security numbers. If an individual's social security number is required, the last four digits of that number may remain unredacted.

(B) Account numbers. If account numbers are required, the last four digits of these numbers may remain unredacted.

(C) Complete dates of birth. If a date of birth is required, a partial date may remain unredacted.

(D) Criminal Identification and Information numbers and National Crime Information Center numbers.

(E) Addresses and phone numbers of victims, parties, witnesses, and court personnel.

(F) Names of victims.

(2) The requirements of subdivision (d)(1) do not apply to lodged electronic exhibits that are sealed or otherwise confidential by law independent of this rule.

(3) *Responsibility of the party lodging the electronic exhibit*

The responsibility for excluding or redacting identifiers identified in (d)(1) from all electronic exhibits lodged with the court rests solely with the parties and their attorneys. The court clerk will not review each electronic exhibit for compliance with this provision.

(4) *Confidential reference list*

A party may replace a redacted identifier with a reference. If a party does so, the party must lodge electronically, along with the lodged electronic exhibit, a reference list. The reference list is confidential. The party lodging the reference list must include the word "CONFIDENTIAL" at the top of each page. The reference list must identify each item of redacted information and specify the reference that uniquely corresponds to each item of redacted information listed. The reference list must also specify the lodged electronic exhibits where the reference appears in place of the identifier. A single list may be used for the entire set of lodged electronic exhibits.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Subdivision (b) limits access to lodged electronic exhibits to parties and the court. Should the list be different—for example, a broader list like the list of those who may remotely access certain electronic records under rule 2.515(b) of the California Rules of Court?
- Under subdivision (b), once admitted into evidence, access to a lodged electronic exhibit is no longer limited to the parties and the court. Should the language of this subdivision be broader such as "offered into evidence" rather than "admitted into evidence"?
- Under subdivision (c), if not admitted into evidence, a lodged electronic exhibit must be deleted unless otherwise ordered by the court. Should the language of this subdivision be broader such as "offered into evidence" rather than "admitted into evidence"?
- Should subdivision (c) have a specific timeline for a court's deletion of lodged exhibits?
- Should any lodged electronic exhibits *not* be deleted under subdivision (c)?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- 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?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Rules of Court, rule 2.901, at pages 5.

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Rule 2.901 of the California Rules of Court would be adopted, effective January 1, 2022, to read:

1 **Rule 2.901. Lodged electronic exhibits**
2
3 **(a) Definition**
4
5 A "lodged electronic exhibit" is an exhibit in electronic format that is not filed, but
6 rather is electronically transmitted to or received by the court for temporary storage
7 pending use at a trial or other evidentiary hearing.
8
9 **(b) Access to lodged electronic exhibits**
10
11 (1) A lodged electronic exhibit may be accessible only by the parties and the
12 court until it is admitted into evidence.
13
14 (2) If a lodged electronic exhibit is confidential by law or sealed by court order,
15 it does not lose its confidential or sealed status by operation of this rule.
16
17 **(c) Deletion of lodged electronic exhibit if not admitted into evidence**
18
19 Unless otherwise ordered by the court, if a lodged electronic exhibit is not admitted
20 into evidence, the clerk must delete it after the hearing, proceeding, or trial for
21 which it was submitted, and email or mail confirmation of such deletion must be
22 sent to the submitting party.

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RULES COMMITTEE ACTION REQUEST FORM

Rules Committee action requested [Choose from drop down menu below]:
Circulate for comment (January 1 cycle)

Rules Committee Meeting Date: 04/14/2021

Title of proposal: Rules: Electronic Filing and Service in Criminal Cases

Proposed rules, forms, or standards *(include amend/revise/adopt/approve):*
Amend Cal. Rules of Court, rules 2.251, 2.252, 2.253, 2.255, 2.258, and 2.259

Committee or other entity submitting the proposal:
Information Technology Advisory Committee

Staff contact (name, phone and e-mail): Andrea Jaramillo, 916-263-0991, andrea.jaramillo@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by Rules Committee date: N/A. Approved by Judicial Council Technology Committee: January 11, 2021
Project description from annual agenda: 10.1 Trial Court Rules and Statutes Revisions
Project Summary: Revise statutes and the California Rules of Court for the trial courts to support e-business. In collaboration with other advisory committees, as needed, review rules and statutes and develop recommendations for amendments to align with modern business practices.

Proposals within the scope of this item include:
c) Develop a proposal to amend permissive electronic filing and electronic service rules to reference Penal Code section 690.5.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

Information for JC Staff regarding form translations:

- *List any amended forms in this proposal that have already been translated:*
- *List any new forms that require translation by statute or that you will request to be translated:*

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INVITATION TO COMMENT

SPR21-17

Title
Rules: Electronic Filing and Service in Criminal Cases

Proposed Rules, Forms, Standards, or Statutes
Amend Cal. Rules of Court, rules 2.251, 2.252, 2.253, 2.255, 2.258, and 2.259

Proposed by
Information Technology Advisory Committee
Hon. Sheila F. Hanson, Chair

Action Requested
Review and submit comments by May 27, 2021

Proposed Effective Date
January 1, 2022

Contact
Andrea L. Jaramillo, 916-263-0991
andrea.jaramillo@jud.ca.gov

Executive Summary and Origin

The Information Technology Advisory Committee recommends the Judicial Council amend rules 2.251, 2.252, 2.253, 2.255, 2.258, and 2.259 of the California Rules of Court. The purpose of the proposal is to meet Penal Code section 690.5's requirement that the Judicial Council adopt rules for the electronic filing and service of documents in criminal cases in the trial courts.

Background

In 2017, the Judicial Council sponsored legislation to add section 690.5 to the Penal Code to provide express authority for "the permissive filing and service of documents" in criminal proceedings. Penal Code section 690.5 became law effective January 1, 2018.

The Proposal

The proposal would add references to Penal Code section 690.5 to the electronic filing and electronic service rules of the California Rules of Court to bring criminal cases within the scope of those rules. The proposal is needed to comply with Penal Code section 690.5's requirement that the Judicial Council make rules for the electronic filing and electronic service of documents in criminal cases.

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee.
It is circulated for comment purposes only.

Penal Code section 690.5 states:

> Subdivisions (a) and (b) of Section 1010.6 of the Code of Civil Procedure, pertaining to the permissive filing and service of documents, are applicable to criminal actions, except as otherwise provided in Section 959.1 or any other provision of this code.

This language was intended to ensure electronic filing and electronic service would not be *required* in criminal matters. As the Judicial Council report recommending the council sponsor Penal Code section 690.5 explains:

> Because some county justice partners may not have sufficient resources to undertake electronic filing and service in criminal cases, new Penal Code section 690.5 will incorporate only the permissive provisions of section 1010.6 into the Penal Code. Under this proposal, courts will not be authorized to require mandatory electronic filing and service in criminal actions. Rather, for those courts with the resources to implement electronic filing and service in criminal matters, this proposal will provide them with express authority to do so, provided the parties *consent* to electronic filing and service.

(Judicial Council of Cal., Advisory Com. Rep., Judicial Council–Sponsored Legislation: Applying the Electronic Filing and Service Provisions of Code of Civ. Proc., § 1010.6(a) and (b) to Criminal Actions (Oct. 28, 2016), p. 3, *https://jcc.legistar.com/View.ashx?M=F&ID=4815159&GUID=80D76D4B-5A18-4048-8B97-346AEBCF1DA5*, italics added.)

The following amendments are included in the proposal:

- **Rule 2.251(a):** This provision generally authorizes electronic service and states that service may be made electronically under Code of Civil Procedure section 1010.6 and the California Rules of Court. The amendment adds a reference to Penal Code section 690.5 and specifies that electronic service in criminal cases requires consent.

- **Rule 2.251(c)(1)–(2):** These provisions govern electronic service required by local rule or court order. The amendments specify that courts may only require electronic service in civil actions because mandatory electronic filing and electronic service are not applicable in criminal actions under Penal Code section 690.5.

- **Rule 2.251(k):** This provision authorizes a court to serve documents electronically under Code of Civil Procedure section 1010.6 and the California Rules of Court. The amendment adds a reference to Penal Code section 690.5.

- **Rule 2.252(a):** This provision generally authorizes electronic filing as provided under Code of Civil Procedure section 1010.6 and the California Rules of Court. The amendment adds a reference to Penal Code section 690.5.

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- **Rule 2.253(a):** This provision specifically authorizes courts to permit electronic filing by local rule subject to the conditions in Code of Civil Procedure section 1010.6 and the California Rules of Court. The amendment adds a reference to Penal Code section 690.5.

- **Rule 2.255(h):** This is a new provision that prohibits electronic filing service providers (EFSPs) and electronic filing managers (EFMs) from charging service fees when an electronic filer is a prosecutor, an indigent defendant, or counsel for an indigent defendant. These service fees are charged by the service provider and are not filing fees.

- **Rule 2.258:** This rule governs the payment of filing fees. The amendment specifies the rule applies to civil actions as criminal cases do not have filing fees.

- **Rule 2.259(e):** This rule provides for issuance of an electronic summons. The amendment adds new provisions authorizing the court to issue an electronic summons pursuant to Penal Code sections 813, 816a, 1390, and 1391. Service of the summons would need to be made as prescribed elsewhere by law.

Alternatives Considered

Because Penal Code section 690.5 requires the Judicial Council to make rules, no alternative to rulemaking was considered. With respect to the particular rules, the Information Technology Advisory Committee (ITAC) considered input from the Criminal Law Advisory Committee (CLAC) on fees charged by service providers for electronic filing services. CLAC raised concerns that fees would likely bar most public defender and district attorney offices from opting into electronic filing, and would be a hardship for indigent defendants. CLAC recommended no service charges be permitted for filings in criminal actions for prosecutors and all defendants and their counsel. ITAC considered this, but limited the proposal to a prohibition of service fees for prosecutors, indigent defendants, and counsel for indigent defendants. While ITAC agreed with the concerns CLAC raised about prosecutors, public defenders, and indigent defendants, it did not agree that EFSPs and EFMs should not be able to charge non-indigent defendants for services. ITAC seeks specific comments on this issue.

Fiscal and Operational Impacts

Because the proposal only applies to permissive electronic filing and electronic service by consent, which is already authorized by statute, the proposal does not impose new costs on the courts or electronic filers.

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Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- The proposed amendments would prohibit EFSPs and EFMs from charging for electronic filing services in criminal cases when an electronic filer is a prosecutor, indigent defendant, or counsel for an indigent defendant.
    - Is this exemption from service charges appropriate?
    - For *EFSPs and EFMs*: would you be willing to offer electronic filing in criminal cases with this limitation?
    - For *prosecutors, defense attorneys representing indigent defendants, and those representing the interests of indigent, pro per defendants*: would a service provider's fee prevent the use of electronic filing?
    - For *defense attorneys representing non-indigent defendants*, would a service provider's fee prevent the use of electronic filing?
    - Should there be no service charges for the electronic filing in criminal cases?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- 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?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Rules of Court, rules 2.251, 2.252, 2.253, 2.255, 2.258, and 2.259, at pages 6–9
2. Link A: Penal Code section 690.5, *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=690.5.&lawCode=PEN*

DRAFT

Rules 2.251, 2.252, 2.253, 2.255, 2.258, and 2.259 of the California Rules of Court would be amended, effective January 1, 2022, to read:

Rule 2.251. Electronic service

(a) Authorization for electronic service

When a document may be served by mail, express mail, overnight delivery, or fax transmission, the document may be served electronically under Code of Civil Procedure section 1010.6, Penal Code section 690.5, and the rules in this chapter. For purposes of electronic service made pursuant to Penal Code section 690.5, express consent to electronic service is required.

(b) * * *

(c) Electronic service required by local rule or court order

(1) A court may require parties to serve documents electronically in specified civil actions by local rule or court order, as provided in Code of Civil Procedure section 1010.6 and the rules in this chapter.

(2) A court may require other persons to serve documents electronically in specified civil actions by local rule, as provided in Code of Civil Procedure section 1010.6 and the rules in this chapter.

(3)–(4) * * *

(d)–(j) * * *

(k) Electronic service by or on court

(1) The court may electronically serve documents as provided in Code of Civil Procedure section 1010.6, Penal Code section 690.5, and the rules in this chapter.

(2) A document may be electronically served on a court if the court consents to electronic service or electronic service is otherwise provided for by law or court order. A court indicates that it agrees to accept electronic service by:

(A) Serving a notice on all parties and other persons in the case that the court accepts electronic service. The notice must include the electronic service address at which the court agrees to accept service; or

(B) Adopting a local rule stating that the court accepts electronic service. The rule must indicate where to obtain the electronic service address at which the court agrees to accept service.

Rules 2.251, 2.252, 2.253, 2.255, 2.258, and 2.259 of the California Rules of Court would be amended, effective January 1, 2022, to read:

Advisory Committee Comment

Subdivision (b)(1)(B). The rule does not prescribe specific language for a provision of a term of service when the filer consents to electronic service, but does require that any such provision be clear. *Consent to Electronic Service and Notice of Electronic Service Address* (form EFS-005-CV) provides an example of language for consenting to electronic service.

Subdivision (c). The subdivision is applicable only to civil actions as defined in rule 1.6. Penal Code section 690.5 excludes mandatory electronic service in criminal cases.

Subdivisions (c)–(d). Court-ordered electronic service is not subject to the provisions in Code of Civil Procedure section 1010.6 requiring that, where mandatory electronic filing and service are established by local rule, the court and the parties must have access to more than one electronic filing service provider.

Rule 2.252. General rules on electronic filing of documents

(a) In general

A court may provide for electronic filing of documents in actions and proceedings as provided under Code of Civil Procedure section 1010.6, Penal Code section 690.5, and the rules in this chapter.

(b)–(h) * * *

Rule 2.253. Permissive electronic filing, mandatory electronic filing, and electronic filing by court order

(a) Permissive electronic filing by local rule

A court may permit parties by local rule to file documents electronically in any types of cases, subject to the conditions in Code of Civil Procedure section 1010.6, Penal Code section 690.5, and the rules in this chapter.

(b)–(c) * * *

Rule 2.255. Contracts with electronic filing service providers and electronic filing managers

(a)–(g) * * *

Rules 2.251, 2.252, 2.253, 2.255, 2.258, and 2.259 of the California Rules of Court would be amended, effective January 1, 2022, to read:

(h) Fees for electronic filing services not chargeable in some criminal actions

(1) Electronic filing service providers and electronic filing managers may not charge a service fee when an electronic filer files a document in a criminal action when the electronic filer is a prosecutor, an indigent defendant, or counsel for an indigent defendant.

(2) For purposes of this subdivision, "indigent defendant" means a defendant who the court has determined is not financially able to employ counsel pursuant to Penal Code section 987. Pending the court's determination, "indigent defendant" also means a defendant the public defender is representing pursuant to Government Code section 27707.

Rule 2.258. Payment of filing fees in civil actions

(a) Use of credit cards and other methods

A court may permit the use of credit cards, debit cards, electronic fund transfers, or debit accounts for the payment of civil filing fees associated with electronic filing, as provided in Government Code section 6159, rule 10.820, and other applicable law. A court may also authorize other methods of payment.

(b) * * *

Rule 2.259. Actions by court on receipt of electronic filing

(a)–(d) * * *

(e) Issuance of electronic summons

(1) *Court authorized to issue electronic summons*

(A) On the electronic filing of a complaint, a petition, or another document that must be served with a summons in a civil action, the court may transmit a summons electronically to the electronic filer in accordance with this subdivision and Code of Civil Procedure section 1010.6.

(B) On the electronic filing of an accusatory pleading against a corporation, the court may transmit a summons electronically to the prosecutor in accordance with this subdivision and Penal Code sections 690.5, 1390 and 1391.

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(C) When a summons is issued in lieu of an arrest warrant, the court may transmit the summons electronically to the prosecutor or person authorized to serve the summons in accordance with this subdivision and Penal Code sections 690.5, 813 and 816a.

(2) The electronically transmitted summons must contain an image of the court's seal and the assigned case number.

(3) Personal service of the printed form of a summons transmitted electronically to the electronic filer has the same legal effect as personal service of a copy of an original summons.

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Item number: 25

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee action requested [Choose from drop down menu below]**:**
Submit to JC (without circulating for comment)

Rules Committee Meeting Date: April 14, 2021

Title of proposal: Rules and Forms: Miscellaneous Technical Changes

Proposed rules, forms, or standards *(include amend/revise/adopt/approve):*
Amend rules 4.574, 5.335, and 5.697; and revise forms ADOPT-200, CM-010, CM-110, EJ-155, FL-200, FL-220, FL-260, FL-278, FL-324(P), JV-101(A), JV-535(A), and PLD 050

Committee or other entity submitting the proposal:
Judicial Council Staff

Staff contact (name, phone and e-mail): Anne M. Ronan, 415-865-8933, anne.ronan@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by Rules Committee date: N/A
Project description from annual agenda: N/A

If requesting July 1 or out of cycle, explain:
These proposals were not circulated for public comment because they are noncontroversial, involve technical revisions, and are therefore within the Judicial Council's purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).)

Additional Information: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

Information for JC Staff regarding form translations:

- *List any amended forms in this proposal that have already been translated:*
- *List any new forms that require translation by statute or that you will request to be translated:*

JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

Item No.: 21-092

For business meeting on May 20–21, 2021

Title
Rules and Forms: Miscellaneous Technical Changes

Rules, Forms, Standards, or Statutes Affected
Amend rules 4.574, 5.335, and 5.697; and revise forms ADOPT-200, CM-010, CM-110, EJ-155, FL-200, FL-220, FL-260, FL-278, FL-324(P), JV-101(A), JV-535(A), and PLD-050

Recommended by
Judicial Council staff
Anne M. Ronan, Supervising Attorney
Legal Services

Agenda Item Type
Action Required

Effective Date
September 1, 2021

Date of Report
April 14, 2021

Contact
Anne M. Ronan, 415-865-8933
anne.ronan@jud.ca.gov

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Executive Summary

Various members of the judicial branch, members of the public, and Judicial Council staff have identified errors in the California Rules of Court and Judicial Council forms resulting from typographical errors and changes resulting from legislation, and previous rule amendments and form revisions. Judicial Council staff recommend making the necessary corrections to avoid causing confusion for court users, clerks, and judicial officers.

Recommendation

Judicial Council staff recommend that the Judicial Council, effective September 1, 2021:

1. Amend rule 4.574 of the California Rules of Court to change “reply” to “denial” to correct the name of the document cited in subdivision (b)(3);

2. Amend rule 5.335 of the California Rules of Court to replace former Family Code section 4945 with Family Code section 5700.506, the new version of the statute, in subdivision (a);

3. Amend rule 5.697 of the California Rules of Court to replace “agree with the continuation of” with “are in agreement with receiving court-ordered” in subdivision (e)(1)(D)(iv) and to delete “continued” in subdivision (v), where the rule addresses the social worker’s reporting requirements for a nonminor disposition hearing;

4. Revise *Adoption Request* (form ADOPT-200) to correct typographical errors on page 1 (item 2) by changing “This Adoption Request in” to “This Adoption Request is” and on page 5 (item 15h) by changing the cross-reference from “15d” to “15f”;

5. Revise *Civil Case Cover Sheet* (form CM-010) to add an item for an email address to the Attorney/Party box at the top left of the form and to revise *Case Management Statement* (form CM-110) and *General Denial* (form PLD-050) to remove the “Optional” instruction from the items for email address at the top left of each of those forms. These revisions are to bring the forms into compliance with California Rules of Court, rule 2.111, which requires the inclusion of an email address on papers filed with the trial court;

6. Revise *Exemptions from the Enforcement of Judgments* (form EJ-155) to include a new exemption, for Scholarshare (Higher Education Savings), added through legislation;

7. Revise *Petition to Determine Parental Relationship (Uniform Parentage)* (form FL-200), item 8d, to replace the incorrect reference to “Attachment 6c(1)” with “Attachment 8d”;

8. Revise *Response to Petition to Determine Parental Relationship (Uniform Parentage)* (form FL-220) to correct minor formatting errors and to replace the incorrect reference to “Attachment 6c(1)” with “Attachment 9c” in item 9c;

9. Revise *Petition for Custody and Support of Minor Children* (form FL-260), item 4i, to replace the incorrect reference to “Attachment 4h” with “Attachment 4i”;

10. Revise *Order After Hearing on Motion to Cancel (Set Aside) Judgment of Parentage* (form FL-278) on page 1 (item 6) to change “The Court Finds” to “The Court Orders” and on page 3 to renumber items 8, 9, and 10 as items 7, 8, and 9 to correct typographical errors;

11. Revise *Declaration of Supervised Visitation Provider (Professional)* (form FL-324(P)) to remove the reference to subdivision (d) in Family Code section 3200.5 at items 4 and 5 to mirror the references to that code section on form FL-324(NP);

12. Revise *Additional Children Attachment* (form JV-101(A)) to correct the lettering sequence in item 6 to “a.,” “b.,” and “c.” and to add “and the *Indian Child Inquiry Attachment* (form ICWA-010(A)) is attached” in item 6b to mirror the language in form JV-100 at item 6b;

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13. Revise *Attachment to Order Designating Educational Rights Holder* (form JV-535(A)) to correct the typographical error on page 1 in the form's footer by replacing "Form Approved for Mandatory Use" with "Form Adopted for Mandatory Use"; at item 9 on page 1 to move "to make" to precede the check box labeled "educational"; and at item 18 on page 2 to replace the incorrect references to "items 14 or 15" with "items 16 or 17."

The text of the proposed amended rule and the revised forms are attached at pages 4–35.

Relevant Previous Council Action

Although the Judicial Council has acted on these rules and forms, this proposal recommends only minor corrections unrelated to any prior action.

Analysis/Rationale

The changes to these rules and forms are technical in nature and necessary to correct inadvertent omissions and incorrect references.

Policy implications

There are no policy implications to this proposal.

Comments

This proposal was not circulated for public comment because the changes are noncontroversial, involve technical revisions, and are therefore within the Judicial Council's purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).)

Alternatives considered

None.

Fiscal and Operational Impacts

Operational impacts are expected to be minor. The proposed revisions may result in reproduction costs if courts provide hard copies of any of the forms recommended for revision. Because the proposed changes are technical corrections, case management systems are unlikely to need updating to implement them.

Attachments and Links

1. Cal. Rules of Court, rules 4.574, 5.335, and 5.697, at pages 4–5
2. Forms ADOPT-200, CM-010, CM-110, EJ-155, FL-200, FL-220, FL-260, FL-278, FL-324(P), JV-101(A), JV-535(A), and PLD-050, at pages 6–35

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Rule 4.574. Proceedings following an order to show cause

(a) * * *

(b) Denial

(1)–(2) * * *

(3) A copy of the ~~reply~~ denial and any supporting documents must be served on the district attorney, the Attorney General, and on any assisting entity or counsel.

(4) * * *

(c)–(g) * * *

Rule 5.335. Procedures for hearings on interstate income withholding orders

(a) Purpose

This rule provides a procedure for a hearing under Family Code section ~~4945~~ 5700.506 in response to an income withholding order.

(b)–(g) * * *

Rule 5.697. Disposition hearing for a nonminor (Welf. & Inst. Code, §§ 224.1, 295, 303, 358, 358.1, 361, 366.31, 390, 391)

(a)–(d) * * *

(e) Social study (§§ 358, 358.1)

The petitioner must prepare a social study of the nonminor if the court proceeds to a disposition hearing. The social study must include a discussion of all matters relevant to disposition and a recommendation for disposition.

(1) The petitioner's social study must include the following information:

(A)–(C) * * *

(D) If reunification services are being considered:

(i)–(iii) * * *

(iv) Whether the nonminor and parent, parents, or guardian ~~agree with the continuation of~~ are in agreement with receiving court-ordered reunification services;

(v) Whether ~~continued~~ reunification services are in the best interest of the nonminor; and

(vi) * * *

(E)–(N) * * *

(2) * * *

(f)–(h) * * *

ADOPT-200 Adoption Request

Clerk stamps date here when form is filed.

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Not approved by the Judicial Council

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

If you are adopting more than one child, fill out an adoption request for each child.

1 Adopting parent(s)

a. Name: ______________________

b. Name: ______________________

Relationship to child: ______________________

Street address: ______________________

City: ______________ State: _____ Zip: ______________

Telephone number: ______________________

Lawyer (if any) *(name, address, telephone numbers, e-mail address, and State Bar number):*

____

____

____

2 County of filing

This *Adoption Request* is filed in this court because *(check all that apply):*

- ☐ The adopting parent or parents live in this county;
- ☐ The child was born in or the child now lives in this county;
- ☐ An office of the agency that placed the child for adoption is located in this county;
- ☐ An office of the department or public adoption agency that is investigating the request is located in this county;
- ☐ The placing birth parent or parents lived in this county when the adoptive placement agreement, consent, or relinquishment was signed;
- ☐ The placing birth parent or parents lived in this county when the request was filed;
- ☐ The child was freed for adoption in this county.

(To be completed by the clerk of the superior court if a hearing date is available.)

Hearing Date ➡ Hearing is set for:
Date: ______________
Time: ______________
Dept.: ______________ Room: ______________

Name and address of court if different from above:

____

____

To the person served with this request: If you do not come to this hearing, the judge can order the adoption without your input.

(Note: If the child is a dependent of the court, the *Adoption Request* must be filed in the county where the child was freed for adoption or the county where the adopting parent or parents reside. See Fam. Code, § 8714.)

3 Type of adoption

Check one of the following:

- ☐ Agency *(name):* ______________________ ☐ Relative ☐ Nonrelative
  - ☐ Tribal customary adoption *(attach tribal customary adoption order)*
- ☐ Independent: ☐ Relative ☐ Nonrelative ☐ Additional Parent(s)
- ☐ Intercountry *(name of agency):* ______________________
- ☐ Stepparent adoption
- ☐ Stepparent adoption to confirm parentage. See form ADOPT-050-INFO to determine whether you are eligible for the stepparent adoption to confirm parentage process.

Joinder:

☐ Joinder is being filed at same time as this *Adoption Request*. ☐ Joinder will be filed.

Your name: ______________________ | Case Number:

4 Information about the child

a. The child's new name will be: ______________________

b. Sex: ☐ Female ☐ Male ☐ Nonbinary

c. Date of birth: ______________ Age: _____

d. Child's address (*if different from address of adopting parent or parents*):
Street: ______________________ City: ____________ State: _____ Zip: ________

e. Place of birth (*if known*): City: ______________ State:_____ Country: ____________

f. If the child is 12 or older, does the child agree to the adoption? ☐ Yes ☐ No

g. Date child was placed in the physical care of the adopting parents: ______________

h. ☐ The child was conceived by assisted reproduction in compliance with Family Code section 7613.

i. ☐ The child is a dependent of the court. Juvenile Case No. __________ County: ____________

5 Child's name before adoption (fill out ONLY for independent, stepparent, or tribal customary adoption)

Child's name before adoption: ______________________

6 Birth parents

Names of birth parents, if known: ______________________

7 Legal guardian

Does the child have a legal guardian? ☐ Yes ☐ No (If yes, attach *Letters of Guardianship* and fill out below.)

a. Date guardianship ordered: ______________ c. Case number: ______________

b. County: ______________________

8 Inquiry and notice under the Indian Child Welfare Act

a. ☐ The inquiry required under law to determine whether the child may be an Indian child has been made, and a completed *Indian Child Inquiry Attachment* (form ICWA-010(A)) is attached.
Note: In agency adoptions, it is the responsibility of the agency to ensure that this inquiry is conducted and the form is made part of the file. In independent adoptions, the adoption service provider, CDSS Regional Office, or delegated county adoption agency is responsible.

b. ☐ A completed version of *Parental Notification of Indian Status* (form ICWA-020) is attached OR a good faith attempt has been made to provide the form to the parents, Indian custodian, or guardian of the child and inform them that they are required to complete and submit the form to the court.
Note: In agency adoptions, it is the responsibility of the agency to ensure that these forms are made part of the file. In independent adoptions, the adoption service provider, CDSS Regional Office, or delegated county adoption agency is responsible.

c. ☐ There is **reason to know** that this child is an Indian child. Notice of the adoption request will be provided to the child's tribe or tribes, parents, Indian custodian, and the Bureau of Indian Affairs, using *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030).

9 Adoption of an Indian child

a. ☐ This is an adoption of an Indian child. The adopting parents have filled out and attached *Adoption of Indian Child* (form ADOPT-220) and will bring *Parent of Indian Child Agrees to End Parental Rights* (form ADOPT-225) to the hearing.

b. ☐ This is a tribal customary adoption under Welfare and Institutions Code section 366.24. Parental rights have been modified under and in accordance with the attached tribal customary adoption order, and the child has been ordered placed for adoption.

10 Agency adoption questions

a. ☐ I/We have received information about the Adoption Assistance Program, the Regional Center, mental health services available through Medi-Cal or other programs, and federal and state tax credits that might be available.

b. All persons with parental rights agree that the child should be placed for adoption by the California Department of Social Services or a county adoption agency or a licensed adoption agency (Fam. Code, § 8700) and have signed a relinquishment form approved by the California Department of Social Services, and the time to revoke the relinquishment has expired or been waived. ☐ Yes ☐ No
If no, list the name and relationship to child of each person who has not signed the relinquishment form or whose time to revoke the relinquishment has not expired or been waived:

____

11 Independent adoption questions

a. ☐ A copy of the Independent Adoptive Placement Agreement from the California Department of Social Services is attached. (This is required in most independent adoptions; see Fam. Code, § 8802.)

b. All persons with parental rights agree to the adoption and have signed the Independent Adoptive Placement Agreement or consent on the appropriate California Department of Social Services form. ☐ Yes ☐ No
(If no, list the name and relationship to child of each person who has not signed the agreement form):

____

c. ☐ I/We will file promptly with the department or delegated county adoption agency the information required by the department in the investigation of the proposed adoption.

d. ☐ This is an independent adoption involving additional parent(s):
- ☐ All persons with existing parental rights agree to this adoption and will maintain their existing parental rights.
- ☐ An agreement waiving termination of parental rights, signed by both the existing parent(s) and the adopting parent(s) is attached.

12 Stepparent adoption and confirmation of parentage questions

a. The birth parent *(name):* ____________________ ☐ has signed a consent ☐ will sign a consent.

b. The birth parent *(name):* ____________________ ☐ has signed a consent ☐ will sign a consent.

c. The adopting parent married or entered into a registered domestic partnership with the legal parent on *(date)*: ____________________. *(For court use only. This does not affect social worker's recommendation. There is no waiting period.)*

d. ☐ I am seeking a stepparent adoption to confirm my parentage. At the time the child was born, I was married to or in a state-registered domestic partnership with the parent who gave birth or whose parentage was established through a gestational surrogacy process, and we remain in that union. See attached:
- ☐ Form ADOPT-205, *Declaration Confirming Parentage in Stepparent Adoption*
- ☐ Form ADOPT-206, *Declaration Confirming Parentage in Stepparent Adoption: Gestational Surrogacy*
- ☐ Declaration describing the circumstances of the child's conception.

e. The investigation or written report will be completed as follows *(choose one):*
- ☐ I will choose someone to do an investigation or written report. I understand that the person I choose must be a licensed clinical social worker, a licensed marriage and family therapist, or work for a licensed private adoption agency. I will pay this person or agency directly.
- ☐ I would like the court to choose someone to do an investigation. I understand that the court can charge me money for this investigation.

f. ☐ This is a stepparent adoption involving an additional parent:
- ☐ All persons with existing parental rights agree to this adoption and will maintain their existing parental rights.
- ☐ An agreement waiving termination of parental rights, signed by both the existing parent(s) and the adopting parent(s) is attached.

Your name: ______________________ **Case Number:**

13 Intercountry adoption questions

a. ☐ This adoption may be subject to the Hague Adoption Convention (*form* ADOPT-216 *must be filed with this request*).

b. ☐ This is an adoption conducted under the requirements of the Hague Adoption Convention and the child has already moved with the adopting parent(s) to another Hague Convention member country or will be moving at the conclusion of this adoption.

Child will be moving or has moved to (name of country): ______________________

Adopting parent(s): ☐ seek(s) a California adoption ☐ will be petitioning for a Hague Adoption Certificate ☐ will be seeking a Hague Custody Declaration.

c. ☐ This is an intercountry adoption that was finalized in another country before the child entered the United States with the adopting parent(s).

Date the child entered the United States: ______________________

See form ADOPT-050-INFO for a list of documents to attach to this *Adoption Request*.

14 Contact after adoption

Contact After Adoption Agreement (form ADOPT-310) ☐ is attached ☐ will not be used ☐ will be filed at least 30 days before the adoption hearing ☐ is undecided at this time.

☐ This is a tribal customary adoption. Postadoption contact is governed by the attached tribal customary adoption order.

15 Consent for adoption

Complete all sections that apply to your adoption:

a. ☐ The consent of the birth parent is not necessary because *(check the applicable reasons under Fam. Code, § 8606)*:

(1) ☐ The parent has been judicially deprived of the custody and control of the child.

(2) ☐ The parent has voluntarily surrendered the right to custody and control of the child in a judicial proceeding in another jurisdiction, under a law of that jurisdiction providing for the surrender.

(3) ☐ The parent has deserted the child without providing information to identify the child.

(4) ☐ The parent has relinquished the child under Family Code section 8700.

(5) ☐ The parent has relinquished the child for adoption to a licensed or authorized child-placing agency in another jurisdiction.

b. ☐ The child has a presumed parent under Family Code section 7611. The consent of the presumed parent is not required because:

(1) ☐ The presumed parent did not become a presumed parent before the mother's relinquishment or consent became irrevocable or the mother's parental rights were terminated. (Fam. Code, § 8604(a).)

(2) ☐ The presumed parent signed a Waiver of the Right to Further Notice of Adoption Proceedings pursuant to Family Code section 7660.5.

c. ☐ Termination of parental rights of an alleged father is not required because:

(1) ☐ The relationship to the child was previously terminated or determined not to exist by a court.

(2) ☐ The alleged father was served as prescribed in Family Code section 7666 with a written notice of alleged parentage and the proposed adoption, and has failed to bring an action pursuant to section 7630(c) within 30 days of service of the notice or the birth of the child, whichever is later. (*Attach proof of notice to this* Adoption Request.)

(3) ☐ The alleged father has executed a written form to waive notice, deny parentage, relinquish the child for adoption, or consent to the adoption of the child.

Your name: ______________________ | **Case Number:**

(15) d. ☐ A court ended the parental rights of:

Name: ____________ Relationship to child: ____________ on *(date):* ____________
Name: ____________ Relationship to child: ____________ on *(date):* ____________
(Enter the date of the court order ending parental rights and attach a copy of the order.)

e. ☐ The child is the subject of a tribal customary adoption order under Welfare and Institutions Code section 366.24, which has modified the parental rights of *(attach a copy of the order)*:

Name: ____________ Relationship to child: ____________ on *(date):* ____________
Name: ____________ Relationship to child: ____________ on *(date):* ____________
Name: ____________ Relationship to child: ____________ on *(date):* ____________

f. ☐ I/We will ask the court to end the parental rights of *(attach copy of* Petition to Terminate Parental Rights *or* Application for Freedom From Parental Custody, *if filed):*

Name: ____________ Relationship to child: ____________
Name: ____________ Relationship to child: ____________

g. ☐ Adopting parent has custody of the child by court order or by agreement with the other parent, and each of the following persons with parental rights has not contacted the child and has not paid for the child's care, support, and education for one year or more when able to do so. (Fam. Code, § 8604(b).)

Name: ____________ Relationship to child: ____________
Name: ____________ Relationship to child: ____________
Name: ____________ Relationship to child: ____________

h. ☐ The child has been abandoned as follows:

(1) ☐ The child has been left by the child's parent or parents with no way to identify the child.

(2) ☐ The child has been left in the custody of another person by both parents or the sole parent for six months without providing for the child's support, or without communication from the parent or parents, with the intent to abandon the child.

(3) ☐ One parent has left the child in the care and custody of the other parent for one year or longer without providing for the child's support or without communication from the parent, with the intent to abandon the child.

(If any of the above boxes are checked, adopting parent must also check item 15f and file an Application for Freedom From Parental Custody. *See Fam. Code, § 7822(a).)*

i. ☐ Each of the following persons with parental rights has died:

Name: ____________ Relationship to child: ____________
Name: ____________ Relationship to child: ____________

(16) **Suitability for adoption**

Each adopting parent:

a. Is at least 10 years older than the child or meets the criteria in Family Code section 8601(b);
b. Will treat the child as their own;
c. Will support and care for the child;
d. Has a suitable home for the child; *and*
e. Agrees to adopt the child.

Your name: ______________________________

Case Number:

(17) Requests to court

☐ I/We ask the court to approve the adoption and to declare that the adopting parents and the child have the legal relationship of parent and child, with all the rights and duties of this relationship, including the right of inheritance.

☐ I/We ask the court to date its order approving the adoption as of an earlier date *(date)*: ______________ for the following reason (Fam. Code, § 8601.5):

____

____

(Enter a date no earlier than the date parental rights were ended.)

☐ This is a tribal customary adoption. I/We ask the court to approve the adoption and to declare that the adopting parents and the child have the legal relationship of parent and child, with all of the rights and duties stated in the attached tribal customary adoption order and in accordance with Welfare and Institutions Code section 366.24.

(18) If a lawyer is representing you in this case, the lawyer must sign here:

Date: ______________ ______________________ *Type or print lawyer's name* ▶ ______________________ *Signature of lawyer for adopting parent(s)*

(19) I declare under penalty of perjury under the laws of the State of California that the information in this form and all its attachments is true and correct to my knowledge. This means that if I lie on this form, I am guilty of a crime.

Date: ______________ ______________________ *Type or print your name* ▶ ______________________ *Signature of adopting parent*

Date: ______________ ______________________ *Type or print your name* ▶ ______________________ *Signature of adopting parent*

NOTICE—ACCESS TO AFFORDABLE HEALTH INSURANCE: Do you or someone in your household need affordable health insurance? If so, you should apply for Covered California. Covered California can help reduce the cost you pay toward high-quality affordable health care. For more information, visit *www.coveredca.com*. Or call Covered California at 1-800-300-1506 (English) or 1-800-300-0213 (Spanish).

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*

TELEPHONE NO.: FAX NO. *(Optional):*

E-MAIL ADDRESS:

ATTORNEY FOR *(Name):*

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

STREET ADDRESS:

MAILING ADDRESS:

CITY AND ZIP CODE:

BRANCH NAME:

CASE NAME:

FOR COURT USE ONLY

DRAFT

03/15/21

NOT APPROVED BY JUDICIAL COUNCIL

CIVIL CASE COVER SHEET

☐ **Unlimited** (Amount demanded exceeds $25,000)

☐ **Limited** (Amount demanded is $25,000)

Complex Case Designation

☐ Counter ☐ Joinder

Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER:

JUDGE:

DEPT.:

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort
- ☐ Auto (22)
- ☐ Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
- ☐ Asbestos (04)
- ☐ Product liability (24)
- ☐ Medical malpractice (45)
- ☐ Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort
- ☐ Business tort/unfair business practice (07)
- ☐ Civil rights (08)
- ☐ Defamation (13)
- ☐ Fraud (16)
- ☐ Intellectual property (19)
- ☐ Professional negligence (25)
- ☐ Other non-PI/PD/WD tort (35)

Employment
- ☐ Wrongful termination (36)
- ☐ Other employment (15)

Contract
- ☐ Breach of contract/warranty (06)
- ☐ Rule 3.740 collections (09)
- ☐ Other collections (09)
- ☐ Insurance coverage (18)
- ☐ Other contract (37)

Real Property
- ☐ Eminent domain/Inverse condemnation (14)
- ☐ Wrongful eviction (33)
- ☐ Other real property (26)

Unlawful Detainer
- ☐ Commercial (31)
- ☐ Residential (32)
- ☐ Drugs (38)

Judicial Review
- ☐ Asset forfeiture (05)
- ☐ Petition re: arbitration award (11)
- ☐ Writ of mandate (02)
- ☐ Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403)
- ☐ Antitrust/Trade regulation (03)
- ☐ Construction defect (10)
- ☐ Mass tort (40)
- ☐ Securities litigation (28)
- ☐ Environmental/Toxic tort (30)
- ☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment
- ☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint
- ☐ RICO (27)
- ☐ Other complaint *(not specified above)* (42)

Miscellaneous Civil Petition
- ☐ Partnership and corporate governance (21)
- ☐ Other petition *(not specified above)* (43)

2. This case ☐ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
   a. ☐ Large number of separately represented parties
   b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
   c. ☐ Substantial amount of documentary evidence
   d. ☐ Large number of witnesses
   e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
   f. ☐ Substantial postjudgment judicial supervision
3. Remedies sought *(check all that apply):* a. ☐ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action *(specify):*
5. This case ☐ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. *(You may use form CM-015.)*

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Form Adopted for Mandatory Use
Judicial Council of California
CM-010 [Rev.September 1, 2021]

CIVIL CASE COVER SHEET

Cal. Rules of Court, rules 2.30, 3.220, 3.400–3.403, 3.740;
Cal. Standards of Judicial Administration, std. 3.10
www.courts.ca.gov

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than $25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort
- Auto (22)–Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

Other PI/PD/WD (Personal Injury/ Property Damage/Wrongful Death) Tort
- Asbestos (04)
  - Asbestos Property Damage
  - Asbestos Personal Injury/ Wrongful Death
- Product Liability *(not asbestos or toxic/environmental)* (24)
- Medical Malpractice (45)
  - Medical Malpractice– Physicians & Surgeons
- Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
  - Premises Liability (e.g., slip and fall)
  - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
  - Intentional Infliction of Emotional Distress
  - Negligent Infliction of Emotional Distress
  - Other PI/PD/WD

Non-PI/PD/WD (Other) Tort
- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
  - Legal Malpractice
  - Other Professional Malpractice *(not medical or legal)*
- Other Non-PI/PD/WD Tort (35)

Employment
- Wrongful Termination (36)
- Other Employment (15)

Contract
- Breach of Contract/Warranty (06)
  - Breach of Rental/Lease Contract *(not unlawful detainer or wrongful eviction)*
  - Contract/Warranty Breach–Seller Plaintiff *(not fraud or negligence)*
  - Negligent Breach of Contract/ Warranty
  - Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
  - Collection Case–Seller Plaintiff
  - Other Promissory Note/Collections Case
- Insurance Coverage *(not provisionally complex)* (18)
  - Auto Subrogation
  - Other Coverage
- Other Contract (37)
  - Contractual Fraud
  - Other Contract Dispute

Real Property
- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
  - Writ of Possession of Real Property
  - Mortgage Foreclosure
  - Quiet Title
  - Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

Unlawful Detainer
- Commercial (31)
- Residential (32)
- Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

Judicial Review
- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
  - Writ–Administrative Mandamus
  - Writ–Mandamus on Limited Court Case Matter
  - Writ–Other Limited Court Case Review
- Other Judicial Review (39)
  - Review of Health Officer Order
  - Notice of Appeal–Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)
- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

Enforcement of Judgment
- Enforcement of Judgment (20)
  - Abstract of Judgment (Out of County)
- Confession of Judgment *(non-domestic relations)*
- Sister State Judgment
- Administrative Agency Award *(not unpaid taxes)*
- Petition/Certification of Entry of Judgment on Unpaid Taxes
- Other Enforcement of Judgment Case

Miscellaneous Civil Complaint
- RICO (27)
- Other Complaint *(not specified above)* (42)
  - Declaratory Relief Only
  - Injunctive Relief Only *(non-harassment)*
  - Mechanics Lien
  - Other Commercial Complaint Case *(non-tort/non-complex)*
  - Other Civil Complaint *(non-tort/non-complex)*

Miscellaneous Civil Petition
- Partnership and Corporate Governance (21)
- Other Petition *(not specified above)* (43)
  - Civil Harassment
  - Workplace Violence
  - Elder/Dependent Adult Abuse
  - Election Contest
  - Petition for Name Change
  - Petition for Relief From Late Claim
  - Other Civil Petition

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ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*	FOR COURT USE ONLY
TELEPHONE NO.: FAX NO. *(Optional):* E-MAIL ADDRESS: ATTORNEY FOR *(Name):*	DRAFT 03/15/21 NOT APPROVED BY JUDICIAL COUNCIL
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
CASE MANAGEMENT STATEMENT ***(Check one):*** ☐ **UNLIMITED CASE** (Amount demanded exceeds $25,000) ☐ **LIMITED CASE** (Amount demanded is $25,000 or less)	CASE NUMBER:

A **CASE MANAGEMENT CONFERENCE** is scheduled as follows:

Date: Time: Dept.: Div.: Room:

Address of court *(if different from the address above):*

☐ **Notice of Intent to Appear by Telephone, by *(name):***

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. **Party or parties** *(answer one):*
   a. ☐ This statement is submitted by party *(name):*
   b. ☐ This statement is submitted **jointly** by parties *(names):*

2. **Complaint and cross-complaint** *(to be answered by plaintiffs and cross-complainants only)*
   a. The complaint was filed on *(date):*
   b. ☐ The cross-complaint, if any, was filed on *(date):*

3. **Service** *(to be answered by plaintiffs and cross-complainants only)*
   a. ☐ All parties named in the complaint and cross-complaint have been served, have appeared, or have been dismissed.
   b. ☐ The following parties named in the complaint or cross-complaint
      (1) ☐ have not been served *(specify names and explain why not):*
      (2) ☐ have been served but have not appeared and have not been dismissed *(specify names):*
      (3) ☐ have had a default entered against them *(specify names):*
   c. ☐ The following additional parties may be added *(specify names, nature of involvement in case, and date by which they may be served):*

4. **Description of case**
   a. Type of case in ☐ complaint ☐ cross-complaint *(Describe, including causes of action):*

Form Adopted for Mandatory Use
Judicial Council of California
CM-110 [Rev. September 1, 2021]

CASE MANAGEMENT STATEMENT

Cal. Rules of Court, rules 3.720–3.730
www.courts.ca.gov

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:

4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*

☐ *(If more space is needed, check this box and attach a page designated as Attachment 4b.)*

5. **Jury or nonjury trial**

The party or parties request ☐ a jury trial ☐ a nonjury trial. *(If more than one party, provide the name of each party requesting a jury trial):*

6. **Trial date**

a. ☐ The trial has been set for *(date):*

b. ☐ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain):*

c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability):*

7. **Estimated length of trial**

The party or parties estimate that the trial will take *(check one):*

a. ☐ days *(specify number):*

b. ☐ hours (short causes) *(specify):*

8. **Trial representation** *(to be answered for each party)*

The party or parties will be represented at trial ☐ by the attorney or party listed in the caption ☐ by the following:

a. Attorney:

b. Firm:

c. Address:

d. Telephone number:

e. E-mail address:

f. Fax number:

g. Party represented:

☐ Additional representation is described in Attachment 8.

9. **Preference**

☐ This case is entitled to preference *(specify code section):*

10. **Alternative dispute resolution (ADR)**

a. **ADR information package.** Please note that different ADR processes are available in different courts and communities; read the ADR information package provided by the court under rule 3.221 for information about the processes available through the court and community programs in this case.

(1) For parties represented by counsel: Counsel ☐ has ☐ has not provided the ADR information package identified in rule 3.221 to the client and reviewed ADR options with the client.

(2) For self-represented parties: Party ☐ has ☐ has not reviewed the ADR information package identified in rule 3.221.

b. **Referral to judicial arbitration or civil action mediation** (if available).

(1) ☐ This matter is subject to mandatory judicial arbitration under Code of Civil Procedure section 1141.11 or to civil action mediation under Code of Civil Procedure section 1775.3 because the amount in controversy does not exceed the statutory limit.

(2) ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.

(3) ☐ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court or from civil action mediation under Code of Civil Procedure section 1775 et seq. *(specify exemption):*

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:

10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in *(check all that apply and provide the specified information):*

	The party or parties completing this form **are willing** to participate in the following ADR processes *(check all that apply):*	If the party or parties completing this form in the case **have agreed** to participate in or have already completed an ADR process or processes, indicate the status of the processes *(attach a copy of the parties' ADR stipulation):*
(1) Mediation	☐	☐ Mediation session not yet scheduled ☐ Mediation session scheduled for (*date*): ☐ Agreed to complete mediation by (*date*): ☐ Mediation completed on (*date*):
(2) Settlement conference	☐	☐ Settlement conference not yet scheduled ☐ Settlement conference scheduled for (*date*): ☐ Agreed to complete settlement conference by (*date*): ☐ Settlement conference completed on (*date*):
(3) Neutral evaluation	☐	☐ Neutral evaluation not yet scheduled ☐ Neutral evaluation scheduled for (*date*): ☐ Agreed to complete neutral evaluation by (*date*): ☐ Neutral evaluation completed on (*date*):
(4) Nonbinding judicial arbitration	☐	☐ Judicial arbitration not yet scheduled ☐ Judicial arbitration scheduled for (*date*): ☐ Agreed to complete judicial arbitration by (*date*): ☐ Judicial arbitration completed on (*date*):
(5) Binding private arbitration	☐	☐ Private arbitration not yet scheduled ☐ Private arbitration scheduled for (*date*): ☐ Agreed to complete private arbitration by (*date*): ☐ Private arbitration completed on (*date*):
(6) Other (*specify*):	☐	☐ ADR session not yet scheduled ☐ ADR session scheduled for (*date*): ☐ Agreed to complete ADR session by (*date*): ☐ ADR completed on (*date*):

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

11. **Insurance**

a. ☐ Insurance carrier, if any, for party filing this statement *(name):*

b. Reservation of rights: ☐ Yes ☐ No

c. ☐ Coverage issues will significantly affect resolution of this case *(explain):*

12. **Jurisdiction**

Indicate any matters that may affect the court's jurisdiction or processing of this case and describe the status.

☐ Bankruptcy ☐ Other *(specify):*

Status:

13. **Related cases, consolidation, and coordination**

a. ☐ There are companion, underlying, or related cases.

(1) Name of case:

(2) Name of court:

(3) Case number:

(4) Status:

☐ Additional cases are described in Attachment 13a.

b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by *(name party):*

14. **Bifurcation**

☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action *(specify moving party, type of motion, and reasons):*

15. **Other motions**

☐ The party or parties expect to file the following motions before trial *(specify moving party, type of motion, and issues):*

16. **Discovery**

a. ☐ The party or parties have completed all discovery.

b. ☐ The following discovery will be completed by the date specified *(describe all anticipated discovery):*

Party	Description	Date

c. ☐ The following discovery issues, including issues regarding the discovery of electronically stored information, are anticipated *(specify):*

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

17. **Economic litigation**

a. ☐ This is a limited civil case (i.e., the amount demanded is $25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90-98 will apply to this case.

b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed *(if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):*

18. **Other issues**

☐ The party or parties request that the following additional matters be considered or determined at the case management conference *(specify):*

19. **Meet and confer**

a. ☐ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court *(if not, explain):*

b. ☐ After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following *(specify):*

20. Total number of pages attached *(if any):* ____________

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and alternative dispute resolution, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date:

(TYPE OR PRINT NAME)	▶ (SIGNATURE OF PARTY OR ATTORNEY)
(TYPE OR PRINT NAME)	▶ (SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached.

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EXEMPTIONS FROM THE ENFORCEMENT OF JUDGMENTS

The following is a list of assets that may be exempt from levy in enforcing a judgment.

Exemptions are found in the United States Code **(USC)** and in the California codes, primarily the Code of Civil Procedure (**CCP**).

Because of periodic changes in the law, the list may not include all exemptions that apply in your case. The exemptions may not apply in full or under all circumstances. Some are not available after a certain period of time. You or your attorney should read the statutes.

If you believe the assets that are being levied on are exempt, file the claim of exemption form that you received with the *Notice of Levy* packet.

AMOUNT OF EXEMPTIONS: For the exemption amount, please refer to the code section listed below for each type of property. The current amounts of certain exemptions are listed in *Current Dollar Amounts of Exemptions From Enforcement of Judgments* (form EJ-156). The amounts of some of the exemptions are amended every three years and become effective immediately on April 1 under the provisions of Code of Civil Procedure section 703.150.

Type of Property	Code and Section
ABLE Accounts	Welf & I C § 4880(c)
Accounts *(See Deposit Accounts)*	
Appliances	CCP § 704.020
Art and Heirlooms	CCP § 704.040
Automobiles	CCP § 704.010
BART District Benefits	CCP § 704.110 Pub Util C § 28896
Benefit Payments:	
BART District Benefits	CCP § 704.110 Pub Util C § 28896
Charity	CCP § 704.170
Civil Service Retirement Benefits (Federal)	5 USC § 8346
County Employees Retirement Benefits	CCP § 704.110 Govt C § 31452
Disability Insurance Benefits	CCP § 704.130
Fire Service Retirement Benefits	CCP § 704.110 Govt C § 32210
Fraternal Organization Funds Benefits	CCP § 704.130 CCP § 704.170
Health Insurance Benefits	CCP § 704.130
Irrigation System Retirement Benefits	CCP § 704.110
Judges Survivors Benefits (Federal)	28 USC § 376(n)
Legislators Retirement Benefits	CCP § 704.110 Govt C § 9359.3
Life Insurance Benefits:	
Group	CCP § 704. 100
Individual	CCP § 704. 100
Lighthouse Keepers Surviving Spouses Benefits	33 USC § 775
Longshore & Harbor Workers Compensation or Benefits	33 USC § 916
Military Benefits:	
Retirement	10 USC § 1440
Survivors	10 USC § 1450
Municipal Utility District Retirement Benefits	CCP § 704.110 Pub Util C § 12337
Peace Officers Retirement Benefits	CCP § 704.110 Govt C § 31913
Pension Plans (and Death Benefits):	
Private	CCP § 704.115
Public	CCP § 704.110
Public Assistance	CCP § 704.170 Welf & I C § 17409

Type of Property	Code and Section
Benefit Payments *(cont.)*	
Relocation Benefits	CCP § 704.180
Retirement Benefits and Contributions:	
Private	CCP § 704.115
Public	CCP § 704.110
Segregated Benefit Funds	Ins C § 10498.5
Social Security Benefits	42 USC § 407
Strike Benefits	CCP § 704.120
Supplemental Security Income	42 USC § 1383 42 USC § 407(d)
Transit District Retirement Benefits (Alameda and Contra Costa Counties)	CCP § 704.110 Pub Util C § 25337
Unemployment Benefits and Contributions	CCP § 704.120
Veterans Benefits	38 USC § 5301
Veterans Medal of Honor Benefits.	38 USC § 1562
Welfare Payments	CCP § 704.170 Welf & I C § 17409
Workers Compensation	CCP § 704.160
Boats	CCP § 704.060 CCP § 704.710
Books	CCP § 704.060
Building Materials (Residential)	CCP § 704.030
Business:	
Licenses	CCP § 695.060 CCP § 699.720(a)(1)
Tools of Trade.	CCP § 704.060
Cars and Trucks (including proceeds)	CCP § 704.010
Cash	CCP § 704.070
Cemeteries:	
Land Proceeds	Health & SC § 7925
Plots	CCP § 704.200
Charity	CCP § 704.170
Claims, Actions and Awards:	
Personal Injury	CCP § 704.140
Worker's Compensation	CCP § 704.160
Wrongful Death	CCP § 704.150
Clothing	CCP § 704.020
Condemnation Proceeds	CCP § 704.720(b)
County Employees Retirement Benefits	CCP § 704.110 Govt C § 31452
Damages (*See Personal Injury and Wrongful Death)*	
Deposit Accounts:	
Deposit Accounts (generally)	CCP § 704.220
Deposit Accounts (hardship).	CCP § 704.225

EXEMPTIONS FROM THE ENFORCEMENT OF JUDGMENTS
(Continued)

Type of Property	Code and Section
Deposit Accounts *(cont.)*	
Escrow or Trust Funds	Fin C § 17410
Social Security Direct Deposits	CCP § 704.080
Direct Deposit Account:	
Social Security	CCP § 704.080
Supplemental Security Income	CCP § 704.080
Public Benefits	CCP § 704.080
Disability Insurance Benefits	CCP § 704.130
Dwelling House	CCP § 704.740
Earnings	CCP § 704.070 CCP § 706.050 15 USC § 1673(a)
Educational Grant	Ed C § 21116
Employment Bonds	Lab C § 404
Federal Emergency Management Agency (FEMA) funds	CCP § 704.230
Financial Assistance:	
Charity	CCP § 704.170
Public Assistance	CCP § 704.170 Welf & I C § 17409
Student Aid	CCP § 704.190
Welfare *(See Public Assistance)*	
Fire Service Retirement	CCP § 704.110 Govt C § 32210
Fraternal Organizations Funds and Benefits	CCP § 704.130 CCP § 704.170
Fuel for Residence	CCP § 704.020
Furniture	CCP § 704.020
General Assignment for Benefit of Creditors	CCP § 1801
Health Aids	CCP § 704.050
Health Insurance Benefits	CCP § 704.130
Home:	
Building Materials	CCP § 704.030
Dwelling House	CCP § 704.740
Homestead	CCP § 704.720 CCP § 704.730
Housetrailer	CCP § 704.710
Mobilehome	CCP § 704.710
Homestead	CCP § 704.720 CCP § 704.730
Household Furnishings	CCP § 704.020
Insurance:	
Disability Insurance	CCP § 704.130
Fraternal Benefit Society	CCP § 704.110
Group Life	CCP § 704.100
Health Insurance Benefits	CCP § 704.130
Individual	CCP § 704.100
Insurance Proceeds—Motor Vehicle	CCP § 704.010
Irrigation System Retirement Benefits	CCP § 704.110
Jewelry	CCP § 704.040
Judges Survivors Benefits (Federal)	28 USC § 376(n)
Legislators Retirement Benefits	CCP § 704.110 Govt C § 9359.3
Licenses	CCP § 695.060 CCP § 720(a)(1)
Lighthouse Keepers Surviving Spouses Benefit.	33 USC § 775
Longshore and Harbor Workers Compensation or Benefits	33 USC § 916
Military Benefits:	
Retirement	10 USC § 1440
Survivors	10 USC § 1450
Military Personnel—Property	50 USC § 3934
Motor Vehicle (Including Proceeds)	CCP § 704.010 CCP § 704.060
Municipal Utility District Retirement Benefits	CCP § 704.110 Pub Util C § 12337
Peace Officers Retirement Benefits	CCP § 704.110 Govt C § 31913
Pension Plans:	
Private	CCP § 704.115
Public	CCP § 704.110
Personal Effects	CCP § 704.020
Personal Injury Actions or Damages	CCP § 704.140
Prisoner's Funds	CCP § 704.090
Property Not Subject to Enforcement of Money Judgments	CCP § 704.210
Prosthetic and Orthopedic Devices	CCP § 704.050
Provisions (for Residence)	CCP § 704.020
Public Assistance	CCP § 704.170 Welf & I C § 17409
Public Employees:	
Death Benefits	CCP § 704.110
Pension	CCP § 704.110
Retirement Benefits	CCP § 704.110
Vacation Credits	CCP § 704.113
Railroad Retirement Benefits	45 USC § 231m
Railroad Unemployment Insurance	45 USC § 352(e)
Relocation Benefits	CCP § 704.180
Retirement Benefits and Contributions:	
Private	CCP § 704.115
Public	CCP § 704.110 Ins C § 10498.5
Scholarshare (Higher Education Savings)	CCP § 704.105
Segregated Benefit Funds	Ins C § 10498.6
Servicemembers Property	50 USC § 523(b)
Social Security	42 USC § 407
Social Security Direct Deposit.	CCP § 704.080
Strike Benefits	CCP § 704.120
Supplemental Security Income	42 USC § 1383(d) 42 USC § 407
Student Aid	CCP § 704.190
Tools of Trade	CCP § 704.060
Transit District Retirement Benefits (Alameda and Contra Costa Counties)	CCP § 704.110 Pub Util C § 25337
Travelers Check Sales Proceeds	Fin C § 1875
Unemployment Benefits and Contributions	CCP § 704.120
Uniforms	CCP § 704.060
Vacation Credits (Public Employees)	CCP § 704.113
Veterans Benefits	38 USC § 5301
Veterans Medal of Honor Benefits	38 USC § 1562
Wages	CCP § 704.070 CCP § 706.050 CCP § 706.051
Welfare Payments	CCP § 704.170 Welf & I C § 17409
Workers Compensation Claims or Awards	CCP § 704.160
Wrongful Death Actions or Damages	CCP § 704.150

PARTY WITHOUT ATTORNEY OR ATTORNEY STATE BAR NUMBER:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT** **Not approved by** **the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT:	
PETITION TO DETERMINE PARENTAL RELATIONSHIP	CASE NUMBER:

1. The petitioner
   a. ☐ gave birth to the children listed in item 2.
   b. ☐ wants to be determined as a parent of the children in item 2 because *(specify):*
   c. ☐ wants to be determined as not a parent of the children listed in item 2 because *(specify):*
   d. ☐ is the child or the child's personal representative *(specify court and date of appointment):*
   e. ☐ Other *(specify):*
2. The children are
   a. Child's name — Birthdate — Age
   b. ☐ a child who is not yet born.
3. The court has jurisdiction over the respondent because the respondent:
   a. ☐ lives in this state.
   b. ☐ had sexual intercourse in this state, which resulted in conception of the children listed in item 2.
   c. ☐ Other *(specify):*
4. The action is brought in this county because *(you must check one or more to file in this county):*
   a. ☐ the children live or are found in this county.
   b. ☐ a parent is deceased and proceedings for administration of the estate have been or could be started in this county.
5. Petitioner claims *(check all that apply):*
   a. ☐ respondent is the parent of the children listed in item 2 above.
   b. ☐ parentage has been determined by a voluntary declaration of parentage or paternity. *(Attach a copy if available.)*
   c. ☐ respondent is the children's parent and has failed to support the children.
   d. ☐ *(name):* has furnished or is furnishing the following reasonable expenses of pregnancy and birth for which the respondent as parent of the children should pay:
      Amount — Payable to — For *(specify):*
   e. ☐ public assistance is being provided to the children.
   f. ☐ Other *(specify):*
6. A completed *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (form FL-105) is attached.

Form Approved for Optional Use
Judicial Council of California
FL-200 [Rev. September 1, 2021]

PETITION TO DETERMINE PARENTAL RELATIONSHIP
(Uniform Parentage)

Family Code, § 7630
www.courts.ca.gov

PETITIONER: RESPONDENT:	CASE NUMBER:

Petitioner asks the court to make the determinations indicated below.

7. PARENT-CHILD RELATIONSHIP *(check all that apply):*
   a. ☐ Petitioner ☐ Respondent is the parent of the children listed in item 2.
   b. ☐ Petitioner ☐ Respondent is not the parent of the children listed in item 2.
   c. ☐ Petitioner requests genetic testing to determine whether the ☐ Petitioner ☐ Respondent is the parent of the children listed in item 2.

8. CHILD CUSTODY AND VISITATION (PARENTING TIME)
   a. If ☐ Petitioner ☐ Respondent is found to be the parent of the children listed in item 2.

	Petitioner	**Respondent**	**Joint**	**Other**
b. Legal custody of children to	☐	☐	☐	☐
c. Physical custody of children to	☐	☐	☐	☐
d. Child visitation (parenting time) be granted to	☐	☐		☐

As requested in ☐ form FL-311 ☐ form FL-312 ☐ form FL-341(C)
☐ form FL-341(D) ☐ form FL-341(E) ☐ Attachment 8d

   e. The facts in support of the requested custody and visitation (parenting time) orders are *(specify):*
   ☐ Contained in the attached declaration.

9. REASONABLE EXPENSES OF PREGNANCY AND BIRTH

	Petitioner	Respondent	Joint
Reasonable expenses of pregnancy and birth to be paid by as follows:	☐	☐	☐

10. FEES AND COSTS OF LITIGATION	Petitioner	Respondent	Joint
a. Attorney fees to be paid by	☐	☐	☐
b. Expert fees, guardian ad litem fees, and other costs of the action or pretrial proceedings to be paid by	☐	☐	☐

11. NAME CHANGE
   ☐ Children's names be changed, according to Family Code section 7638, as follows *(specify old and new names):*

12. CHILD SUPPORT
   The court may make orders for support of the children and issue an earnings assignment without further notice to either party.

13. ☐ OTHER ORDERS REQUESTED *(specify):*

14. I have read the restraining order on the back of the *Summons* (form FL-210) and I understand it applies to me when this *Petition* is filed.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

______________________________ ▶ ______________________________
(TYPE OR PRINT NAME) (SIGNATURE OF PETITIONER)

A blank *Response to Petition to Determine Parental Relationship* (form FL-220) must be served on the respondent with this petition.

NOTICE: If you have a child from this relationship, the court is required to order child support based upon the income of both parents. Support normally continues until the child is 18. You should supply the court with information about your finances. Otherwise, the child support order will be based upon information supplied by the other parent. Any party required to pay child support must pay interest on overdue amounts at the "legal" rate, which is currently 10 percent.

PARTY WITHOUT ATTORNEY OR ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	*FOR COURT USE ONLY* **DRAFT** **Not approved by** **the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT:	
RESPONSE TO PETITION TO DETERMINE PARENTAL RELATIONSHIP	CASE NUMBER:

1. The petitioner
   a. ☐ is a parent of the children in item 2.
   b. ☐ is not a parent of the children in item 2.
   c. ☐ is the child or the child's personal representative *(specify court and date of appointment):*
   d. ☐ Other *(specify):*

2. The children are
   a. Child's name Birthdate Age

   b. ☐ a child who is not yet born.

3. The respondent
   a. ☐ lives in the state of California.
   b. ☐ was in California when the children listed in item 2 were conceived.
   c. ☐ does not live in the state of California.
   d. ☐ was not in California when the children listed in item 2 were conceived.
   e. ☐ Other *(specify):*

4. The children
   a. ☐ live or are found in this county.
   b. ☐ are children of a parent who is deceased, and proceedings for administration of the estate have been or could be started in this county.

5. The respondent is
   a. ☐ the parent of the children listed in item 2 above.
   b. ☐ not certain if the respondent is the parent of the children listed in item 2 above.
   c. ☐ not the parent of the children listed in item 2 above.
   d. ☐ Other *(specify):*

6. Additional statements
   a. ☐ Parentage has been determined by a voluntary declaration of parentage or paternity. *(Attach a copy if available.)*
   b. ☐ Parentage has been established in another case ☐ governmental child support ☐ Other *(specify):*
   c. ☐ Public assistance is being provided to the children.

7. A completed *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (form FL-105) is attached.

PETITIONER:	CASE NUMBER:
RESPONDENT:	

The respondent asks that the court make the determinations listed below.

8. PARENT-CHILD RELATIONSHIP *(check all that apply):*
   a. ☐ Respondent ☐ Petitioner is the parent of the children listed in item 2.
   b. ☐ Respondent ☐ Petitioner is not the parent of the children listed in item 2.
   c. ☐ Respondent requests genetic testing to determine whether the ☐ Petitioner ☐ Respondent is the parent of the children listed in item 2.

9. CHILD CUSTODY AND VISITATION (PARENTING TIME)

	Petitioner	**Respondent**	**Joint**	**Other**
a. Legal custody of children to	☐	☐	☐	☐
b. Physical custody of children to	☐	☐	☐	☐
c. Child visitation (parenting time) be granted to	☐	☐		☐

As requested in ☐ form FL-311 ☐ form FL-312 ☐ form FL-341(C)
☐ form FL-341(D) ☐ form FL-341(E) ☐ Attachment 9c

d. The facts in support of the requested custody and visitation (parenting time) orders are *(specify):*
   ☐ Contained in the attached declaration.

10. REASONABLE EXPENSES OF PREGNANCY AND BIRTH:

	Petitioner	Respondent	Joint
Reasonable expenses of pregnancy and birth to be paid by as follows:	☐	☐	☐

11. FEES AND COSTS OF LITIGATION

	Petitioner	Respondent	Joint
a. Attorney fees to be paid by	☐	☐	☐
b. Expert fees, guardian ad litem fees, and other costs of the action or pretrial proceedings to be paid by	☐	☐	☐

12. NAME CHANGE
   ☐ Children's names be changed, according to Family Code section 7638, as follows *(specify old and new names):*

13. OTHER ORDERS REQUESTED *(specify):*

14. CHILD SUPPORT
   The court may make orders for support of the children and issue an earnings assignment without further notice to either party.

I have read the restraining order on the back of the *Summons* (form FL-210) and I understand it applies to me.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

____________________________	▶ ____________________________
(TYPE OR PRINT NAME)	(SIGNATURE OF RESPONDENT)

NOTICE: If you have a child from this relationship, the court is required to order child support based upon the income of both parents. Support normally continues until the child is 18. You should supply the court with information about your finances. Otherwise, the child support order will be based upon information supplied by the other parent. Any party required to pay child support must pay interest on overdue amounts at the "legal" rate, which is currently 10 percent.

PARTY WITHOUT ATTORNEY OR ATTORNEY STATE BAR NUMBER:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT:	
PETITION FOR CUSTODY AND SUPPORT OF MINOR CHILDREN	CASE NUMBER:

NOTICE: This action will not terminate a marriage or domestic partnership and will not determine a parental relationship.

1. I am the petitioner. The respondent and I are the parents of the following minor children:

Child's name	Birthdate	Age

☐ continued on Attachment 1.

2. Choose at least one box below to explain why you are using this form:
   a. ☐ I am married to the respondent, and no action is pending in any court for dissolution, legal separation, or nullity.
   b. ☐ Respondent and I have signed a voluntary declaration of parentage or paternity regarding the minor children, and no action regarding the children has been filed in any other court. A copy is attached.
   c. ☐ Respondent and I have legally adopted a child together.
   d. ☐ Respondent and I have been determined to be the parents in juvenile court or governmental child support.
   Case number:
   County: State: Country (if not the United States):

3. A completed *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (form FL-105) is attached.

4. **Child custody and visitation (parenting time).** I request the following orders:

	Petitioner	Respondent	Joint	Other
a. Legal custody of children to:	☐	☐	☐	☐
b. Physical custody of children to:	☐	☐	☐	☐
c. Visitation (parenting time) of children with:	☐	☐		☐

   d. If "Other" is checked above, name of the other person is *(specify):*
   The proposed schedule for visitation (parenting time) is as follows:

   ☐ See the attached form FL-311, *Child Custody and Visitation (Parenting Time) Application Attachment.*

PETITIONER: RESPONDENT:	CASE NUMBER:

4. e. ☐ I request that the child abduction prevention orders requested on form FL-312 be approved.
   f. ☐ I request that the proposed holiday schedule set out in ☐ form FL-341(C) ☐ other be approved.
   g. ☐ I request that additional orders regarding child custody set out in ☐ form FL-341(D) ☐ other be approved.
   h. ☐ I request that joint legal custody orders set out in ☐ form FL-341(E) ☐ other be approved.
   i. ☐ I request that visitation (parenting time) be supervised for the following persons, with the following restrictions:

   ☐ Continued on Attachment 4i.

   j. ☐ Other *(specify)*:

5. **Fees and cost of litigation**
   a. Attorney's fees will be paid by ☐ petitioner ☐ respondent.
   b. ☐ Each party will pay their own attorney's fees.

6. **Child support.** The court may make orders for support of the children and issue an earnings assignment without further notice to either party.

7. Other *(specify)*:

8. **I have read the restraining order on the back of the *Summons* (form FL-210) that is being filed with this petition, and I understand that it applies to me when this petition is filed.**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME) (SIGNATURE OF PETITIONER)

A blank *Response to Petition for Custody and Support of Minor Children* (form FL-270) must be served on the respondent with a copy of this Petition.

NOTICE: If you have a child from this relationship, the court is required to order child support based on the incomes of both parents. You should supply the court with information about your income. Otherwise, the child support order will be based on information supplied by the other parent. Any party required to pay child support must pay interest on overdue amounts at the "legal rate," which is currently 10 percent.

PARTY WITHOUT ATTORNEY OR ATTORNEY	STATE BAR NUMBER:	FOR COURT USE ONLY
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
E-MAIL ADDRESS:		
ATTORNEY FOR (*name*):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		**DRAFT Not approved by the Judicial Council**
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
PETITIONER:		
RESPONDENT:		
OTHER PARTY:		
ORDER AFTER HEARING ON MOTION TO CANCEL (SET ASIDE) JUDGMENT OF PARENTAGE		CASE NUMBER:

1. This matter proceeded as follows: ☐ Uncontested ☐ By stipulation ☐ Contested
   a. Date: Dept.: Judicial officer:
   b. ☐ Petitioner present ☐ Attorney present *(name):*
   c. ☐ Respondent present ☐ Attorney present *(name):*
   d. ☐ Other party present ☐ Attorney present *(name):*
   e. ☐ Children present *(name):* ☐ Attorney present *(name):*
   f. ☐ Guardian ad litem present *(name):*
   g. ☐ Attorney for local child support agency present *(name):*
   h. ☐ Other *(specify):*

2. For purposes of this order, the previously established parents are *(names):*
   a.
   b.
   c.

THE COURT FINDS

3. The following facts exist regarding the previously established parents and the children listed below:

	Name of child	Date of birth	Genetic Father	Parentage Judgment	Filed Voluntary Declaration of Parentage or Paternity
a.			☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
b.			☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
c.			☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
d.			☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
e.			☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
f.			☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
g.			☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
h.			☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No

   i. ☐ Additional children are listed on a page attached to this order.

PETITIONER: RESPONDENT: OTHER PARTY:	CASE NUMBER:

4. ☐ The court finds the voluntary declaration of parentage or paternity is void (invalid) for the following children *(specify):*

5. Other *(specify):*

THE COURT ORDERS

6. All orders previously made in this action will remain in full force and effect except as specifically modified below.

	Name of child	Date of birth	Judgment of Parentage Canceled (Set Aside)	Voluntary Declaration of Parentage or Paternity Canceled (Set Aside)
a.			☐ Yes ☐ No	☐ Yes ☐ No ☐ N/A
b.			☐ Yes ☐ No	☐ Yes ☐ No ☐ N/A
c.			☐ Yes ☐ No	☐ Yes ☐ No ☐ N/A
d.			☐ Yes ☐ No	☐ Yes ☐ No ☐ N/A
e.			☐ Yes ☐ No	☐ Yes ☐ No ☐ N/A
f.			☐ Yes ☐ No	☐ Yes ☐ No ☐ N/A
g.			☐ Yes ☐ No	☐ Yes ☐ No ☐ N/A
h.			☐ Yes ☐ No	☐ Yes ☐ No ☐ N/A

i. ☐ Additional children are listed on a page attached to this order.

All child support and arrearage orders concerning each child for whom a previous judgment of parentage has been canceled (set aside) are vacated. The previously established parent has no right to reimbursement for any child support paid before the cancellation (set-aside) of the judgment of parentage or voluntary declaration of parentage or paternity.

j. ☐ A judgment of nonparentage is granted with respect to the following children *(specify):*

k. ☐ The motion is denied, based upon the best interest of the child, with regard to the following children *(specify):*

7. For the children named in item 6k, the court denies the motion to cancel (set aside) because of *(check all that apply):*
   a. ☐ The age of the child *(specify):*

   b. ☐ The length of time since the entry of the judgment establishing parentage *(specify time period):*

   c. ☐ The nature, duration, and quality of the relationship between the previously established parent and the child, including the duration and frequency of any time periods during which the child and the previously established parent resided in the same household or enjoyed a parent-child relationship *(specify):*

   d. ☐ The fact that the previously established parent has requested that the parent-child relationship continue.
   e. ☐ The fact that the genetic parent of the child does not oppose preservation of the relationship between the previously established parent and the child.

PETITIONER: RESPONDENT: OTHER PARTY:	CASE NUMBER:

7. f. ☐ The fact that there would be a detriment to the child if the genetic parent were established as the parent *(explain):*

g. ☐ The fact that the previously established parent has hindered the ability to discover the identity of, or get support from, the genetic parent *(specify):*

h. ☐ Other factors concerning the best interest of the child *(specify):*

8. ☐ If the voluntary declaration of parentage or paternity is canceled (set aside), or the court makes a finding that the voluntary declaration is void (invalid), the court clerk must send a copy of this order to the California Department of Child Support Services: **DCSS-POP Unit, P.O. Box 419070-MS 241, Rancho Cordova, CA 95741-9070**.

9. ☐ The court further orders *(specify):*

Date:

JUDICIAL OFFICER

☐ SIGNATURE FOLLOWS LAST ATTACHMENT

Number of pages attached: ________

Approved as conforming to court order:
Date:

SIGNATURE OF ATTORNEY FOR *(specify):*
☐ PETITIONER ☐ RESPONDENT ☐ OTHER

Approved as conforming to court order:
Date:

SIGNATURE OF ATTORNEY FOR *(specify):*
☐ PETITIONER ☐ RESPONDENT ☐ OTHER

Approved as conforming to court order:
Date:

SIGNATURE OF ATTORNEY FOR *(specify):*
☐ PETITIONER ☐ RESPONDENT ☐ OTHER

Approved as conforming to court order:
Date:

SIGNATURE OF ATTORNEY FOR *(specify):*
☐ PETITIONER ☐ RESPONDENT ☐ OTHER

SUPERVISED VISITATION PROVIDER *(Name and address):* NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO. *(Optional):* E-MAIL ADDRESS *(Optional):*	*FOR COURT USE ONLY* **DRAFT** **Not approved by** **the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT: OTHER PARTY/PARENT:	
DECLARATION OF SUPERVISED VISITATION PROVIDER (PROFESSIONAL)	CASE NUMBER:

1. **Purpose.** I submit this form to declare that I comply with all mandatory requirements for professional providers of supervised visitation under Family Code section 3200.5 and standard 5.20 of the Standards of Judicial Administration.

2. **Type of submission.** I am *(check a or b):*
   a. ☐ completing this form before I provide initial supervised visitation services in the case.
   b. ☐ updating this form and attaching an original report of the supervised visitation that I monitored.
      (1) The report is dated *(specify date):*
      (2) ☐ Copies of the report were also sent to all parties and their attorneys ☐ and the attorney for the child.

3. I am paid to provide supervised visitation services as an independent contractor, employee, intern, or volunteer operating independently or through a supervised visitation center or agency.

4. **Qualifications.** I meet the qualifications listed in Family Code section 3200.5 for this position as follows *(check all that apply):*
   a. ☐ I am 21 years of age or older.
   b. ☐ I have no record of a conviction for driving under the influence (DUI) within the last five years.
   c. ☐ I have not been on probation or parole for the last 10 years.
   d. ☐ I have no record of a conviction for child molestation, child abuse, or other crimes against a person.
   e. ☐ I have proof of automobile insurance for transporting the child.
   f. ☐ I have had no civil, criminal, or juvenile restraining orders within the last 10 years.
   g. ☐ There is no current or past court order in which I am the person being supervised.
   h. ☐ I agree to speak the language of the party being supervised and of the child, or I will provide a neutral interpreter over the age of 18 years who is able to do so.
   i. ☐ I agree to adhere to and enforce the court order regarding supervised visitation.
   j. ☐ I completed a Live Scan criminal background check before providing services.
   k. ☐ I am registered as a TrustLine provider.

5. **Training.** I meet the training requirements under Family Code section 3200.5 as follows *(check all that apply):*
   a. ☐ I completed 24 hours of training, including at least 12 hours of classroom instruction in all required subjects.
   b. ☐ I completed the California Department of Social Services' online training course required for mandated reporters.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF DECLARANT)

NOTICE: See standard 5.20 of the California Standards of Judicial Administration for further requirements that may apply.

CHILD'S NAME:	CASE NUMBER:

4. Petitioner on information and belief alleges the following:

a. The child named below comes within the jurisdiction of the juvenile court under the following subdivisions of section 300 of the Welfare and Institutions Code *(check applicable boxes; see attachment 3a for concise statements of facts):*

☐ (a) ☐ (b)(1) ☐ (b)(2) ☐ (c) ☐ (d) ☐ (e) ☐ (f) ☐ (g) ☐ (h) ☐ (i) ☐ (j)

b. Child's name:	c. Age:	d. Date of birth:	e. Gender:

☐ Information is the same as that given for the child in item 1. *(If not the same, provide different information below.)*

f. Name: ☐ mother
Address: ☐ father ☐ guardian ☐ unknown
If mother or father *(check all that apply):*
☐ legal ☐ biological ☐ presumed ☐ alleged

g. Name: ☐ mother
Address: ☐ father ☐ guardian ☐ unknown
If mother or father *(check all that apply):*
☐ legal ☐ biological ☐ presumed ☐ alleged

h. Name: ☐ mother
Address: ☐ father ☐ guardian ☐ unknown
If mother or father *(check all that apply):*
☐ legal ☐ biological ☐ presumed ☐ alleged

i. Other *(state name, address, and relationship to child):*

☐ No known parent or guardian resides within this state. This adult relative lives in this county or is closest to this court.

j. Prior to intervention, child resided with
☐ parent *(name):*
☐ parent *(name):*
☐ guardian *(name):*
☐ Indian custodian *(name):*
☐ other *(state name, address, and relationship to child):*

k. Child is
☐ not detained ☐ detained
Date and time of detention:
Current place of detention *(address):*
☐ Relative ☐ Shelter/foster care ☐ Other

5. a. The child named below comes within the jurisdiction of the juvenile court under the following subdivisions of section 300 of the Welfare and Institutions Code *(check applicable boxes; see attachment 3a for concise statements of facts):*

☐ (a) ☐ (b)(1) ☐ (b)(2) ☐ (c) ☐ (d) ☐ (e) ☐ (f) ☐ (g) ☐ (h) ☐ (i) ☐ (j)

b. Child's name:	c. Age:	d. Date of birth:	e. Gender:

☐ Information is the same as that given for the child in item 1. *(If not the same, provide different information below.)*

f. Name: ☐ mother
Address: ☐ father ☐ guardian ☐ unknown
If mother or father *(check all that apply):*
☐ legal ☐ biological ☐ presumed ☐ alleged

g. Name: ☐ mother
Address: ☐ father ☐ guardian ☐ unknown
If mother or father *(check all that apply):*
☐ legal ☐ biological ☐ presumed ☐ alleged

h. Name: ☐ mother
Address: ☐ father ☐ guardian ☐ unknown
If mother or father *(check all that apply):*
☐ legal ☐ biological ☐ presumed ☐ alleged

i. Other *(state name, address, and relationship to child):*

☐ No known parent or guardian resides within this state. This adult relative lives in this county or is closest to this court.

j. Prior to intervention, child resided with
☐ parent *(name):*
☐ parent *(name):*
☐ guardian *(name):*
☐ Indian custodian *(name):*
☐ other *(state name, address, and relationship to child):*

k. Child is
☐ not detained ☐ detained
Date and time of detention:
Current place of detention *(address):*
☐ Relative ☐ Shelter/foster care ☐ Other

Form Adopted for Mandatory Use
Judicial Council of California
JV-101(A) [Rev. September 1, 2021]

ADDITIONAL CHILDREN ATTACHMENT
Juvenile Dependency Petition

Welfare and Institutions Code, § 300;
Cal. Rules of Court, rule 5.504
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

6. Indian Child Welfare Act Inquiry *(check one)*:

a. ☐ I have asked as to whether the child is or may be a member of an Indian tribe or eligible for membership and the biological child of a member, and the *Indian Child Inquiry Attachment* (form ICWA-010(A)) is attached.

b. ☐ On information and belief, I am aware that inquiry has been completed by *(insert name)* and the *Indian Child Inquiry Attachment* (form ICWA-010(A)) is attached.

c. ☐ Inquiry about whether the child is or may be a member of an Indian tribe or eligible for membership and the biological child of a member has not yet been completed for the reasons set out below. I am aware of the ongoing duty to complete this inquiry and will complete the *Indian Child Inquiry Attachment* (form ICWA-010(A)) and submit it to the court as soon as possible.

CHILD'S NAME:	CASE NUMBER:

General Information

1. Child's or youth's date of birth: Child's Statewide Student Identifier (SSID):
   Indian child's tribe (if applicable):
   Address: City: Zip Code:
   Email: Phone No.:

2. School information
   a. School district (local educational agency or LEA):
   b. School *(name and address):*
   c. Foster youth educational liaison (Ed. Code, § 48853.5) *(name and contact information):*
   d. ☐ The child is currently expelled from school and may be eligible for readmission on or after *(date):*

3. County office of education *(name and address):*

   Foster youth service coordinator *(name and contact information):*

4. Regional center *(name and address):*

   Service coordinator *(name and contact information):*

5. County placing agency *(specify):*
   a. Assigned social worker or probation officer *(name and contact information):*
   b. Supervising social worker or probation officer *(name, address, and contact information):*

6. CASA organization *(name and address):*

   Court Appointed Special Advocate (CASA) *(name and contact information):*

7. Child's or youth's attorney *(name, address, and contact information):*

THE COURT FINDS AND ORDERS

8. ☐ The child or youth is the subject of a petition filed under section 325. The child's parent, guardian, or Indian custodian is unavailable, unable, or unwilling to exercise educational or developmental services rights; the agency has made diligent efforts to locate and secure the participation of the parent, guardian, or Indian custodian in educational and developmental-services decisionmaking; and the child's or youth's educational and developmental-services needs cannot be met without the temporary appointment of a responsible adult as educational rights holder.

9. ☐ Limitation of the rights of the parent(s), guardian(s), or Indian custodian(s) to make ☐ educational ☐ developmental-services decisions is necessary to protect the child or youth.

10. ☐ The youth is at least 18 years old and
    a. ☐ has chosen not to make ☐ educational ☐ developmental-services decisions for the youth.
    b. ☐ is deemed incompetent to make educational or developmental-services decisions for the youth.

11. ☐ *(If 10a or 10b is checked):* The appointment of an educational rights holder to make developmental-services decisions for the youth is in the youth's best interests.

CHILD'S NAME:	CASE NUMBER:

12. ☐ The court has denied or terminated reunification services for the parent, guardian, or Indian custodian, and the child or youth is placed in a planned permanent living arrangement under section 366.21(g)(5), 366.22, 366.26, 366.3(i), or 727.3(b)(5)–(6).

13. There ☐ is ☐ is not a responsible adult relative, nonrelative extended family member, or other adult known to the child who is available and willing to serve as the educational rights holder.

14. The child or youth is receiving special education, general education accommodations and modifications, early intervention services, or developmental services. ☐ Yes ☐ No

15. ☐ The child or youth is receiving services under the following plan *(check all that apply):*
    - a. ☐ Individualized education program (IEP)
    - b. ☐ Section 504 plan
    - c. ☐ Individualized family service plan (IFSP)
    - d. ☐ Individual program plan (IPP)
    - e. ☐ Special education local plan area (SELPA)
    - f. ☐ Other *(explain):*

    The LEA, SELPA, or regional center must provide a copy of any plan to the designated educational rights holder.

16. ☐ The child or youth needs the following educational or developmental assessments or services *(check all that apply):*
    - a. ☐ The child is 0–3 years old, is at risk for a disability or has a developmental delay, and needs assessment for services.
    - b. ☐ The child is 0–3 years old, has a disability, and needs the development of an IFSP.
    - c. ☐ The child or youth is 3 years old or older, may have a disability, and needs intake and assessment for services.
    - d. ☐ The child or youth is 3 years old or older, has a disability, and needs the development or revision of an IEP, IPP, or Section 504 plan.

17. The appointed educational rights holder must *(check all that apply):*
    - a. ☐ Submit to the LEA a written referral for assessment for special education and related services or for services under section 504 of the Rehabilitation Act of 1973.
    - b. ☐ Submit to the regional center a written referral for an initial intake and eligibility assessment or evaluation.
    - c. ☐ Submit to the LEA a written referral for assessment or services, or a written request to convene the IEP team to develop, review, or revise the pupil's IEP.
    - d. ☐ Submit a written request to the regional center to convene the IFSP team to develop, review, or revise the IFSP.
    - e. ☐ Submit a written request to the regional center to convene the IPP team to develop, review, or revise the IPP.
    - f. ☐ Other:

18. ☐ The following person is directed under rule 5.649(c)–(d) to take whatever steps are necessary to request any assessments or services identified in item 16 or 17 *(name and address unless confidential):*

19. ☐ The current educational program and school placement are in the best interests of the child or youth.

20. ☐ The current IFSP, IPP, or other developmental services plan is in the best interests of the child or youth.

21. ☐ The child or youth ☐ is ☐ is *not* attending the child's or youth's school of origin. If not,
    - a. The educational rights holder ☐ has ☐ has *not* waived the child's or youth's right to attend the school of origin.
    - b. The child or youth ☐ has ☐ has *not* waived the child's or youth's right to attend the school of origin.

22. ☐ The county placing agency has considered educational stability and the opportunity to be educated in the least restrictive educational program when making placement decisions for the child or youth.

CHILD'S NAME:	CASE NUMBER:

Educational Rights Holder Service of Process Check Box

Mandatory:

1. ☐ Social worker ☐ Probation officer
   a. Name:
   b. Mailing or electronic service address:
   c. Date of service:
   d. Method of service:
2. ☐ Child *(if 10 years of age or older)*
   a. Name:
   b. Mailing or electronic service address:
   c. Date of service:
   d. Method of service:
3. ☐ Local Foster Youth Educational Liaison
   a. Name:
   b. Mailing or electronic service address:
   c. Date of service:
   d. Method of service:
4. ☐ Attorney for child or youth
   a. Name:
   b. Mailing or electronic service address:
   c. Date of service:
   d. Method of service:
5. ☐ County Office of Education Foster Youth Services Coordinator
   a. Name:
   b. Mailing or electronic service address:
   c. Date of service:
   d. Method of service:
6. ☐ Educational Rights Holder
   a. Name:
   b. Mailing or electronic service address:
   c. Date of service:
   d. Method of service:

Mandatory, if applicable:

1. ☐ Regional Center Service Coordinator
   a. Name:
   b. Mailing or electronic service address:
   c. Date of service:
   d. Method of service:
2. ☐ CASA Volunteer
   a. Name:
   b. Mailing or electronic service address:
   c. Date of service:
   d. Method of service:
3. ☐ Tribe/Bureau of Indian Affairs
   a. Name:
   b. Mailing or electronic service address:
   c. Date of service:
   d. Method of service:

If appropriate:

1. ☐ Mother ☐ Father ☐ Legal guardian
   a. Name:
   b. Mailing or electronic service address:
   c. Date of service:
   d. Method of service:
2. ☐ Indian custodian
   a. Name:
   b. Mailing or electronic service address:
   c. Date of service:
   d. Method of service:

If requested and entitled to notice under § 293:

1. ☐ Other *(specify)*:
   a. Name:
   b. Mailing or electronic service address:
   c. Date of service:
   d. Method of service:
2. ☐ Other *(specify)*:
   a. Name:
   b. Mailing or electronic service address:
   c. Date of service:
   d. Method of service:
3. ☐ Other *(specify)*:
   a. Name:
   b. Mailing or electronic service address:
   c. Date of service:
   d. Method of service: